

Emperor Vs. Bhagi Vedu

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Court : Mumbai

Decided On : Aug-24-1906

Reported in : (1906)8BOMLR697

Judge : Aston and ;Beamon, JJ.

Appeal No. : Criminal Appeal No. 336 of 1906

Appellant : Emperor

Respondent : Bhagi Vedu

Judgement :

Aston, J.

1. In this case the Sessions Judge of Nasik agreeing with the assessors has convicted the accused Bhagi, one of the wives of Vedu Lonari, of the offence of murder of one Shankar who was the child of her co-wife.

2. Mr. Gupte has argued the case for the accused and has brought forward every circumstance which can be possibly urged in favour of the accused. But notwithstanding all that he has urged I am of opinion that it is clearly established that the accused did quarrel with her co-wife, that the child Shankar was last seen alive in her company being taken by her towards the well in which his body was found on the following morning. I am also satisfied that the confession which the

accused made on the 16th May to the Second Class Magistrate was a voluntary confession in which she has truly stated the motive with which she committed the crime. She states there with some detail that she quarrelled with her co-wife Baija that Baija had taunted her and that she was in an inflamed state of mind and anger the whole of that night and that on Sunday evening when she saw the boy she made up her mind to take the child and kill him. She then took him to the well in the garden of Raghoo Patil and dropped him in the well from which his dead body was taken the next morning.

3. In dealing with the evidence the Sessions Judge has referred to this confession as a genuine one.

4. I presume that the Sessions Judge was not forgetful of the fact that he ought to be satisfied that a confession was voluntarily made before it can be even admissible in evidence. But I have dealt with it in the remarks that I have already made and the conclusion to which I come on the evidence in the case is that the accused was not induced by any means which would make a confession inadmissible in evidence, and that it is a true confession. It does not appear to us to be necessary to confirm the capital sentence.

5. we therefore confirm the conviction but commute the capital sentence to one of transportation for life.

Beaman, J.

6. I agree with my learned colleague but I would like to make a few remarks with reference to the confession. It occurs to me that in all such cases the principal duty which Judges have to discharge, the primary importance of which is too often overlooked, is to determine in the first instance whether a retracted confession is voluntary or has been improperly induced.

7. The mere fact that a prisoner puts in a plea of not guilty and denies having made the confession or explains having made it by allegation of Police torture, is enough in itself to put a Judge upon enquiry, and he then has to decide before admitting the confession at all, or allowing it to be looked at, whether it has been

improperly induced. That is a question for the Court, i.e., the Judge to answer in limine.... If upon weighing all the circumstances, the prisoner's denial and the probabilities, it appears to the Judge that the confession has been improperly induced, no matter how true it may be, he is bound to exclude it.

8. In the present case it seems to me that the Sessions Judge, who has treated the case on the whole temperately, with great fairness, did to some extent consider that question, though all the factors involved in it were not as dearly defined as they should have been. I also think that this is a point which it is for the Court to determine before the trial begins. If, as here, he comes to the conclusion that the confession was not improperly induced, and admits it, it then becomes evidence and liable to be appreciated and weighed with the rest of the evidence in the usual way. Being thus an important part of the prosecution evidence, Judge and assessors agreed in believing that it was substantially true and from that conclusion I see no reason to differ.

9. When the Judge calls the confession 'genuine' I take him to mean that it was voluntary. If both voluntary and, true it is, even standing alone, virtually conclusive. I would therefore confirm the conviction but I agree with my learned colleague in thinking this a proper case for commuting the sentence to transportation for life.