

title, that adjudication is or is not an award. What the necessary implications of the judgment of Lord BUCKMASTER in this respect are, I do not at present propose to consider; it is sufficient in this appeal to say that the decision of a Court on a reference under section 30 is clearly not an award. If it is not an award, it follows that an appeal to this Court does not lie under section 54.

I therefore agree in the judgment just pronounced by my learned brother.

VENKATA
REDDI
v.
ADINARA-
YANA RAO.
—
VENKATA-
SUBBA RAO, J.

K.R.

APPELLATE CRIMINAL.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice,
and Mr. Justice Pakenham Walsh.*

PEDDA TIRUMALIGADU AND ANOTHER (ACCUSED).*

1928,
August 14.

Sentence of death—Number of persons banding together for taking a man's life—Found guilty of murder—Court unable to find which accused delivered fatal blow—Appropriate sentence.

Where two or more persons band themselves together for the express purpose of taking a man's life and are found guilty of murder, the Court is not justified in refraining from passing a sentence of death, which would otherwise be proper, merely on the ground that it cannot find definitely which of the accused delivered the blow which is to be regarded as fatal.

CASE taken up in revision by the High Court calling upon the accused to show cause why the sentence of transportation for life passed on them by the Court of Session of the Kurnool Division in Calendar Case No. 63 of 1927 on its file should not be enhanced to one of death.

* Criminal Revision Case No. 411 of 1928 (Taken up No. 33 of 1928).

TIRUMALI-
GADU,
In re.

D. A. Krishna Variar for accused.

Public Prosecutor for the Crown.

COUTTS
TROTTER,
C.J.

JUDGMENT.

COUTTS TROTTER, C.J.—In this case two men who are brothers were tried for the murder of a man called Narsigadu on the 21st October last. The motive for the murder is plain enough. The elder brother, the first accused, had obviously been engaged in traffic in illicitly distilled arrack. The deceased man who was an official and not a mere intermeddler with other people's affairs gave information some time in September that the first accused was engaged in this illicit business. Thereupon the Sub-Inspector of Excise, Mr. Luke, searched the first accused's house and found in it quite a substantial quantity of illicitly distilled arrack. For that the first accused was prosecuted and convicted and the case was pending at the time of this man's murder. He disappeared on the afternoon of the 21st which was a Friday. The second accused is alleged to have had a separate sexual motive, but, in view of the fact that he and his brother were both seen on the scene of the murder standing by the dead man's body, it is not really necessary to go into that question. The little boy Kasigadu called as P.W. 9 gives a very clear story of what he heard and saw. He heard a gun shot on the Friday when he was grazing some cattle. He went in the direction of the place where he heard the shot fired and met the second accused's wife and put a question to her which she did not answer. He went on a little further and there he saw the deceased man lying in the bed of a channel covered with blood. Close by him was the second accused with a gun in his hand and behind the second accused stood the first. The boy had fever that night and when he went home he did not

report what he had seen to his parents. His explanation which the learned Judge entirely accepted was that, having seen the obviously murdered body of a *talaiyari* at the feet of these assassins, he was terrified as to what might happen to himself. But next day when it became the subject of discussion that this deceased man was missing he suggested to his parents that they should search the Edurla Vanka that was near. There this man's body was found. It had been horribly mauled and half eaten away by wild beasts so much so that when the surgeon made his post-mortem a day later it was found that practically all the intestines and many other parts of the body had been devoured. But enough was left to show this, that a bullet had gone through the body fracturing the sixth and seventh ribs on its way—and that bullet was afterwards found in the bed of the channel—also that the man's skull had been fractured, a fracture which was clearly caused by an axe which was found lying near his body and which apparently belonged to himself. The probability is he was shot first and then what was to be the *coup de grace* was a blow with the axe. It is reasonably clear—not that in the light of what I am about to say it matters very much—that it was probably one person who fired the shot and the other who gave the blows with the axe. On the boy's information when the police examined him these two men were arrested and put on their trial for murder. The learned Judge convicted them of murder, but abstained from passing the death penalty. Mr. Justice DEVADOSS who perused the calendar has put this case up to us for enhancement in order that we should consider whether these men should be sentenced to death. The course is one which, speaking for myself, I extremely dislike unless I feel myself constrained to adopt it. When a man has once been on trial for his

TIRUMALI-
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life and has escaped with his life, it is obviously a very serious step to take away that life on appeal except in an extreme case. I regret to say that this is clearly an extreme case. It was a horrible murder from the most sordid of motives and I am at a loss to understand what induced the learned Judge to adopt the course he did. But he has given his reasons, and I think it best to set them forth. He says this at the end of his judgment:—

“As regards the sentence I take into consideration the fact that it is not clear which of the accused fired the gun and who cut the deceased man on the head with an axe”

as if that mattered—

“The medical witness says that Narsigadu should have died owing to shock on account of the fractures of the skull and the ribs. It appears to me that the fatal wounds were those on the head as it is rarely that a man succumbs by the mere fracture of his two ribs.”

As to that the question is not merely as to the fracture of the ribs but what lesions were caused to the tissues inside and the vital organs after the bullet had passed the fractured ribs on its way through the body to go out the other side as we know it did.

“The evidence does not show which accused it was that caused the fractures to the skull. In view of these considerations, I sentence both the accused to transportation for life.”

I very much regret to say that there are quite a number of acting Sessions Judges in this Presidency who appear to labour under the delusion that, where it is clear that two or more people banded themselves together for the express purpose of taking a man's life, it is not right to pass the death sentence, however horrible the circumstances, unless you can put your finger on the accused who delivered the particular blow

that is to be regarded as mortal. That is a complete illusion and would be cured by a perusal of any elementary text-book on Criminal Law. This case is so horrible that I feel constrained to take the course which I dislike, namely, of directing that these sentences be enhanced and the accused be sentenced to death.

TIRUMALI-
GADD,
In re.
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GOOTS-
TROTTER,
C.J.

PAKENHAM WALSH, J.—I agree with my Lord the Chief Justice. I myself do not like enhancing of sentence in these cases unless it appears to be absolutely called for. But in this case I think the murder is such a brutal one that we have no other course but the one we adopt.

PAKENHAM
WALSH, J.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenvven.

T. S. RAGUPATHI AYYAR (COMPLAINANT IN ALL), PETITIONER, 1928,
September 5.

v.

NARAYANA GOUNDAN AND TWO OTHERS, (ACCUSED),
RESPONDENTS.*

*Indian Penal Code, sec. 425—“Destruction of any property”,
“Such change in any property or in the situation thereof as
destroys or diminishes its value or utility or affects it
injuriously”—Implication of—Goats allowed to graze in
mitta forest—Grazing rights reserved to permit holders—
If “mischief.”*

The expressions “destruction of any property” and “such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously” in section 425 of the Indian Penal Code carry the implication that something should be done contrary to the natural use and serviceableness of such property.

* Criminal Revision Cases Nos. 996, 998 and 997 of 1927.