

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 4 | Issue 1

2021

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Pakala Narayana Swami v. King Emperor

AIR 1939 PC 47

LAKSHITA KHURANA ¹

ABSTRACT

Evidence is the most important factor in holding the accused guilty of a criminal offence. This paper discusses such case law Pakala Narayana Swami v. King Emperor, in which a man was brutally murdered by his son-in-law due to a financial issue. In the conclusion of this case comment, we shall see if the accused was able to escape the eyes of law or not.

I. BRIEF FACTS

On Tuesday, March 23, 1937, at about noon the **body** of the deceased man was found in a steel trunk in a third-class compartment at Puri, the terminus of a branch line on the Bengal Nagpur Railway, where the trunk had been left unclaimed. The body had been **cut into 7 portions**, and the medical evidence left no doubt that the man had been murdered.

1. About the man –

He was a man of about 40 years, and had been married about 22 years. He had been a peon in the service of the Dewan of Pithapur.

One of his daughters was the wife of the accused.

2. Background of the case –

It was suggested by the prosecution that before her marriage and about 19 years before the events in question the wife of the accused, then a girl of about 13, had had an intrigue with the deceased. Four **letters** were produced by the deceased's widow purporting to be signed by the girl bearing

date 1918 supporting this suggestion. The Judge was not satisfied with the evidence of handwriting; there was no other evidence worth considering in support; and this suggested motive must be definitely **rejected**. The fact however remains that the deceased was in possession of these four documents purporting to be signed by the wife of the accused.

About 1919 the accused and his wife were married. They went to live at Berhampur about 250 miles from Pithapur. About 1933 they returned to Pithapur where they appear to have **stayed with her father**.

They seem at that time to have been in **need of money**; and during 1936 the accused's wife **borrowed** from the deceased man at various times and in relatively small sums an amount of Rs. **3,000** at interest at the rate of **18%**, per annum. About 50 letters and notes proving these transactions signed: by the accused's wife were found in the deceased man's house at Pithapur after his death.

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3. Facts relating to death of the deceased

On Saturday, March 20, 1937, the **deceased man received a letter** the contents of which were not accurately proved, but it was reasonably clear that it **invited him to come that day or next day to Berhampur**. It was **unsigned**. The widow said that on that day her husband showed her a letter and said that he was going to Berhampur as the appellant's wife had written to him and told him to go and receive payment of his due.

The **deceased left his house on Sunday, March 21**, in time to catch the train for Berhampur. On Tuesday, **March 23, his body was found** in the train at Puri as already stated.

4. Facts relating to guilt of the accused

Police **suspicion** does not appear to have been directed against the accused and his household until **April 4**, on which date the police visited the house, examined the inhabitants and **obtained a statement from the accused**, the admissibility of which is one of the principal grounds of the appeal. They **searched the premises**, as is said, for incriminating documents only, and in the afternoon arrested the 4 persons.

In addition to evidence of the facts above stated the prosecution adduced the **evidence of two employees in a shop** at Berhampur where **trunks** were made and sold, who gave evidence that on Monday, March 22, in the afternoon the dhobie / washerman of the accused called at the shop and ordered a trunk, and that a trunk was taken to the accused's house and shown to him and his wife. A small trunk of the size of the trunk in question was then **delivered to the dhobie** at the shop and he took it away. The transaction was

entered in the rough day book and in the fair copy book of the shop as of the day in question.

Evidence was given by a **jetka driver**, who lived near the accused that early in the morning some 4 months before the trial the **accused had come to his house** and said he wanted a jetka; that he drove to the accused's house; that a **trunk** which was like the trunk in question was **loaded** on the jetka; and that he drove the accused with the trunk to the station where the trunk was unloaded and **taken into the station**. The evidence was **corroborated by a man** who ran alongside the jetka in charge of the horse which was fresh.

A witness of repute spoke to **seeing the accused** at the **station** on the morning of March 23 when the train on which the trunk was found arrived. He could not say that he saw the accused enter the train.

The accused and the other three members of his household were arrested on the 4th, and the house remained **unoccupied**. On 7th April, a **further search** of the premises was made by the police, and a bundle of **rags** which apparently had been washed but contained **blood-stains** was found buried at a depth of about 18 inches in the compound. Some rags also bloodstained but still damp was found in a box in the bathroom. The trial Judge accepted this evidence.

5. Statement of the Accused & its Importance:

The alleged statement of accused was that the **deceased had come to his house** on the evening of March 21, slept in one of the outhouse rooms for the night and left on the evening of the 22nd by the passenger train.

This statement was obviously important for it admitted that the murdered man arrived at the accused's house on the 21st.

On the morning of March 23;

- The accused **went to the station** with Gangulu (the jetka driver) in the jetka, and went off by the passenger train to Chatrapur on some private business with one Delhi's Chiranjivi Rao.
- Hearing at the Chatrapur station, that **Chiranjivi Rao was away**, the accused returned by the Vizagapatam passenger train, as far as Jagannadhapur whence he went to Narendrapur to see one Juria Naiko.
- Again, **Naiko too was absent**. So, the accused **returned to Berhampur by jetka**.

II. ISSUES

1. Whether the statement of the accused can be considered as **Confession**, as under section 162 of CrPC or section 25 of Evidence Act?
2. Whether the statement of the deceased to his wife that he is going to Berhampur to take back his loan was considered as a **Dying Declaration**?

III. PROCEDURAL BACKGROUND OF THE CASE

The landmark judgment of the Privy Council has travelled its way up in the judiciary by the decision of both lower courts i.e., **Trial Court to High Court by convicting the accused** for committing the crime of Murder and sentenced

him for death. Hence, an appeal to the Privy Council.

Held by Previous Courts

After hearing the evidence, the examining **Magistrate - discharged** the accused, his wife, his wife's brother, and his clerk living at his house; holding that there was no sufficient evidence to support the charge.

At the **Trial Court**, the Sessions Judge acquitted the appellant's wife of all the charges but **convicted the appellant** of murder and sentenced him to death.

This is an appeal by special leave from a judgment of the **High Court of Patna** who **affirmed the decision** of the Sessions Judge at Berhampur.

IV. JUDGEMENT

Held by Privy Council;

1. With respect to Issue 1 (Confession):

Held:

The statement made before police under Section 162 **cannot** be held to be a confession.

Reasons stated:

- i. No statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed.
- ii. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a

gravely incriminating fact, even a conclusively incriminating fact is **not of itself a confession**.

- iii. The statement was **partly confession & partly explanatory** of his innocence (hence, self-exculpatory).

The Lordships came to the conclusion that the words of the section lead to the conclusion that the statement is not admissible even when made by the person ultimately accused. Thus, the **statement** of the accused had been held to have been **wrongly admitted**.

In view of their Lordships' decision that the alleged statement was **inadmissible** by reason of **Section 162**, the appellant's contention that it was inadmissible as a confession under Section 25 of the Indian Evidence Act becomes **unnecessary**.

2. With respect to Issue 2 (Dying Declaration):

Held:

The statement was **rightly admitted** as dying declaration.

Reasons stated:

- i. 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, and that the "**circumstances**" can **only** include the acts done when and where the death was caused. It was observed that "the circumstances" **were** of the transaction which **resulted in death** of the declarant.

- ii. 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 for 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 March 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 that he was **setting out to the place where the accused lived**, and to meet 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**.

Hence, that statement of the deceased is to be considered as a dying declaration.

3. With respect to other issues:

- a. *Regarding bloodstained rags in the bathroom –*

Held:

It would be **unsafe to rely** upon this discovery.

Reasons stated:

- i. On appeal, both of the Judges thought that the articles found **were not on the premises when the police searched on the 4th**; Mr. Justice Manohar Lal thought that the discovery was made

under **highly suspicious circumstances** and that **no inference** should be drawn against the accused in respect of it.

- ii. In this state of the case, their Lordships said it would be **unsafe to rely** upon the discoveries on April 7.

b. Regarding Accused’s guilt –

Held:

- i. Accused is guilty
- ii. Appeal dismissed

Reasons stated:

- i. It must be taken to have been proved that a trunk was bought by order of the accused and taken to his house on the afternoon of March 22.
- ii. At about 6 a.m. on March 23, that **trunk** containing the body of the deceased was placed on the train at the station of Berhampur having been conveyed there in a vehicle ordered by the accused in which **he and the trunk traveled** to the Bengal Nagpur Railway station. The deceased had on the day before set out from his house for the express purpose of visiting the accused's house.
- iii. In these circumstances there is **ample evidence** of the presence of the deceased at the accused's house; the fact which alone the statement sought to establish. In which was the mutilated body of a man recently murdered: a trunk which he **purchased** a little more than 12 hours before the trunk was placed in the train.

iv. He gave no explanation and contented himself with a **denial** that he knew the man, or that the man had visited his house, or that he had seen the trunk. All these **statements** were **untrue**.

v. In these circumstances it is impossible to say that the proceedings which ended with a conviction for murder resulted in a failure of justice. For these reasons the appeal should be dismissed and their Lordships will humbly advise His Majesty accordingly.

Decree drawn:

APPEAL DISMISSED and ACCUSED CONVICTED.

Applicable Sections of Law of Evidence

	Sections applicable	Instances in the case where they are applicable
Main Sections	Section 25	Confession considered irrelevant & unreliable (as it was self-exculpatory in nature, & made to the police officer).
	Section 32(1)	Deceased’s statement considered as dying declaration.
	Section 4	“Shall presume” – Court presumed that the unsigned letter received by deceased

Other Sections		on 20 th March was sent by the accused.			
	Section 5	Evidence of relevant facts – Rs. 3000 borrowed at 18% interest. And about 50 letters shown for its proof.		Section 9	Explaining/Introducing relevant facts - They got married, got shifted, came back after few years to stay with wife's father and was in need of money. Thus, explaining the need for borrowing loans.
		Witness of the repute saw the accused on the station on the 23 rd March morning.		Section 17	Accused had admitted that deceased man arrived at accused's house on 21 st March, the day deceased left his house for payment.
	Section 6	Went to Chatrapur, then to Jagannadhapur, then returned to Behrampur via the jetka.		Section 59	Fact proved by oral evidence of Jetka driver about taking the accused to the deceased's house along with a similar trunk as the trunk in question.
	Section 7	Cause for letters (fact in issue) - Wife was in need of money, thus sending letters, acquiring loan at the interest of 18%.		Section 101	Burden of proving the guilt of the accused lied on the prosecution.
	Section 8	Previous conduct of the accused before committing murder.		Section 136 (Para 1)	Judge decides admissibility of evidence – Evidence of 4 letters bearing date of 1918 was rejected by the Court

		because of lack of corroboration.
		Evidence of bloodstained rags found on 7 th April by the police: held not admissible, by judge's discretion.
