
(1918) 01 CAL CK 0048

Calcutta High Court

Case No: None

Emperor

APPELLANT

Vs

Kabili Katoni

RESPONDENT

Date of Decision: Jan. 14, 1918

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 337, 374

Citation: 47 Ind. Cas. 811

Hon'ble Judges: Smither, J; Charles Chitty, J

Bench: Division Bench

Judgement

1. The accused Kabili Katoni has been found guilty by the unanimous verdict of the Jury of the murder of one Mangal Singh and has been sentenced to death by the Sessions Judge of the Assam Valley District. The case has come before us u/s 374 of the Criminal Procedure Code, and there is also an appeal by the accused to this Court.

2. It was argued that there had been such a misdirection by the learned Sessions Judge as vitiated the verdict of the Jury and that the accused was entitled to a new trial. The passage relied upon was that where the learned Judge was dealing with the burden which lay upon either side to prove such facts as they asserted. In this case" (he said) "it is for Kabili to satisfy the Jury that he was ill treated by the Police or that inducements were offered," On 12th September 1917, Kabili had made a detailed confession before a Magistrate. To that confession he adhered, with some slight differences and additions, before the Commit-ting Magistrate on 27th September. On 5th December 1917, before the Court of Sessions he retracted his confession. He said that after his arrest the Police tied his hands behind him and kept him in confinement; they ill-treated him in various ways and pressed him to tell everything and make a confession; as the Police ill-treated him be repeated the story they told him. Further, he said that he was brought to the Magistrate by two constables, who told him that be would be released if he told the Magistrate every, thing they instructed him to gay; that he confessed to the Magistrate

through fear of the Police; and that his statement to the Magistrate was false. Now the question of the relevance and admissibility of the confession is for the Judge to decide; when he has decided that it is relevant, and it has been laid before the Jury, it is for them to appraise its value as evidence, and one test which they will have to apply is whether it appears for them to have been freely and voluntarily made. Speaking generally, the burden of proving any fact which he asserts is upon the accused. In this case, if he alleged ill-treatment by the Police or any inducement by them to him to confess he should have done some-thing to prove it. Here the prosecution tendered the confession and examined the Magistrate recording it to show that it was voluntarily made. Not a question was asked of the Magistrate in cross-examination to suggest the contrary, nor was a question asked of the Sub-Inspector who had had charge of the case throughout to suggest that there had been any improper conduct on the part of the Police by way of either ill-treatment or inducement. Fifteen days after the confession the accused adhered to it before the Committing Magistrate. It was not until the trial in the Court of Session that the accused withdrew his previous statements. It cannot be said that the direction of the learned Judge was erroneous, still less that it vitiated the verdict. The charge must be read as a whole, and later on the learned Judge was careful to impress upon the Jury that it was only if they found the statement to have been voluntarily made that they could take it into account as evidence. He left it to the Jury to decide whether in the circumstances the confession should be regarded as genuine or not. There seems to be no force in the contention that the Jury were misdirected by the Judge.

3. Turning to the facts, which we are entitled, and indeed bound, to consider under Chapter XXVII, Criminal Procedure Code, they are very simple and it is unnecessary to recapitulate them, as they are set out clearly and succinctly in the charge to the Jury. The story told by Nepali Lalung clearly implicates Kabili, Rabiram and himself in the murder of Mangal Singh, The question is whether it can be accepted as the true version of the matter. Nepali was on his own showing an accomplice and was tendered and accepted a pardon u/s 337, Criminal Procedure Code. It was essential that his evidence should be corroborated in material particulars. The Jury evidently were of opinion that it was, and also the Judge, as he accepted the Jury's verdict. We see no reason to differ. In the first place we have the confession of the accused Kabili which appears to have been freely and voluntarily made. It differs from Nepali's story in some important particulars. Nepali describes Rabiram the brother of Kabili as being present and taking a leading part in the murder. Kabili's Confession makes no mention of Rabiram, but this was, no doubt, from a desire on his part to screen his brother. Rabiram was also put upon his trial but was acquitted by the Jury, presumably because there was nothing against him but Nepali's statement. Then Nepali states that Mangal and Kabili went away in Dasibar's boat and that he followed in another boat and joined them afterwards; while Kabili says that Mangal and Nepali were in Dasibar's boat, and that he joined them afterwards. Dasibar corroborates Nepali. The motive for the crime spoken to by Nepali is corroborated both by Kabili's confession and by the evidence of Namala, the wife of Sat Singh, with whom Mangal is said to have had an intrigue. Kabili adds on this point that both Mangal and he

used to visit Namala. It would appear at first sight that Nepali's story was improbable, inasmuch as he poses as a close friend of Mangal Singh. Why then should he for a paltry sum of Rs. 20, which does not appear to have been paid, join with Kabili and Rabiram in murdering Mangal Singh deliberately and in cold blood? It may be that Nepali has not told the whole truth on the question of motive. Something of that kind is indicated by Kabili, when in his confession he stated that Mangal Singh and Nepali Lalung also had quarrels between them. But Nepali has never sought to exculpate himself with regard to the share which he took in the actual murder. After giving the case our best consideration, we find it to be a true case against Kabili Katoni. There appear to be no mitigating circumstances, which would justify the infliction of the lesser sentence. The murder was most cruel and deliberate. We accordingly dismiss the appeal and confirm the sentence of death.