

1946

Present : Dias, Commissioner of Assize.

THE KING v. MUDALIHAMY.

21—*M. C. Ratnapura, 43,874.*

Evidence Ordinance, s. 32 (1)—Meaning of “circumstances of the transaction” — Statement of deceased before the cause of death has arisen—Admissibility.

The statement admissible under section 32 (1) of the Evidence Ordinance may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed.

Pakala Narayana Swami v. Emperor A.I.R. (1939) P.C. 47 followed. The King v. Arnolis Perera (1927) 28 N.L.R. 481 not followed.

THIS was a statement of reasons given by the Commissioner of Assize, Western Circuit, for admitting certain evidence tendered by the prosecution and objected to by the defence.

K. S. Rajah, for the accused.

F. B. P. Jayasuriya, C.C., for the Crown.

March 29, 1946. DIAS, COMMISSIONER OF ASSIZE—

At the close of the argument I decided to admit the evidence tendered by the prosecution and objected to by the defence. I intimated that I would give my reasons later.

The accused, W. K. Mudalihamy, is charged with committing the murder of one R. K. William Singho on March 30, 1945.

The case for the prosecution is that the accused and William Singho were friends and that the former lived in the same estate lines with William Singho and his mistress, Mary Nona. It is the case for the prosecution that on the day in question the accused went off to obtain bees' honey in the jungle. In his absence William Singho is alleged to have come to his lines and after his midday meal left the place with some scrap rubber and a box of matches.

When Mary Nona questioned him as to where he was going, William Singho is alleged to have said “Mudalihamy (the accused) wanted me to go and collect honey and I am going to meet him”.

William Singho has not been heard of since. Twelve days later an unrecognisable and decomposed body of a man was found wedged in between two rocks in the middle of a stream.

Mary Nona identified the body by certain tattoo marks and the doctor found seven stab wounds and one incised wound on the body.

The question for decision is whether the statement of William Singho made to Mary Nona is admissible under section 32, sub-section (1) of the Ceylon Evidence Ordinance.

The decision in *The King v. Arnolis Perera*¹ is exactly in point. If that decision is followed the evidence is clearly inadmissible. When Crown Counsel opened the case, acting under this authority, I desired him not to open to the Jury the alleged statement of William Singho.

¹ (1927) 28 N. L. R. 481.

Crown Counsel, however, has subsequently brought to my notice the decision of the Privy Council in the case of *Pakala Narayana Swami v. Emperor*¹.

Crown Counsel has argued that in the light of this decision the case of *The King v. Arnolis Perera (supra)* can no longer be considered as a binding authority.

In the absence of the Jury the question has been argued and I am of opinion that the Privy Council judgment is in point.

In the local case similar evidence was rejected on the ground that section 32 (1) of the Evidence Ordinance is limited to statements made by a person *after the event*, which resulted in his death.

The Privy Council has dissented from this view. Lord Atkin in delivering judgment said :—

“ A variety of questions has been mooted in the Indian Courts as to the effect of this section. It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the ‘ circumstances ’ can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. ‘ Circumstances of the transaction ’ is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in ‘ circumstantial evidence ’ which includes evidence of all relevant facts. It is on the other hand narrower than ‘ *res gestae* ’. Circumstances must have some proximate relation to the actual occurrence : though, for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that ‘ the circumstances ’ are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that ‘ the cause of (the declarant’s) death comes into question ’. In the present case the cause of the deceased’s death comes into question. The transaction is one in which the deceased was murdered on March 21 or 22 : and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on March 20 or 21,

¹ A. I. R. (1939) P. C. 47 at 50.

that he was setting to the place where the accused lived, and to meet a person, the wife of the accused, who lived in the accused's house appears clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. The statement was rightly admitted”

I decided to follow the Privy Council judgment and admitted the evidence.

Objection overruled.

