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Queen-Empress Vs Jadub Das

None

Court: Calcutta High Court

Date of Decision: June 20, 1899

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) â€" Section 161, 288, 307

Citation: (1900) ILR (Cal) 295

Hon'ble Judges: Prinsep, J; Hill, J

Bench: Division Bench

Judgement

Prinsep and Hill, JJ.
Three persons--Jadub Das, Mangal Das, and Rai Charan Das--were tried in the Sessions Court of Jessore on a

charge of murder by causing the death of one Jogeswar Das by strangling him, and in the Sessions Court a further charge of abetment u/s 114 of

the Indian Penal Code was added by the Sessions Judge against Jadub Das. The jury returned an unanimous Ã¯Â¿Â½298] verdict of acquittal and the

Sessions Judge has referred the case to us u/s 307 of the Code of Criminal Procedure in respect only of Jadub Das. He has accepted the verdict

of acquittal as regards the other two accused.

2. Dwarika Das is the father of the deceased Jogeswar, and he states that his son left his house at about two dandas of the evening of the 1st

January, and has never since been seen alive. He made many inquiries regarding him during that night and the following day, but could learn nothing

until, on the morning of the 3rd January, he was told by one Biswanath that his son''s body was lying in a field. He went there and found his son

dead; Jadub Das, the prisoner, his mother and grandmother, who are both witnesses, being present ""lamenting."" He also says that ""Patiraj

Chowkidar went there at that time,"" but this man has not been examined as a witness. He then went and gave information to the police station,

distant about six miles, charging Jadub Das with the crime, and mentioning Biswanath and Mangal Das as being concerned in it. It may here be

observed that nothing was then said of the presence of Jadub Das and the female witnesses when he first found the body. The Police Sub-

Inspector went on the following day, that is on the afternoon of the 4th, and then commenced his investigation.

3. Now the first thing naturally would be to proceed against Jadub Das, who was the person accused by Dwarik on the ground that he bore ill-will

towards the deceased. The Sub-Inspector states that Jadub was not at home, and that he was brought by a constable at about 4-30 in the

afternoon. The constable, who is said to have arrested him, has not, however, been examined, and therefore there is nothing to show that Jadub

Das was in any way evading arrest. Having got Jadub Das before him, it would be expected that the Sub-Inspector would arrest him; but he says

that he did not do so. He would have us believe that he considered that he had no sufficient ground for arresting him. That is indeed the reason

mentioned, and accepted by the learned Sessions Judge in a part of his reference to us. On the contrary, the Sub-Inspector proceeded to record a

statement in writing of Jadub Das professedly u/s 161 of the Code of Criminal Procedure, and then immediately afterwards he arrested him and

sent him in to the Magistrate without any delay. In that statement it may be mentioned that Jadub Das denied all knowledge of the murder, and

therefore there was nothing before the Sub-Inspector, in addition to the accusation of Dwarik Das, which was already before him, to induce him to

arrest Jadub Das. We think it was a very improper step on the part of the Sub-Inspector to take any statement in writing from Jadub Das. He must

have known that statement was being taken preliminary to his arrest, and that it could be so taken only for the purpose of obtaining evidence. We

observe that a similar course was also taken in regard to another man--Rai Charan Das. This will be presently referred to. Jadub Das was

accordingly sent in to the Magistrate on the evening of the 4th. Now, with suspicion on some foundation against Jadub Das, it would naturally

follow that the police should make a further and close inquiry from the inmates of his house. The Sub-Inspector, however, would have us believe

that he did not think it necessary to make any inquiry beyond a mere cursory inquiry, and that he directed his inquiries elsewhere. He states,

however, that he examined the mother of Jadub Das on the evening of the 6th, and that the next morning she repeated the same statement in the

presence of about fifty people, the statement then made being one incriminating her son Jadub Das and the two other prisoners, Mangal and Rai

Charan. Having this statement before him, the Sub-Inspector did not attempt to expedite the completion of the investigation, or to arrest Mangal

and Rai Charan. On the 10th January he sent in the mother of Jadub Das to be examined by the Magistrate u/s 164 of the Code of Criminal

Procedure, and the reason he gives for requesting this to be done was that she was the only eye-witness available, and it was very likely that she

would be gained over by the accused if she was not examined at once. The Sub-Divisional Magistrate accordingly recorded her statement as that

of a witness, and in so doing, he added a note that statement was taken in the presence of Jadub Das and three others who had an opportunity of

cross-examining the witnesses, but had not done so. In that statement, no doubt, this woman describes that the murder was committed by the

prisoners. We think it was never intended that Section 164. should be applied to such a purpose. It was not intended to enable the police to obtain

an incriminating statement by some person, and as it were to put a seal on that statement by sending in that person to a Magistrate, practically

under custody, to be examined before the judicial inquiry or trial, and therefore compromised in his evidence when judicial proceedings are

regularly taken. We may also observe that the law does not require that in the case of a witness so examined there should be a certificate after

proper inquiry that the statement has been voluntarily made, and the law also expressly protects a witness from unnecessary restraint or

inconvenience at the hands of the police. Here this woman was sent by the police, and therefore presumedly under some restraint, and there was

consequently much risk that her statement would be given under some pressure and not voluntarily. In this case we can find no reason why the

Sub-Inspector should not have sent up the entire case at that time. If he had done so, this woman could have attended as any other witness. There

was, moreover, no sufficient reason Why he should have hurriedly sent up this woman alone to be examined before the completion of the

investigation.

4. We have already stated that a statement of a witness so obtained always raises a suspicion that it has not been voluntarily made. Here we have

the fact that, although it was repeated a few days later before the Magistrate, it was retracted at the Sessions trial, and an explanation, which was

not prima facie unfounded or impossible, given to show that the statement had been improperly obtained. With this before him, the Sessions Judge

was, in our opinion, bound to make some inquiry. Instead of doing so he at once proceeded u/s 288 of the Code of Criminal Procedure to bring

on the record as evidence at the Sessions trial the two statements made by this witness, and it may be added the Sessions Judge never made any

inquiry at all into this matter, although the same story was repeated by Jadub Das when he accounted for the manner by which his confession had

been obtained in the Magistrate''s Court.

5. The inquiry before the Magistrate commenced on the 14th, and first of all Dwarik Das was examined, then the Sub-Inspectors and then the

mother of the accused, Jadub Das, who had already made a statement on the 10th. Now if the statement that she made on the 10th was a part of

the inquiry before the Magistrate and a commencement of it, it is impossible to conceive for what useful purpose the same statement should have

been again recorded. The fact that the Magistrate in recording the first statement thought proper to certify that it was made in the presence of

Jadub Das and the other accused, and that they had an opportunity to cross-examine, but did not do so, would seem to show that the Magistrate

considered that he was making that examination as part of a judicial inquiry. She then repeated almost in the same words what she had already said

on the 10th. There was also the evidence of the grandmother of Jadub, and of his wife which, in some respects, corroborated the evidence given

by the mother. At the close of the evidence for the prosecution in the Magistrate"s Court when the accused were examined, Jadub Das proceeded

to make a statement in the nature of a confession, and generally in the same terms as the statement already given by his mother as a witness. At the

Sessions trial, not only did these three women deny their previous statements, but Jadub Das also denied the confession that he had made. The

Sessions Judge nevertheless proceeded to place OH the record, u/s 288 of the Code of Criminal Procedure, the evidence given by these three

women before the Committing Magistrate, as well as the statement of the mother previously recorded u/s 164 on the 10th.

6. In addition to these statements, there is the evidence of a blind man, of which it is necessary only to say that in the Sessions Court he has

embellished his evidence given before the Magistrate very considerably, so as to make it press more severely on the accused. No doubt the

Sessions Judge has placed on the record the previous statement made by this witness before the Magistrate; but even if we were to accept that

statement as true in preference to his later deposition, we should still not regard it as of any value whatsoever in this case. The remaining evidence

consists of the evidence of the Sub-Inspector and the constable, and also of the medical witnesses. The evidence of the Sub-Inspector is, we think,

not at all material in this case, except in so far as it shows that he has not fairly conducted the investigation.

7. It has been already mentioned that the statement obtained by the police from the mother of Jadub Das is said to have incriminated Rai Charan,

but that instead of arresting Rai Charan, the Inspector examined him as a witness, reducing his statement to writing, and that he then arrested Rai

Charan. We have already expressed our strong disapproval of this proceeding. To all intents and purposes it was the obtaining by the police of a

statement from an accused person and reducing it to writing, and this was done at a time when the police officer well knew that there was evidence

before him on which he was bound to arrest Rai Charan. The impropriety of such proceedings is aggravated by the course taken by the Sessions

Judge. He examined the Sub-Inspector in regard to that statement, and he thus admitted it as evidence on the trial. This statement cannot be

regarded otherwise than as a confession made by Rai Charan to the Sub-Inspector. If it be so regarded, it was clearly inadmissible u/s 25 of the

Evidence Act. If, on the other hand, it was to be used as evidence against the other prisoners, it was manifestly inadmissible. It was therefore very

improper on the part of the Sessions Judge himself to introduce this statement so as to place it before the jury, and by so doing he must have

seriously prejudiced, not only Rai Charan, but the other prisoners who are mentioned in that statement as taking a prominent part in the murder.

8. The Sessions Judge has, moreover, in this manner, acted in disregard of the statutory rule laid down in Section 162 of the Code of Criminal

Procedure, which declares that ""no statement made to a police officer in the course of an investigation shall, if taken in writing, be used as

evidence."" No doubt Rai Charan, it is said, was not under arrest when he made that statement; but there was ample information with the police on

which he might and should have been arrested.

9. It is impossible to avoid believing that Rai Charan was practically under arrest at that time, and that there has been an endeavour made by the

police, which has been successful, to get this statement admitted as evidence when it was clearly inadmissible.

10. Lastly, we have the medical evidence. The evidence of the medical officer who conducted the post-mortem is not very explicit as regards the

actual cause of death, and we think it is to be regretted that, under such circumstances, the Sessions Judge should not have examined the medical

witness himself at the Sessions trial. But taking the evidence of this officer as recorded by the Magistrate, the Sessions Judge proceeded to

examine the Civil Surgeon as an expert, and be did not examine this witness on the points which were in evidence on the statement of the officer

who conducted the post-mortem examination, but he took his statement on matters entered in the post-mortem report. Now that report is not

admissible as evidence except to contradict the officer who made it. It may, however, be used by that officer when under examination for the

purpose of refreshing his memory. We have no particular fault to find with the summing up by the Sessions Judge. The jury unanimously returned a

verdict of acquittal, and the reference, as has already been stated, is only in regard to Jadub Das. Now, in the first place, we observe that in

making this reference the Sessions Judge says: ""Having regard to the nature of the case, I am not surprised that the jury should have returned the

verdict they did;"" and he adds apparently as a reason for his refusing to accept that verdict that the ""decision in a case of this kind must rest on an

elaborate process of reasoning."" But there was no apparent excuse for the Sessions Judge not laying before the jury the same elaborate process of

reasoning as he thought proper to lay before us in making this reference to us, supposing, however--and we lay special stress on this--that the

manner in which he has treated the case on this reference is legitimate and proper. We give the Judge full credit for being impressed with the guilt of

the accused and doing his best to place the case before us in a proper manner, but having done this, we must express our surprise at the terms in

which he has placed his reference before us. It is not a document which should emanate from any judicial officer. It is a piece of special pleading

with the chief object of exonerating the police from any suspicion in the proceedings.

11. The Sessions Judge does not rely on the evidence as presented to the Jury, but he has throughout relied on the police proceedings, which

could not have been placed before the jury. If he desired to show that the proceedings of the police were regular and above suspicion, he should

obviously have obtained such evidence by examining police officers as witnesses so as to explain such proceedings. The objections which must be

taken to these proceedings were patent from the first. The Sessions Judge should therefore have examined the Inspector at once on all these

points, and he should also have required evidence regarding the custody of Jadub Das in the jail with special reference to the meeting which is said

to have taken place between the female witnesses and the prisoner Jadub Das, and the inducement then said to have been held out. The Sessions

Judge has really asked us to consider and determine their case, not only as he himself admits on an elaborate process of reasoning which he never

laid before the jury, but on matters which were not admissible in evidence, and were not therefore before the jury, and he has then asked us to

hold that the verdict of the jury is erroneous on grounds which were never laid before them for their consideration. Obviously, in a reference u/s

307, it is our duty to consider whether the verdict of the jury is erroneous or perverse on the case presented to them at the trial. Moreover the

course adopted by the Sessions Judge would be most unfair to those under trial, for they would not have had an opportunity of meeting and

rebutting what is now to be used against them. The Sessions Judge throughout seems to have considered that the Inspector was not only attacked,

but as if he were under trial. It was rather the duty of the Sessions Judge to consider how far the evidence could be fairly used against those who

were really under trial. He has not approached a consideration of the evidence by satisfying himself how far the reasons given for discrediting the

evidence in consequence of alleged irregularities or misconduct of the police have any substantial foundation, but he has rather applied himself to

exonerate the police. As an instance of this, we would mention that, when the mother of Jadub Das denied the statements that she had made to the

Magistrate, and stated how they had been improperly obtained by the police, the Sessions Judge, without any inquiry as to the truth of this

allegation, forthwith brought on the record, u/s 288 of the Code of Criminal Procedure, those statements to be treated as evidence at the trial as if

this accusation had no foundation; and it may be added that it is on this statement that the conviction of Jadub Das, which the Sessions Judge

recommends, must principally depend. The Sessions Judge has referred to, and relied on, police diaries. Now the police diaries never could be

placed before the jury. They are only useful as is pointed out by the Code of Criminal Procedure, Section 172, not as evidence, but to aid a Court

on the trial, so as to enable it to make a thorough inquiry on all material points by eliciting in the examination of the witnesses--and especially of

police witnesses the real facts of the case. We are surprised to find that the Sessions Judge has not seen any impropriety on the part of the Sub-

Inspector in examining Jadub Das and Rai Charan, in recording their statements immediately before their arrest at a time when the Sub-Inspector

must have known that he was about to arrest them. We cannot, therefore, agree with the Sessions Judge that in this respect the Sub-Inspector''s

conduct of the investigation appears to have been perfectly proper and straightforward without affording any ground for even a suggestion to the

contrary.

12. Then, again, when we come to the proceedings in respect to the mother of Jadub Das, we find that the Sessions Judge thinks that they were

not at all open to comment. It seems to us, however, that there are serious reasons for disapproving of them. Here we have a statement said to

have been made on the 6th, and it is followed by a delay in completing the investigation, which is not explained, and which is also prima facie

unaccountable. This was followed up by the Sub-Inspector sending in this woman to have her examined on the 10th by the Magistrate u/s 164 of

the Code of Criminal Procedure. The Sessions Judge apparently overlooked this delay, and we can find no explanation why this woman, who is

said to have first made this statement to the police on the 6th and to have repeated it to the villagers on the 7th, should have been kept until the

10th, if it was necessary to have her statement taken by the Magistrate. The case was really completed when the statement had been obtained

from the mother of Jadub Das and the two other women of the house, and there was really no reason at all why there should have been any delay

in concluding the investigation and sending in the final report with all the evidence obtainable. We are consequently quite unable to take the view

expressed by the Sessions Judge of the conduct of the police in this investigation.

13. It remains, however, to consider the order which, on the evidence before us, we should make on this reference and on the evidence at the

Sessions trial.

14. The sole fact upon which we can rely is that Jogeswar''s body was found in a state from which the medical evidence shows it may be

concluded that death was caused by violent means about 36 hours before the discovery of the body. The other evidence that there is on the record

is the evidence of the three women recorded by the Committing Magistrate and denied by them in the Court of Sessions, but placed on the record

by the Sessions Judge and laid before the jury u/s 288 of the Code of Criminal Procedure. Now the manner in which such evidence should be

treated has long ago been settled by the decisions of this Court;, and it has been laid down that, unless there is something to show the truth of the

former statement, it should not be preferred to the statement made subsequently in the Sessions Court, that is to say, that there should be

something to corroborate such a statement on some material point. The ease of Queen v. Amanulla (1874) 12 B.L.R., A, 15: 21 W.B. 49, is the

leading case on this subject. What reason, it may be asked, is there to suppose that the statements made before the Magistrate by these witnesses

were true? The only corroboration that there is afforded by the statement made by Jadub Das at the conclusion of the record of the evidence for

the prosecution by the Magistrate, and that statement is in the nature of a confessional statement. But that statement was also repudiated in the

Sessions Court, and it has been frequently held by this Court that it is not safe to rely upon a statement so made, unless it is corroborated by some

evidence so as to show that it is true. Now, what evidence is there that it is true? There are the statements of these witnesses, but the statements of

these witnesses should not be accepted without some corroboration. Here then we have two sets of evidence, neither of which can alone be

accepted without corroboration, and which cannot therefore each in turn be taken to corroborate the other. Reference may be made to the

judgment of Kernan, J., in Queen-Empress v. Rangi I.L.R (1886) 10 Mad 295, and Queen-Empress v. Bharmuppa I.L.R(1888) 12 Mad., 123.

The last case especially expresses the opinion that we entertain, that evidence brought in u/s 288 cannot be accepted as proper corroboration of a

confession made to a Magistrate and retracted at the Sessions trial. There is, moreover, an additional reason for refusing to act on such evidence,

for there is very good ground for supposing that the confession of Jadub Das made before the Magistrate on the 14th January was not fairly

obtained, and that it therefore was not a voluntary statement. In the Sessions Court the mother states that she and other female relatives of Jadub

Das were, during the proceedings before the Magistrate, brought into his presence. Jadub Das makes a similar statement. There has been no

attempt made to contradict this. With what object this was done it is not difficult to understand. It must have been for the express purpose of

inducing Jadub Das to confess, and that is what both Jadub Das and his mother state happened, with the result that the mother repeated her

previous statement, and Jadub Das made a similar statement as the best course suggested to them of obtaining a result most favourable to him. No

doubt there is no evidence to show this; but the evidence of the woman is uncontradicted. However that may be, as has been already pointed out,

we think it would not be safe to convict the accused Jadub Das op the evidence of the confession standing by itself, or on the evidence of three

witnesses standing alone, and we do not think that these two sets of evidence can be joined together and held as mutually corroborating each

other, so as to justify our acting on such evidence.

15. It may be that there are some reasons for suspecting that Jadub Das has committed this murder, but we can certainly not convict him on the

evidence before us, for we cannot rely with any confidence on any part of it.

16. In conclusion, it is only necessary to bring to the notice of the Sessions Judge that he has entirely misconceived his duty in this reference u/s

307 of the Code of Criminal Procedure. He seems to think that he was placed in a different position from the jury, or from that which he himself

occupied during the trial. He says that in a case of this kind ""the verdict of the jury does not stand on the same footing as in a case where they are

called upon to decide on evidence given before them. In this case the Court has to act more as an Appellate Court, the evidence having been

practically entirely given in another Court."" We cannot at all concur in this observation. The Judge should recollect that in a trial held by him, he is

exactly in the same position as the jury in dealing with the evidence properly given before him, and that he is bound to confine his attention solely to

that evidence. That is the rule which should invariably guide him in making a reference to this Court u/s 307 of the Code of Criminal Procedure.

The result that we come to, therefore, is that, in our opinion, Jadub Das should be acquitted, and we accordingly direct his release.