

P L D 1970 Supreme Court 13

Present: Muhammad Yaqub Ali, Sajjad Ahmad and M. R. Khan, JJ

TAWAIB KHAN AND ANOTHER-Appellants

Versus

THE STATE--Respondent

Criminal Appeal No. I 1-P of 1968, decided on 29th October 1969.

(On appeal from the judgment and order of the High Court of West Pakistan, Peshawar Bench, Peshawar, dated the 3rd November 1967, in Criminal Appeal No. 51 of 1967).

(a) Penal Code (XLV of 1860),

S. 302---- Dying declarations have sanctity under law but no rigid rule can be laid down that person under immediate apprehension of death would utter nothing but truth---Dying declaration like statement of interested witness requires close scrutiny---Evidence Act (I of 1872), S. 32.

The dying declarations of the deceased have a degree of sanctity under the law, being the statements of a dying man, on the belief that he being placed in a situation of immediate apprehension of severance of his ties with the mundane affairs, he would not tell a lie and implicate innocent persons on false charges. But, in the matter of the administration of criminal justice, taking in view the present state of our society, the assessment of evidence, whether it is the statement of a witness or the statement of a person who is dead, is essentially an exercise of human judgment to evaluate the evidence so as to find out what is true and what is false therein. In this effort, the case has to be considered in all its physical environments and circumstances to find out how far the evidence or its different parts fit in with the circumstances and possibilities that can be safely deduced in the case. In this country, the habit, unfortunately, is quite common, now judicially recognized, that people do add innocent persons along with the guilty to satisfy their sense of revenge and to put the other side to the utmost grief. It is difficult to lay down a rigid rule that a person who is injured and is under an apprehension of meeting his death, would suddenly be gifted, as if by a magic transformation, with a clean conscience and a purity of mind to shed all the age-old habits and deeprooted rancours and enmities. Even, assuming that the pangs of conscience are there at the time to prohibit making of false charges, the question arises whether these pangs are strong enough to fortify him to resist the promptings and persuasions of his relations and others who may be surrounding him at the time and incite him to support the pattern of the charge which they have chosen to make against the accused persons, whether innocent or guilty? It is for this reason that a close scrutiny of the dying declarations like the statements of interested witnesses, becomes absolutely necessary.

(b) Witness-Maxim:

falsus in uno falsus in omnibus no longer applicable-Similarly rule that integrity of witness indivisible, cannot be accepted as universal truth-Grain has to be sifted from chaff in each case-Penal Code (XLV of 1860), S. 302.

The maxim "falsus in uno falsus in omnibus" has all along been discarded by the Courts in this country. Similarly, the rule that the integrity of a witness is indivisible, despite its moral virtue, has not been endorsed by the superior Courts of this country without reservations and cannot be accepted as one of universal applications. In the last analysis, as stated in some of the eminent judicial decisions, "the grain has to be sifted from the chaff" in each case, in the light of its own particular circumstances.

(c) Penal Code (XLV of 1860),

S. 302----Dying declaration: and evidence of eye-witness----Partly accepted, in circumstances of case.

Mahmood Ali Qasuri, Senior Advocate Supreme Court instructed by Muhammad Nazar Khan, Senior Attorney for Appellants.

Kamal Mustafa Bokhary, Assistant Advocate-General, West Pakistan instructed by Ijaz Ali, Attorney for the State.

Dates of hearing: 13th and 15th October 1969.