(1895) 10 AHC CK 0001

Allahabad High Court

Case No: None

Queen-Empress		APPELLANT
	Vs	
Mahabir		RESPONDENT

Date of Decision: Oct. 4, 1895

Citation: (1896) ILR (All) 78

Hon'ble Judges: Knox, J; Banerji, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Banerji, J.

Mahabir Ahir has been convicted of having murdered his sister Musammat Jugni and her illegitimate son, and has been sentenced to death. He has appealed.

2. It appears that Musammat Jugni was a woman of abandoned character, and that in consequence of her sometimes coming to live with the accused he had been put out of caste. It is stated on behalf of the prosecution that she came to the house of the accused about the time when she is said to have been murdered; that she brought with her her illegitimate son about 6 years old; that she insisted upon staying in the house of the accused, notwithstanding his refusal to receive her; and that thereupon the accused murdered her and her child early on the morning of the 22nd of May 1895.

2. On the 25th May the police received private information that two corpses were lying in a field in the village in which the accused lived, and proceeded to the spot. Some bones and two human skulls were found there. The accused was arrested the same day in a village seven or eight miles distant. The investigations were continued till the end of June, when he was sent up for trial.

3. On the 27th of May the accused made a statement before a third class Magistrate, and on the 4th of June he made a fuller statement before the Magistrate who held the preliminary inquiry in this case.

4. The direct evidence against the accused consists of the deposition of one Madho Ahir, his cousin, and the two statements referred to above, which were confessions of guilt. There is also some circumstantial evidence, which, in my opinion, is of a feeble character. If the direct evidence be excluded from consideration, there is nothing to prove that Musammat Jugni and her son have been murdered at all--much less that the accused murdered them. The supposition that the skulls and other bones were their skulls and bones is negatived almost completely by the medical evidence. The Civil Surgeon deposed that one of the skulls was that of a person whose age was probably less than 20 years, and that the other skull was that of a person whose age must have been 12 or 13 years. It has been proved that Musammat Jugni was 35 or 36 years old, and that the age of her son was about 6 years. The skulls found by the police, and especially the one said to have been the skull of the child, could not, therefore, according to the medical evidence, have been those of Jugni and her child. The Civil Surgeon could not state whether the bones found were those of a man or woman. He thought that they were the bones of a young man or woman. Again, according to the medical evidence, some of the bones were in a decayed state. Having regard to the fact that the case for the prosecution was that the alleged murder took place on the 22nd of May, that is only eight days before the examination of the bones by the Civil Surgeon, they could not have undergone so much decay had they been the bones of persons who had met their death only eight days before. The discovery of the bones, therefore, as the evidence stands, does not, in my opinion, help the case for the prosecution, but on the contrary rebuts it to some extent. The only other piece of circumstantial evidence consists of the statements of three witnesses who have deposed that early on the morning of the 22nd of May, about three hours before dawn, they saw the accused going in the company of his sister and her son. I must say that I look upon the evidence of these witnesses with a great deal of suspicion. It is strange that all of them happened to be out of their homes at that early hour, and that all of them challenged the accused and he spoke to them and gave them the same answer. Had these men met the accused in the company of the persons alleged to be deceased, it is not likely that they would have remained silent for full five days, although two dead bodies were seen lying not far from the road.

5. I am of opinion that these witnesses are not persons whose statements can be relied upon. The evidence as to the identification of a sari and an angochha found near the skull and bones as the sari of Musammat Jugni and the angochha of her son is equally incredible.

6. As for the direct evidence, if Madho Ahir is to be believed, there is very damaging evidence against the accused Madho deposed that he had seen the sister of the accused and her son at the house of the accused on Tuesday evening, and he further said:"When one pahar of the night remained I was sleeping at my door, when I saw prisoner going away with his sister and her son to the north of the village to see them off (pahunchane ko). He said he was going to see them off when

I asked him where he was going. She had the munj and cord with her. About a ghari or a ghari and a-half later I went to a grove at north of village for purposes of nature. I heard the boy''s scream from the tal which is near the village. I took up my lota and ran towards the tal. I saw him (prisoner) killing the child with a chopper (gandasa). The woman was lying there. He threatened me and I ran home." If Madho spoke the truth in making the above statement, he was an eyewitness of the murder; and yet we find him say nothing of what he saw to any one, not even to his own wife, until the police appeared on the scene. The accused in his petition of appeal states that he is on bad terms with Madho, and in the Court of Session he stated that the police were quartered in the village for eight days, beat his sister and cousin and made them give evidence. These statements may or may not be true, but they are not improbable, and I am not satisfied that Madho has given true evidence. The learned Judge is of opinion that Madho was an accomplice. If that was so, it was unsafe to act upon his evidence without sufficient corroboration. And such corroboration is wanting in this case. Having regard to his conduct subsequently to the alleged murder I am unable to rely upon his evidence.

7. The greatest difficulty in the case arises from the fact that the accused made two statements in which he confessed having murdered Musammat Jugni and her son by striking them with a gandasa. The statements were retracted both before the committing Magistrate and in the Court of Session. The accused stated that he had made them at the instigation of the police. The statements were recorded with due observance of the provisions of the law, and, if they can be believed, they unmistakably establish the guilt of the accused. The mere fact that a confession has been subsequently retracted will not make it inadmissible against the accused. But before a Court can act upon such confession it must be satisfied as to its truth. Having regard to the fact that it not unoften happens that an accused person is forced or cajoled by the police into making confessions, it is the more necessary that a Court should be satisfied beyond reasonable doubt that the statements contained in the confessions of the accused are true. This necessity is, in my opinion, the greater where the confessions have subsequently been withdrawn. We have in that case two contradictory statements, and, as observed by Kernan, J., in Queen-Empress v. Rangi ILR 10 Mad. 295 "the difficulty is to ascertain which of the statements is the truth, and the responsibility of relying on either statement is very great." For this reason it is, in my judgment, unsafe to rely on and act upon the retracted confessions unless upon a consideration of the whole of the evidence in the case the Court is in a position to come to the unhesitating conclusion that the confessions were true. It is often very difficult, if not impossible, to come to such a conclusion unless "there is" in the words of Kernan, J., "reliable independent evidence to corroborate to a material extent and in material particulars the statements contained in the withdrawn confessional statements." It seems to me, therefore, to be unsafe in the majority of cases to found a conviction on retracted confessions which are not corroborated by credible independent evidence.

8. In this case such evidence is wanting, and I am not satisfied that the confessions were genuine. The first confession was made on the 27th May 1895, and the second on the 4th June 1895. The accused was taken into custody on the 25th May, and he remained in the custody of the police till the 2nd June. The first statement was thus made when he was in the custody of the police, and the second statement was made just after he had come out of police custody. It is probable, therefore, that he was under police influence when both the statements were made. Shortly after that influence had ceased he retracted the statements and stated that he had made them under the instigation of the police.

9. As I have shown above, there is no independent evidence on which reliance can be placed to corroborate the confessions, and on carefully considering them it seems to me that they contain statements which fit in with the case made out by the police. The medical evidence, as I have shown above, rebuts that case. It is also unlikely that the accused took out his sister and her boy in the manner alleged and murdered them at a spot where there was every chance of his being discovered. It is also unlikely that he would have allowed the corpses to lie at the place where the murder was committed, especially after he had met and spoken to no less than four persons, without making any attempt at concealing them. Further, he would have produced the gandasa with which the murder was committed had he voluntarily made a clean breast of all that he had done. The medical evidence makes it very improbable that the skulls and the other bones were those of the persons who are said to have been murdered, and this circumstance throws grave doubt upon the truth of the confessions. It is also unlikely that if the woman was pushed out of the house as stated in the confession she would have taken with her a bundle of munj and a cord. It seems to be probable therefore that the police having found some munj and a cord near the corpses made the accused and Madho state that the woman Jugni had with her a bundle of munj and a cord. It is far from certain that the woman and her son are no longer alive. Under such circumstances I am not satisfied beyond all doubt that the confessions were true. On the contrary, a reasonable doubt exists in my mind as to the guilt of the accused, and I do not feel it safe to convict him on the evidence before us. I would, therefore, give the accused the benefit of the doubt, and, setting aside his conviction and sentence, acquit him of the charge of which he has been convicted.

Knox, J.

10. This is a case referred by the Sessions Court of Gorakhpur for confirmation of sentence of death. I agree in all that has been said by my brother Banerji. The direct evidence in the case is open to grave doubt as has been shown in the judgment just read. The accused in two statements admitted unreservedly that he was the murderer of Jugni and her boy, and that the corpses found are those of Jugni and her son. Those confessions were afterwards withdrawn and the strong evidence which they would otherwise afford against the accused becomes itself in turn open

to doubt. It is true that the accused does not satisfactorily explain how he came to make these admissions and why he has resiled from them. It would have been well if the Court of Sessions had probed this matter further and got together in more detail from the accused the circumstances under which he came to make admissions so fatal to him. But the case is open to doubt. The learned Judge himself feels it in his judgment, and that being so, I agree that the proper course is to set aside the conviction and the sentence. We find Mahabir not guilty of the offence of which he was charged, namely, that on the 22nd May 1895, at Sheoraha Tal, he murdered Musammat Jugni and her son, and we direct his, immediate release.