Emperor Vs Mahomed Yusuf

Fifth Criminal Sessions, 1932: Case No. 26

Court: Bombay High Court

Date of Decision: Dec. 2, 1932

Acts Referred:
Evidence Act, 1872 â€" Section 33

Citation: (1933) 35 BOMLR 1020

Hon'ble Judges: John Beaumont, J

Bench: Single Bench

Judgement

John Beaumont, C.J.
The point for decision in this case is whether the evidence of a witness who was called before the Coroner, who was

enquiring into the death of a man with whose murder the accused is charged, can be taken in evidence in this Court u/s 33 of the Indian Evidence

Act, the particular witness having died, and died prior to the enquiry before the Magistrate, so that he was not called before the Magistrate.

2. Section 33 provides that evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for

the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states,

when the witness (amongst other things) is dead; and then it is provided that ""the proceeding was between the same parties or their representatives

in interest"". Then the explanation provides that a criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the

accused within the meaning of this section. In my opinion 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 those proceedings, even if it can be

said that the accused is a party on the ground that he was during those proceedings a suspect. In my opinion the evidence is not admissible.