

# **Thurukanni Pompiah And Anr. vs State Of Mysore on 25 September, 1964**

**Equivalent citations: AIR1965SC939, 1965CRILJ31, AIR 1965 SUPREME COURT 939, 1965 MADLJ(CRI) 510, 1965 2 SCJ 157, 1965 (1) SCWR 646, 1965 SCD 445**

**Author: R.S. Bachawat**

**Bench: A.K. Sarkar, N. Rajagopala Ayyangar, R.S. Bachawat**

## **JUDGMENT**

R.S. Bachawat, J.

1. Thurukanni Pompiah, Siddaiah, Singapurada Hussaini and Nitravatti Rudramuni were charged under Section 302 of the Indian Penal Code with the offence of murdering Ullegadde Eranna on September 29, 1961 at about 11 A. M. on the road from Kampli to Shanapur at a distance of about a mile. The Sessions Judge, Bellary convicted all of them of an offence under Section 325/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for three years. All the four accused as also the State preferred separate appeals. The High Court allowed the appeals of Siddaiah and Rudramuni, set aside their conviction and sentence and acquitted them. The appeals of Pompiah and Hussaini were dismissed. The appeal by the State was allowed in part, the conviction of Pompiah and Hussaini was altered into one under Section 326/34 of the Indian Penal Code, and in lieu of the sentence imposed by the Sessions Judge, they were sentenced to undergo rigorous imprisonment for a period of four years. Pompiah and Hussaini now appeal to this Court by special leave.

2. Deceased Eranna was a resident of village Tekkalakota in Sirugappa Taluk, Bellary District. Eranna and Pompiah were great friends. Pompiah had a mistress named Shankamma. Taking advantage of this friendship, Eranna used to visit Pompiah's house, and in the course of such visits, developed intimacy with Shankamma. On discovering this intimacy, Pompiah drove away Shankamma from his house. Subsequently, Eranna kept Shankamma as his mistress. This woman was the cause of strained relationship between Eranna and Pompiah. Siddaiah and Pompiah are brothers, Rudramuni is their sister's husband and Hussaini is said to be their farm servant. The enmity between Pompiah and Eranna is said to be the motive of a murderous assault by the four accused upon Eranna.

3. The prosecution case is that on the morning of September 29, 1961, Eranna was going from Kampli to Shanapur to visit Shankamma, who was residing there. On the way from Kampli to

Shanapur, at the place where the road branched off towards Mushtur, Eranna was attacked and assaulted by the four accused, who were armed with sickles and sticks. Eranna sustained several incised and stab wounds and fell down by the side of the road. Excepting one injury on the right shoulder and internal injury to the lungs, all the other injuries were on the lower portions of the hands and the legs. Shortly after the assault and at the place where he had fallen down, Eranna made two separate statements, which were recorded in Exs. P-2 and P-1(a). Later, he was removed to the hospital at Kampli, and there at about 12-15 P. M. he made a declaration, which is recorded in Ex. P-9. He died in the hospital on the same day at about 2-30 P. M. Death was due to shock and haemorrhage as a result of the injuries.

4. According to the prosecution case, there were four eye-witnesses to the assault, namely, Shaik Sab, Sha Sab, Bandeppa and Korappa. The High Court rejected the evidence of these witnesses, and decided the case on the footing that there were no eye-witnesses of the assault.

5. The High Court believed the prosecution case with regard to Exs. P-2, P-1(a) and P-9. Both Exs. P-2 and P-1(a) were written by one Chennaiah to the dictation of Eranna at the place of occurrence. Exhibit P-2 was written in the presence of one Tippanna, and is in the form of a note addressed to Veerabhadrappe, a brother-in-law of Eranna. By Ex. P-2, Veerabhadrappe was requested to come to Kampli immediately, and it was stated that while Eranna was going to Shanapur from Kampli, Pompiah and Hussaini and some others of the village of Eranna came on the way and cut his legs and hands with sickle and axe. Exhibit P-2 did not mention the names of Siddaiah and Rudramuni. At Eranna's request, Tippanna took Ex. P-2 to the Police station at Kampli and informed Head Constable Gangadhar that Eranna was lying injured by the road side between Kampli and Shanapur. Immediately after Ex. P-2 was written, Chennaiah noted in Eranna's diary, Ex. P-1(a), that Eranna had been assaulted by all the four accused. This note was left in Eranna's shirt pocket. At the inquest held in the same afternoon, Gangadhar seized Ex. P-1(a) from Eranna's shirt pocket and also recovered Ex. P-2 from Tippanna's possession. Chennaiah, the scribe of Exs. P-2 and P-1(a), turned hostile, but the High Court held, on a consideration of other evidence, that both Ex. P-2 and Ex. P-1(a) were written at the spot by Chennaiah to the dictation of Eranna.

6. Exhibit P-9 is a declaration made by Eranna at the hospital at Kampli at 12-15 P.M. on September 29, 1961. It bears the impression of Eranna's left thumb. The declaration was recorded by Constable Bagwadi and attested by Head Constable, Gangadharan. Dr. Dasa Rao, Medical Officer-in-charge, Kampli attached a certificate that the declaration was taken in his presence at the hospital and Eranna was then conscious. The High Court found that Ex. P-9 correctly recorded Eranna's statement, that Eranna voluntarily made the statement without any prompting by anybody. In Ex. P-9, Eranna named all the four accused as his assailants. Exhibit P-9 reads as follows:

"I am a resident of Tekkalakota village. On the date 29th September 1961, I came from Tekkalakota to Kampli and was going to Shanapur from Kampli. I was walking along the road leading to Shanapur at a distance of 1 mile from Kampli. At that time four persons namely (1) Thurakanni Pompiah, son of Eraiah who was armed with 'Kodaga Katthi', (2) Pompanna's younger brother Shiddiah who was armed with a stick, (3) Thurukara Hussaini and (4) Nittoor Bandeyya's son Rudramuni, all

residents of Tekkalagota stopped me and they struck me, on my right forearm below my left knee and on my right arm with kudugolu, Jollu and kathi. My right hand and left leg are fractured and whole body is covered with blood. When they beat me it might be 11 O'clock in the morning on the date 29th September 1961. They beat me for the sake of my concubine Chippagiri Shankamma. Read over and heard. It is correct."

7. It will be noticed that before his death, Eranna made three statements which were recorded in Exs. P-12, P-1(a) and P-9 respectively. Though the High Court disbelieved the eyewitnesses, it came to the conclusion that the conviction could be based on the dying declaration, Ex. P-9, alone without any further corroboration. But in view of the fact that Siddaiah and Rudramuni were not named as assailants in the very first statement of Eranna recorded in Ex. P-2 and other circumstances on the record, the High Court did not consider it safe to act on the dying declaration so far as it implicated Siddaiah and Radramuni, and accordingly gave them the benefit of doubt and acquitted them. The High Court observed:

"Whatever may be the reason, the fact remains that in the very first record which he got made to his dictation, Eranna did not mention the names of the second and the fourth accused. The mentioning of the names of the second and the fourth accused in the two subsequent documents, namely, Exhibits P-1(a) and P-9 may have been due to an afterthought."

8. Nevertheless, the High Court thought that even in the absence of corroboration, it could safely convict Pompiah and Hussaini on the basis of the dying declaration alone without any corroboration. The High Court observed:

"When A-1 had not in any way wronged Eranna, there was no reason for Eranna to have any grievance against A-1. Therefore, there is no good ground to suspect that Eranna, in his dying declaration, had falsely implicated A-1., Accused 3 is no other than a farm servant of A-1 and there is nothing improbable in A-3 joining his master, in making an attack on Eranna."

It may be mentioned that Pompiah is accused No. 1 and Hussaini, accused No. 3. We think that the High Court fell into an error in convicting them on the basis of the dying declaration without any corroboration.

9. Under Clause (1) of Section 32 of the Indian Evidence Act, 1872, a statement made by a person who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is a relevant fact in cases in which the cause of that person's death comes into question, and such a statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. The dying declaration of Eranna is, therefore, relevant and material evidence in the case. A truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied

that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration. The law on this subject is stated by Sinha, J. in *Khusal Rao v. State of Bombay*, thus:

"Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the Court after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction."

10. In the instant case, learned counsel for the State contended that the High Court merely gave Siddaiah and Rudramuni the benefit of doubt, and applying *Khusal Rao's* case, the dying declarations could safely form the basis of the conviction of Pompiah and Hussaini without corroboration. We are unable to accept this contention.

11. In *Khusal Rao's* case, , several dying declarations named Khusal and Tukaram as the assailants of the deceased. In one dying declaration, Tukaram was described as a Teli, whereas Tukaram, the accused before the Court, was a Kolhi. The evidence disclosed that there were three or four persons of the name of Tukaram residing in the neighbourhood and some of them were Telis. In these circumstances, the High Court acquitted accused Tukaram, and gave him the benefit of the doubt created by the similarity of the names in the locality. But accused, Khusal, was convicted, on the basis of the dying declarations alone, and this conviction was upheld by this Court. This Court pointed out that "no part of the dying declarations has been shown to be false" and the Court had "no reasons to doubt the truth of the dying declarations and their reliability."

12. In the instant case, the declarations recorded in Exs. P-2 and P-1(a) were made almost simultaneously and the declaration recorded in Ex. P-9 was made shortly thereafter. In Ex. P-2, Eranna named Pompiah and Hussaini only as his assailants, whereas in Exs. P-1(a) and P-9 he named not only Pompiah and Hussaini, but also Siddaiah and Rudramuni as his assailants. Now, his version that Siddaiah and Rudramuni attacked him has been found to be an afterthought. We thus find that a material and integral portion of the deceased's version of the entire occurrence is unreliable. The truthfulness of the dying declarations as a whole is not free from doubt. The prosecution case as a whole does not inspire confidence. The prosecution produced eye-witnesses, who have been found to be unreliable. Considering all the circumstances of the case, we think that the dying declarations suffer from an infirmity and are not reliable by themselves and cannot safely

form the basis of the conviction of the appellants without further corroboration. No such corroboration is forthcoming in this case. The prosecution has, of course, established that there was enmity between Eranna and Pompiah and their relationship was strained; but a possible motive of the murder cannot be treated as corroboration of the dying declarations. In all these circumstances, the appellants should be given the benefit of the doubt and acquitted.

13. In the result appeal is allowed, the convictions and sentences of the appellants are set aside and they are acquitted. We direct that the appellants be set at liberty forthwith.