In Re: Eddula Venkatasubba Reddi and ors.

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Appellant : In Re: Eddula Venkatasubba Reddi and ors.

Judgement :

Sundaram Chetty, J.

1. Accused 1 to 7 have been convicted by the Sessions Judge of Cuddappah for the murder of Eddula Sivamma at Chinnadandlur village on 20th February, 1930, and all of them except Accused 4 were sentenced to death, and Accused 4 to transportation for life. Accused 5 to 7 are alleged to be the hired assassins who committed the murder, whereas Accused 1 to 4 are said to have abetted it.

2. The facts of the prosecution case are briefly as follows: Sivamma was a widow aged about 60, in affluent circumstances, without any issue. She was a charitable lady, and many and various were her religious and charitable dispositions. Accused 1 had an elder brother, who' was brought up by Sivamma, but he died some years ago, leaving his widow Subbamma (P.W.. 7) who is now aged about 23. Accused 1 has two younger brothers, Venkatasiva Reddi aged about 18 (C.W. 2) and a minor aged 12. Sivamma was protecting Subbamma (P.W. 7) in her own house, and treating Accused 1 and his younger brothers with affection, they being her paternal uncle's great-grandsons. They were living in another house, which is two or three doors off Sivamma's house. Her last will is Ex, L, which she executed in 1924, whereby, she left the bulk of her estate to Accused 1 and his two younger brothers after making some bequests for charity and some provision for Subbamma. Pedda Venkatasubba Reddi (C.W. 3), the paternal uncle of Accused 1, was keeping the accounts of Sivamma for several years, till a few months before her death, and she was lending out considerable sums of money on promissory notes and owned also landed property. Accused 2 is the husband of Accused l's sister, residing at Kothapeta, 2 1/2 miles from Chinnadandlur, while Accused 4, who lives in a distant village Pothireddipalli, is Accused l's wife's brother. Accused 3 who is a native of Kothapeta has recently settled at Chinnadandlur to look after his minor nephews. Both Accused 2 and Accused 4 owed money to Sivamma on promissory notes, whereas Accused 3 owed a sum of Rs. 600 on a promissory note to Accused 2.

3. It is beyond doubt that Sivamma was most brutally murdered in the early part of the night of 20th February, 1930, between 7 and 8 p.m., when she was sitting on the outer pial of her house chewing betel after her dinner. According to the prosecution case, it was Accused 1 who plotted the murder of Sivamma in a diabolical manner. It is alleged, that about three months before the occurrence, when .Subbamma was left alone in Sivamma's house, during the latter's absence for a week from the village,

Accused 1 approached Subbamma and made improper overtures to her, that when she reported this matter to Sivamma on her return, she became enraged and after severely scolding Accused 1, told him not to enter her house, and that she was also saying that she would alter her will and settle at Gundlakunta. This threatened disinheritance is said to have supplied Accused 1 a motive for bringing about the death of Sivamma with the aid of hired assassins.

4. There has been an elaborate trial in this case, and the learned Sessions Judge has written an exhaustive judgment, adverting to the evidence in great detail. As observed by him more than once in his judgment, the case for the prosecution principally depends on the evidence of the approver alone.

5. P.W. 1 is the approver. He is doubtless a man of disreputable character, addicted to drinking and gambling. About a month before the murder of Sivamma, he came out of the jail, after serving 9 months' term of imprisonment for robbing a woman. In connection with this case, he was arrested by the Police on 3rd March, 1930, after getting some clue from his associate, one Sanjanna. He was taken before the Stationary Sub-Magistrate of Proddatur on 4th March for remand, and on the next day his confession was recorded (Ex. A). He has given a long narrative. In paragraph 15 of his judgment, the Sessions Judge has summarised it as follows:

Briefly it is to the effect that he accompanied Accused 2 oft the afternoon of the 17th to Proddatur. From there they took a motor bus to Yerraguntla and entrained for Tadpatri that night. At Tadpatri Accused 2 enquired for Tirumal Reddi (Accused 4) and ultimately found him in the village of Kodur. On the way Accused 2 told P.W. 1 that he was going to get men from Tirumal Reddi to murder Sivamma. P.W. 1 and Accused 2 returned from Kodur by train from a neighbouring station Vanganur on the night of the 18th. They reached Proddatur on the 19th morning and from there returned to Kothapeta. On the 20th morning Accused 2 went to Kalamalla Railway station which is 5 miles from Kothapeta and met four hired assassins alleged to have been sent by Tirumal Reddi. He brought them to his house in Kothapeta and in the evening they set out for Chinnadandlur. The approver describes the parts played by the accused including himself that fatal evening.

6. In the detailed narrative, of P.W. 1 as regards the parts' played by these accused (adverted to in paragraph 16 of the learned Sessions Judge's judgment), what is it he has ascribed to Accused 1 - All that the approver says is, that on the 20th February when he and Accused 2 and the four strangers (Accused 5 to 7 and another) were lurking after dusk in a hayyard (marked in the plan Ex. JJ), Accused 1 came to them and said, that only the strangers should go and beat Sivamma, but those known to Sivamma should merely keep watch. After a while Accused -1 came there again and said 'She is sitting outside. You had better get up.' When they came to the potters' lane Accused 1 asked P.W. 1 to stay there and pelt stones if any one should turn up and himself went into a cattle-shed opposite to Sivamma's pial. . This story of the approver, which connects Accused 1 with this murder as the prime abettor, is altogether uncorroborated by any evidence, and is left severely alone. Except for the motive, there is absolutely no proof as to what part, if any, did Accused 1 play in connection with this murder, beyond the uncorroborated statement of the approver.

7. The testimony of an accomplice is doubtless tainted evidence. It is well settled by judicial decisions, that though a conviction on the uncorroborated testimony of an approver is not illegal, it is however unsafe to convict in the absence of independent

corroborative evidence as regards material particulars. Such corroborative evidence may be either direct or circumstantial. This question has been well discussed in the case of The King v. Baskerville (1916) 2 K.B. 658 Lord Reading, C.J., has laid down the principles of law at page 667 as follows:

We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it .... It would be in high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused.

8. Applying the aforesaid test, the corroborative evidence as regards the approver's story to connect Accused 1 with this crime as an abettor, by the narration of the part played by him just before the murder, must be stated to be nil.

9. Coming now to the alleged motive for Accused 1 to plot this murder, there is, of course, the evidence of Subbamma (P.W. 7). It is argued for the appellants that her evidence is suspicious and untrustworthy, as she did not mention to the Police the true main details of her evidence, viz., her molestation by Accused 1 which resulted in the estrangement between Accused 1 and Sivamma, and the rifling by him of Sivamma's iron safe after the cremation. It is admitted by the Circle Inspector (P. W. 31) that he examined Subbamma on the 24th February. But she herself admits in her statement given before the Magistrate under Section 164, Criminal Procedure Code, on 10th March, 1930 (Ex. K) that she did not state these facts to the Police. Conscious of the necessity to account for her omission to state all these to the Police, she wound up her statement with the explanation that owing to the fear and to her having been watched by her brother-in-law (Accused 1) she did not mention these facts to the Police or to other officials. A belated statement of these important facts, after a delay of nearly 20 days, calls for adverse comment, and, at any rate, cannot be accepted without much hesitation. There is still the question, that if the omission to mention these two facts to the Police was due to their not having occurred, why should Subbamma subsequently turn hostile and invent them to implicate Accused 1 The explanation given by Accused 1 is to the effect, that Subbamma came and stayed in his house for ten or twelve days after the murder and asked him to give her jewels and some cash for her share, and as he refused to give her a share in Sivamma's bonds, she gave false evidence. Be this as it may. Subbamma's evidence as regards the relinquishment deed Ex. M, executed by her in favour of Accused 1 and his two brothers, is mendacious, not to speak of the disingenuous character of the answers given by her, as regards that transaction. She is shrewd enough to shape her answers, to serve her interests and cannot be deemed to be guileless. But the explanation of Accused 1 as to the reason for the subsequent change in her attitude is not also convincing.

10. In order to prove the motive for Accused 1 to plot this murder, the prosecution relies on the evidence of P.Ws. 7, 14 and 15. They speak to certain statements made by Sivamma, in her outburst, having been enraged against Accused 1 by reason of his molestation of Subbamma, As for the molestation, there is only the evidence of Subbamma. P.W. 14 says, that Sivamma told him, that as Subbamma had complained

to her that Accused 1 molested her, she forbade him to come to her house. She further said, that after Venkatasiva Reddi's marriage, she would cancel her will, and go and live at Gundlakunta. P.W. 15 also speaks to the outburst of Sivamma, and says that she told him that after marrying Venkatasiva Reddi she would cancel her will and collect all the bonds standing in Accused l's name. It is suggested by the learned Counsel for the appellants, that these statements of the deceased are inadmissible in evidence unless they can be brought under Section 8, Explanation 1, or Section 32(1) of the Evidence Act. According to the prosecution, the disclosure of Sivamma's intention to cancel the will (Ex. L) and disinherit him, was the reason for Accused 1 to plot the murder of Sivamma. Section 8 says, that any fact is relevant which shows or constitutes a motive for any fact in issue. In this case, the fact in issue is, whether Accused 1 caused the murder of Sivamma. The motive for this, can be proved, as a relevant fact. But a fact, though relevant, must only be proved by admissible evidence. What P.Ws. 14 and 15 heard Sivamma say, would be hearsay evidence, and as such inadmissible, unless it can be brought under any recognised exception. I at first thought, that if what Sivamma stated about her intention to cancel the will, constituted a motive for Accused 1 to devise her murder, that statement can be proved only by those who heard it from her. There is, however, this difficulty, viz., that though that statement shows a motive for Accused l's act, it does not lose the character of being a statement made by a deceased person. Such a statement will be admissible under Section 32(1), if it satisfies the requisites mentioned therein. It cannot be deemed to be a statement as to the cause of her death, or as to any of the circumstances of the transaction which resulted in her death, and it would therefore be hearsay and not admissible (vide The Queen-Empress v. Surendra Nath Sarkar (1901) 5 C.W.N. 574). Unless such a statement is shown to have accompanied or explained any act of Sivamma, it would not come under Explanation 1 to Section 8. It must also be noted that P.W. 15 says, that Accused. 1 was not present when Sivamma said so. It is not shown that Sivamma stated like that in the presence or to the knowledge of Accused 1. No doubt,, the result will be, that where a statement made by a deceased person is said to constitute a motive for another to commit a crime, it cannot be proved by one who heard the deceased say so. It is contended that a motive is provable as a relevant fact, but it cannot be proved by hearsay evidence. With some hesitation, I am constrained to accede to the contention that the evidence of these witnesses as to what Sivamma stated to them is inadmissible. That being so, it should be taken, that there is only slender proof in support of the alleged motive, which consists in the evidence of P.W. 7.

11. In the statement of Sivamma, recorded by the V.M. (P.W. 30) shortly after the attack on her, which is filed as Ex. DD, she said that some persons 4 or 3 in number came and cut her on her forehead with a hatchet and cut her with an axe on her side and forehead, and that as her left arm was cut on the wrist, it fell down. She is alleged to have added at the end, that the keys, etc., which were with her were taken away. In paragraph 38 of his judgment, the learned Sessions Judge says: 'The prosecution have based their arguments on the dava being true and the fact that Sivamma did state to the V.M. that her keys were lost.' Assuming that this is a correct record of what Sivamma said, as it purports to be, it may be asked, why Sivamma failed to mention her suspicion about Accused 1 being the abettor of this crime. The prosecution case is that Sivamma was apprehending some foul play by Accused 1, but even if she was fully conscious when she made the statement to the V.M. it is doubtful, whether she was in a position at the time of physical agony and distress to reflect calmly over the affair and make any such inference. Her omission, the defence would try to rely on. But the prosecution has treated P.W. 30 as a hostile witness, and

obtained permission to cross-examination. This so-called dava is either wholly true or wholly concocted, and the third alternative is, that it is partly true and partly concocted. If Sivamma should have lost consciousness after such a brutal attack, she could not have made any statement at all to the V.M. In that case, there is good reason to suspect that this dava was got up by Accused 1 and his party with the aid of the V.M. (P.W. 30).

12. But it would appear even from the evidence of P.W. 7, that when she questioned Sivamma, after opening the door of the house, as to who had beaten her, she said 'some strangers.' This shows, that she was not completely unconscious. Ex. DD is not altogether free from suspicion, if regard be had to the circumstances of this case.

13. The difficulty in this case is that apart from the evidence of the approver, there is scanty evidence of a direct character. So far as Accused 1 is concerned, there is no corroboration of the approver's story regarding the part played by Accused 1 on that fatal night, just before the occurrence. The approver has not stated anything else about Accused 1 in the whole of his long narrative. I have already dealt with the proof adduced for showing a motive for him to commit this crime. It is suggested by the defence that this crime might be the work of dacoits or robbers. But considering the time, place and circumstances of the attack, the most brutal manner in which the poor woman was ruthlessly attacked with deadly weapon, and the absence of any attempt by the culprits to enter into the house for plundering property, I have no hesitation to reject this suggestion as untenable. If the defence is unable to account for the murder in any other way, it cannot be taken that the prosecution story is necessarily true. It must succeed on the strength of its own case, and not on the weakness of the defence.

14. Stress has been laid by the prosecution, on the conduct of Accused 1, in rifling the iron safe of Sivamma on the 21st February, with the aid of the keys, which Sivamma lost during the attack on her. This is spoken to by Subbamma (P.W. 7) alone in her evidence. Her omission to mention this fact, without suspiciously long delay, is a factor to be counted against her veracity. Granting that Accused 1 did meddle with the iron safe, as alleged, and removed some cash, jewels and promissory notes is the inference that he must have brought about the murder irresistible? After Sivamma's death, Accused 1 and his brothers would be entitled to her properties under the will (Ex. L) which remained uncancelled. There was really no need for Accused 1 to clandestinely open the iron safe, for removing some of the contents thereof, as he could get possession of those properties, on the basis of the will, in due course. It is difficult to accept the view of the learned Sessions Judge that the opening of the safe by Accused 1 on the 21st evening is a tangible piece of corroborative evidence as against Accused 1. There is the fact, that the keys were voluntarily produced before the Police on the 22nd, as having been discovered with the bloodstained cloth. The subsequent conduct of Accused 1 in coming to the scene of attack at once along with the Village Munsif and others in taking the injured woman to the hospital and attending the cremation, etc., just as a cordial relation of hers would do, and in the production of the keys before the Police on the 22nd itself, admits of two constructions, according to the angle of vision used. Apart from such conduct, if there is some adequate proof of his complicity in the murder, we can easily deem such conduct as a studious simulation on his part to cover up his guilt. When there is no such proof except the uncorroborated statement of the approver, such conduct, which is prima facie indicative of the innocence, cannot be viewed as mere simulation. At any rate, in a criminal case of this kind, when a set of circumstantial evidence is

capable of two constructions, one in favour of the accused, and one against him, he should at least be entitled to the benefit of the doubt. In paragraph 39 of his judgment the learned Sessions Judge goes on to say:

This is a carefully plotted murder in which considerable foresight has obviously been taken by the culprits who successfully covered up all their traces.

15. The insurmountable difficulties which the prosecution meets with in bringing home the guilt to the accused, owing to the refractory nature of witnesses who would not disclose what they know, or who have come under the sway of the influence of the accused, are certainly deplorable, but in view thereof, there would be no justification for convicting the accused, on insufficient or inadequate evidence, however strong the suspicion may be, giving rise to righteous indignation.

16. The learned Sessions Judge has characterised P.Ws. 6 and 30 as most unsatisfactory witnesses. He is of opinion that they are the confederates of Accused 1. P.W. 6 is even suspected by him of complicity in the murder, and he is the man who is said to have been talking to Sivamma on the pial, just before the attack, and to have also received some minor injuries at the hands of some of the assailants. C.W. 2 is a younger brother of Accused 1, and C.W. 3 is the paternal uncle of Accused 1. They both support the evidence of the Village Munsif (P.W. 30) whom the prosecution discards as a hostile witness. Direct evidence to prove the guilt of Accused 1, in connection with this murder, is practically nil, except that of the approver. The motive for him, as disclosed by Subbamma (P.W. 7) leads to suspicion, even strong suspicion against him. The circumstantial evidence, as regards him, is capable of two constructions, and is not consistent only with his guilt. The question is, whether it is safe to act solely on the evidence of the approver, and convict Accused 1. for abetment of murder.

17. If the gulf of Accused 1 himself should be deemed to have not been proved beyond reasonable doubt, is there a good basis for convicting Accused 2 to 4, who are alleged to have assisted Accused 1 in carrying out his design against the life of Sivamma? Accused 2 and Accused 4 are no doubt close relations of Accused 1, but Accused 3 is not a relation. The mere fact that Accused 2 and Accused 4 are indebted to Sivamma is hardly sufficient to hold that they would readily consent to procure assassins for murdering Sivamma, in order to make a gain for themselves, by getting rid of those debts. On the other hand, the promissory notes executed by them to Sivamma have not been destroyed after her murder, and are still intact. There is also the fact that Accused 4 is a man of considerable property. The only reason for their stooping to join in this nefarious crime can be to oblige their relation (Accused 1). There can be no such motive, so far as Accused 3 is concerned.

18. The story of the approver (P.W. 1) has been the subject of much adverse comment by the learned Counsel for the appellants. His story is a long narrative, and he has, on the whole, stood the long and searching cross-examination without committing himself to serious inconsistencies. But on a careful scrutiny of his narrative, it looks as if he studiedly minimised the importance of the part played by him. To be an accomplice, he should have done something more than what he would ascribe to himself. It is urged on behalf of the accused, that the approver, as shown by his narrative, was there not as an accomplice in the crime but more as an incubus to watch others' dealings for disclosing them. It is also contended that this man must have been supplied to the Police by Pedda Obula Reddi of Kothapeta (C.W. 1) in whose

employ he has been after his release from jail, and in whose cattle-shed he used to sleep. Much has been said on both sides about C.W. 1 and each side is urging that he has a leaning towards the other. There is no doubt that P.W. 1 is a man disreputable in character, who may run with the hare and hunt with the hound. In the face of the evidence of C.W. 1, who says he is related to C.W. 3, as also to Accused 2, Accused 3 and Accused 4, it is difficult to accept the suggestion, that he should have supplied the approver to implicate them in this case, unless by wild speculation.

19. Taking the case of Accused 2, there is really no corroboration of the approver's story that he was in company with Accused 2 from the 17th evening. P.W. 23 (the shop-keeper) at Proddatur, and P.W. 25 (the Village Munsif of Muridanur) do not really corroborate what the approver has said, to connect Accused 2 with this affair, as an introductory circumstance. The learned Sessions Judge views the divergence of the evidence of P.Ws. 23 and 25 from that of the approver as suspicious. But this view-does not advance the case of the prosecution. What it has to do is to adduce evidence to corroborate a material particular in the evidence of the approver for connecting the accused with the crime, and when witnesses cited for such a corroboration fail to corroborate, it is no use saying that they were gained over, or are suppressing the truth. The fact, however, remains, that corroboration is wanting.

20. By the evidence of P.Ws. 27 and 28 we may take it that the approver's statement that he and Accused 2 were at Proddatur on the 19th morning is corroborated. It is true, as observed by the learned Sessions Judge, that desperate attempts have been made by the defence to show that the man who sent the chit to the hotel-keeper (P.W. 27) was not P.W. 28, but his elder brother. There is, however, no good reason to doubt that the man who sent the chit is P.W. 28.

21. According to the approver, he was asked by Accused 2 on reaching Kodur on the 18th to see whether Accused 4 was there. As desired by Accused 4, P.W. 1 brought Accused 2 to the Kallam Doddi or hay-yard, a little before sunset. When Accused 2 and Accused 4 were sitting near the hayricks, two strangers (one of whom is Accused 7) came there and joined them. But P.W. 1 did not hear their conversation. The prosecution has let in the evidence of Mooji Obula Reddi (P.W. 19) to corroborate the story of Accused 2, Accused 4 and Accused 7 having met there. This witness speaks to his having gone there to bring a stone roller, and see them all sitting there. But the approver does not speak to his having seen P.W. 19. The credibility of this witness is attacked on the ground, that he is a biassed witness, as Accused 5 and Accused 7 are according to his own admission in a faction opposed to that of his uncle Obula Reddy. It may be that Accused 4 has no concern in that faction. In this case, it is curious, that even for such slender corroboration, the prosecution has been unable to bring in a witness altogether disinterested.

22. As regards some of the particulars in the narrative of the approver relating to the date of offence (20th February), the evidence of P.Ws. 20, 21 and 22 is adduced by way of corroboration. P.W. 20 is a resident of Chinnadandlur. On his way to his field at about. 9 a.m. on that day, he saw Accused 2; going along a foot-path, followed by four strangers who were walking one behind the other. A month thereafter he identified two of the strangers as Accused 5 and Accused 6, and a month later still, he identified Accused 7 as one of them at a parade. His evidence looks rather artificial, There was nothing special to attract his attention, when he saw some persons going along a foot-path, and it is difficult to believe that by a casual glance at some strangers, without any reason for rivetting his attention on them, he would be able to identify them one

or two months later. This man is related to Eddula Narsi Reddy (P.W. 15) according to the latter's admission in cross-examination, but when questioned about that relationship, this witness would ignore it. The defence is emphasising the fact that P.W. 15 is an arch-j enemy of Accused 1, and Accused 2 a leader of the opposite faction. Though P.W. 15 says that the disputes of the faction were squared up 20 years ago, he is driven to admit a recent criminal case as also disputes connected with Taluk Board elections, which surely indicate the strained nature of the feelings between him and Accused 1 and Accused 2 and their relations. P.W. 21 (the Village Murisif of Gopalapuram.) who speaks to his having seen Accused 3 and Accused 7 cross him on the road at about 3 p.m. on the 20th February, more than a chain away from Sivamma's house, is a witness to corroborate the approver's story, that it was Accused 3 who took Accused 7 to Chirinadandlur to point out Sivamma that afternoon. It is urged for the defence, that this witness is a biassed witness, belonging to the faction of P.W. 15. He admits that he is a co-accused with the son and brother of P.W. 15 in a criminal case recently filed by one Pulligadu. He is related to C.W. 1 and also to Accused 2. He did not tell any one about his having seen Accused 3 and Accused 7 passing along, till 5th March, 1930, when he was examined by the Police. Even when he attested the Panchayatnama (Ex. T) on the 26th February, he made no mention of this, but this omission is sought to be explained, by the prosecution, by stating that the witness could not have suspected Accused 3 until the approver was examined by the Police on 3rd March. It is unfortunate that the only man whom the prosecution could get to speak to this particular, is a person not free from bias, and a member of an opposite faction.

23. There remains the evidence of P.W. 22, who belongs to the village of Thimmapuram, five miles from Kodur. His evidence is fully discussed by the learned Sessions Judge in paragraph 24 of his judgment. This witness who was driving a single bullock cart during the latter part of the night of the 20th February, found his cart stranded in the sandy bed of the Pennar, when he noticed five or six persons coming from Vanganur side. He found Accused 4 coming along with Accused 6 and Accused 7 and others. When he sought for help, Accused 4 asked them to assist him in pushing the bandy for some distance, and they did so. This witness was examined by the Police on 12th March, about 20 days after the occurrence. He is definite in his denial of the presence of Accused 5 among the persons whom he saw. By his bungling as to when he sold the cotton, for paying for the ragi bought at Kodur, he has failed to satisfy our test applied to decide the truth of his version in respect of the incident mentioned by him. In a case of this kind, which shows that the murder in question must be the out-come of a cleverly conceived and carefully worked out plot, the task of the Police in procuring adequate evidence to prove in a Court of Law the guilt of the accused, even if they were able to trace them as the real culprits, is no easy one. The learned Sessions Judge appears to be keenly alive to the fact that the culprits have successfully covered up all their traces so as to make the task of detection a herculean one. Some of his observations in weighing the evidence seems to have been coloured by this impression. But, in order to convict persons charged with murder, there should be unimpeachable evidence of reliable witnesses, bringing home, the guilt to the accused beyond reasonable doubt. Such evidence is wanting in the present case, and it need not reiterated that it is not safe to convict on the sole testimony of an approver, without sufficient corroboration in material particulars either by direct or circumstantial evidence. We have bestowed our anxious consideration over this case. The learned Sessions Judge has doubtless evinced a commendable anxiety to get at the truth. But if we find that the proof adduced at best leads to strong suspicion but falls short of the requisite standard, we are constrained

to give the benefit of the doubt to the accused. In this case, if the accused escape, it is certainly not because their innocence is established, but only as the recipients of the benefit of doubt.

24. In the result, the conviction and sentence of all the accused are set aside. They are acquitted and will be set at liberty.

Horace Owen Compton Beasley, Kt., C.J.

25. I entirely agree with the judgment of my learned brother and do not propose to add anything with regard to the facts of this case but I think it is necessary to say something with regard to the admissibility of some important matters tendered in evidence in the Sessions Court and held to be admissible by the learned Sessions Judge in spite of the objection taken to admissibility by the defence. That evidence relates to the motive for the murder relied upon by the prosecution. It is contended that the 1st accused caused Sivamma to be murdered because she intended to alter her will which was in his favour. This it is alleged was because he had made indecent overtures to Subbamma during the absence of Sivamma from her village and that in consequence of a complaint made by Subbamma to her on her return about those overtures Sivamma was very much incensed and expressed her intention of cutting the 1st accused out of her will. P.W. 15 states as follows:

When I asked her about the inferior jewels she was getting made, she began to abuse saying 'Our caste is a wretched Mala Madiga caste. There is not a caste like this anywhere else. They are eating my properties. They are ungratefull to me. Should I burn more property over them? I am quite sure they will murder me in six months or a year.' She was on the pial and abusing like this very loud. She said that after marrying Venkatasivadu, she would cancel her will and re-transfer or collect all the bonds standing in Accused l's name and go and settle at Gundlakunta or Kokattam. She said she would give her property to such persons as she liked. She said all this out loud. Accused 1 was not present at the time. All Sivamma's anger was because Accused 1 had caught hold of Subbamma.

26. Subbamma (P.W. 7) in her evidence states:

In her second will Sivamma left property to me and to Accused 1 and his two brothers. Sivamma was not on speaking terms with Accused 1 for about three months prior to the murder and he did not come to our house. One day he came and molested me when Sivamma had gone to Nallaballe. Sivamma went there for eight days and I was left alone in the house. He came during the daytime when I was alone. I told him he should come only when Sivamma was at home. He then went away. I complained weeping to Sivamma when she returned home two or three days later. She sent for Accused 1 and scolded him and asked him not to come to her house again. Since then we and Accused 1 were not on speaking terms.

27. Then

Sivamma also told me after this incident with Accused 1 that she would alter her will and that she would go and settle at Gundlakuntla as Accused 1 was a bad character.

28. P.W. 14 also gives similar evidence;

29. Clearly the statement of Sivamma was not one made as to the cause of her death or as to any of the circumstances of the transaction which resulted in her death and this is conceded by, the learned Public Prosecutor. Sivamma's statement therefore is not admissible as one coming within the provision of Section 32 of the Indian Evidence Act. But it is contended that her statement is admissible under Section 8 of the Indian Evidence Act because it shows a motive for, the murder. Section 8 makes any fact relevant which shows or constitutes a motive for any fact in issue and the conduct of any party is relevant as proving such motive. It is contended by the prosecution that Sivamma's intention to alter her will is conduct showing such motive, and clearly her intention to alter her will is a relevant fact but the question is how such an intention is proved. The learned Public Prosecutor of Cuddappah who has most ably argued the case contends that because her intention is relevant it can be proved by hearsay evidence. With this contention I cannot agree. If the intention of a person can be proved by direct evidence, then such evidence is clearly admissible to prove the relevant fact of motive but I can find nothing in the evidence Act which renders hearsay evidence of such intention admissible; and it seems to me that the learned Sessions Judge has failed to draw a distinction between the relevancy of evidence and its admissibility. I can find nothing in Section 8 of the Indian Evidence Act which supports the contention of the prosecution that a relevant fact can be proved by hearsay evidence. Hearsay evidence can never be admitted unless the Indian Evidence Act permits it. Section 32 does, subject to the conditions therein stated, admit hearsay evidence. If the learned Public Prosecutor's contention is correct, then it means that evidence otherwise inadmissible, namely, hearsay evidence can be admitted in order to prove any relevant fact. This it seems to me is an utterly impossible contention. It cannot be argued that Sivamma's expressed intention amounted to conduct because Explanation 1 expressly rules out any such contention. That explanation says:

The word 'conduct' in this section does not include statements, unless, those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

30. What Sivamma said was not in explanation of any act of hers nor did it accompany any act of hers. It is a bare statement unaccompanied by any act and not any explanation of any act. If Sivamma had attempted to tear up her will, that would have been evidence of conduct admissible under Section 8 of the Indian Evidence Act; if she had made any statement in doing so, that also would have been admissible under Section 8; and if she had explained why she was doing so, that also would have been admissible under the same section. But that is not this case at all and I am unable to see how the statement made by her can possibly be admitted. She has not been called and it is merely the evidence of what other persons heard her say in the absence of the 1st accused. Therefore, in my view, the learned Sessions Judge was wrong in admitting such evidence.

31. I think it necessary to add that it is quite clear that the Police were faced in this case with a very difficult task. I am satisfied that the motive for this murder was not robbery and that no one except one who would benefit financially by Sivamma's death was likely to bring about her death. Judging the case from the probabilities and strong suspicion, the conclusion may well be that it was the 1st accused who brought about her death but in criminal cases neither suspicion nor probabilities can decide cases in the absence of legal evidence. In this case in the course of the argument of learned Counsel for the accused the learned Sessions judge was accused of being

obsessed with the belief of the guilt of the accused and to have exhibited unnecessary and unwarranted zeal in convicting them, His task was a very difficult one indeed and I am far from saying that there were not good grounds for the obsession attributed to him. Unfortunately, as my learned brother has pointed out in his judgment, there is not the necessary evidence to turn strong suspicion and probability into a reasonable certainty and the prosecution case fails on that account and I agree that this appeal must be allowed and the conviction and sentence set aside and the accused set at liberty.