

(1929) 09 AHC CK 0004

Allahabad High Court

Case No: None

Durjan

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Sept. 4, 1929

Citation: AIR 1930 All 192 : 121 Ind. Cas. 550

Final Decision: Disposed Of

Judgement

1. Durjan the appellant in this case, along with two others, all sweepers, were charged u/s 302, I.P.C., with murdering one Khilla before the Sessions Judge of Cawnpore. Manian and Lallu were acquitted, but Durjan was convicted and sentenced to death.

2. We are not satisfied with the evidence in this case against the appellant. On 28th January of this year a dead body was discovered near village Baragaon. The dead body had wounds upon it and clearly there had been a murder committed. Part of the face of the corpse had been burnt. It is alleged that the dead body was that of Khilla who was missing from the village.

3. We are not satisfied in the first place that this corpse was that of Khilla. No proceedings were taken for nearly two months after the discovery of the corpse, A photograph had been taken, however, of the corpse. The wife of Khilla was quite unable to identify the photograph as that of her husband. We have carefully examined this photograph and we are certainly of the opinion that if the corpse had been that of Khilla, the wife ought to have been able to identify the photograph of her husband's body.

4. The Judge, however, relies upon the identification of a dhoti and a shirt which were found upon the corpse. These articles are common articles and we do not think it satisfactory that the identification should solely be upon these particular" articles of clothing.

5. We are not satisfied that there was any motive for the murder. The Judge himself says that he is in a difficulty about this point. There is no direct evidence that Durjan murdered Khilla. There was nothing found in Durjan's house to incriminate him. The only evidence that exists upon the record against Durjan is his own retracted confession. As to this we are not satisfied that the proper procedure was adopted in taking this confession. The learned Magistrate who recorded it is clearly confused in his evidence, and does not even remember whether he recorded this statement in his Court or at his bungalow. He says on cross-examination that:

If he records a confession at his bungalow he generally sends away the constables to the Mall Road.

6. This is extremely unsatisfactory, and the learned Magistrate in question ought to be very much more careful in recording these important statements.

7. As regards the confession, the learned Sessions Judge finds that, as regards an important part of it, it is not reliable. The confession records that Khilla was killed with a spear. The medical evidence, given after a careful examination of the body, is to the effect that the murder was committed with a heavy weapon like a gandasa or kulhari. In cases where the sole evidence against the accused is that of a retracted confession, we think it clear that if such a confession is relied on, it must be relied on as a whole and not only in part.

8. We are satisfied that the evidence therefore in this case is insufficient to support the conviction. We, therefore, set aside the conviction and sentence and direct that the appellant be set at liberty provided he is not required for any other offence.