
(1945) 08 BOM CK 0005

In the Bombay High Court

Case No : Case No. 26 of 1945 and 3rd Criminal Sessions 1945

Emperor

APPELLANT

Vs

Bhagwandas Tulsidas

RESPONDENT

Date of Decision : 20-08-1945

Acts Referred:

Evidence Act, 1872 — Section 42

Citation : AIR 1946 Bom 184 : (1945) 47 BOMLR 997

Hon'ble Judges : Lokur, J

Bench : Single Bench

Judgement

Lokur, J.—The accused are being tried for the murder of one Dharamsey, and Mr. Haji, the learned Counsel for two of the accused, wants to tender in evidence the Coroner's inquisition based on the verdict of the jury at the inquest. The learned committing Magistrate admitted it in spite of the objection urged on behalf of the prosecution. He held it to be relevant u/s 42 of the Indian Evidence Act as a judgment in rem, relating to a matter of a public nature, relying upon the following observation in para. 1767 on p. 1111 of Taylor on Evidence (twelfth edition):

The general admissibility of inquisitions rests upon the ground that they contain the result of inquiries made under competent authority concerning matters in which the public is interested.

2. This may apply to inquisitions like "the survey and report made by a surveyor in discharge of a duty imposed upon him by statute", as held in *Evans v. Merthyr Tydfil, Urban Council* [1899] 1 Ch. 241. The learned Magistrate has also referred to Taylor's remark in para. 1674 (on p. 1051) that:

Inquisitions in lunacy, inquisitions post mortem, or other inquisitions, which though regarded as judgments in rem, so far as to be admissible in evidence of the facts determined against all mankind, are considered as not conclusive evidence.

3. In the passage which precedes this remark, the learned author says (p. 1050):

...a judgment in rem furnishes conclusive proof of the facts adjudicated, as well against strangers as against parties, but this rule does not extend to criminal convictions, which are subject to the same rules of evidence as ordinary judgments inter partes.

4. In this country, the question of relevancy is to be decided in accordance with the provisions of the Indian Evidence Act. As pointed out by the Privy Council in *Rani Lekraj Kuar v. Baboo Mahpal Singh*: (1879) L.R. 7 I.A. 63 (Privy Council) Section 2 of the Indian Evidence Act has repealed all rules of evidence not contained in any Statute or Regulations, and the party tendering a document in evidence must show that it is admissible under some provision of the Indian Evidence Act. Section 42, on which the learned Magistrate relies, declares the relevancy of a judgment which relates to matters of a public nature, such as the existence of a public right of way over a land. A Coroner's inquest is aimed at inquiring into the cause of the death of any person, which he has reason to believe to have been caused "by accident, homicide, suicide or suddenly by means unknown." The cause of such an unnatural death is not a matter of a public nature, though one of the objects of holding such a public inquiry is to satisfy the public conscience that an unnatural death was not hushed up. If the cause of death be homicide, the suspect is not always a party to the inquiry. The inquest can be, and often is, held in the absence of the suspect, though according to Section 8 of the Coroner's Act, 1871, it is deemed a judicial proceeding within the meaning of Section 193 of the Indian Penal Code. If the verdict is that the death was the result of a criminal act, then u/s 25 the Coroner is to send at once a copy of the inquisition to the Commissioner of Police, and u/s 26 he may even issue a warrant for the apprehension of the suspect and send him to a Magistrate. The purpose of the inquest is then at an end. The inquisition is not a decision, but a prima facie opinion and stands on no higher footing than an order of commitment to the Sessions. It is not a judgment, much less a judgment inter partes. As observed by Beaumont C.J. in *Emperor v. Mahomed Yusuf*¹ (p. 1021):

...the inquiry before the Coroner, although it may be a judicial proceeding, is not a proceeding between the prosecutor and the accused. The proceedings before the Coroner are merely an inquiry into the circumstances leading to the death of the person whose death is under inquiry, and it is impossible to say that the Crown is a party to these proceedings, even if it can be said that the accused is a party on the ground that he was during those proceedings a suspect.

5. I respectfully think that even the accused cannot be said to be a party to the proceedings, as in many cases the suspect is not present at the inquest. It is a general inquiry for further action by the police if necessary. Hence the inquisition is not a judgment, nor can it be admitted as an opinion, since it represents the opinion of laymen, often arrived at even before the police investigation is complete. In this case the police refused to accept the verdict of the Coroner's

jury that Dharamsey was stabbed by Kaku, and sent a charge-sheet against these three accused and Mulji. If the verdict of the Coroner's jury be adverse to the accused, it would certainly prejudice the accused if the inquisition be admitted and brought to the notice of the jury as a piece of relevant evidence.

6. Hence the Coroner's inquisition is not relevant under any of the provisions of the Indian Evidence Act, and is, therefore, inadmissible in evidence.