

Mt. Khuban Vs. Emperor

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Court : Allahabad

Decided On : Sep-05-1929

Reported in : AIR1930All29

Appellant : Mt. Khuban

Respondent : Emperor

Judgement :

1. Mt. Khuban, Chand, Buddha and Bhanta alias Bhagwanta were committed to the Court of Sessions at Etah to take their trial under Section 302, I.P.C.
2. Mr. Iftikhar Hussain, Additional Sessions Judge who heard the case, acquitted Buddha, Chand and Bhanta. He convicted Mt. Khuban and sentenced her to death.
3. Mt. Khuban has appealed to this Court and the record has been submitted by the Sessions for confirmation of sentence.
4. The Local Government has appealed from the judgment acquitting Bhagwanta alias Bhanta. No appeal has been preferred against the order of acquittal regarding Chand and Buddha.
5. On the night between 14th and 15th January 1929, one Mt. Jawwa and her two infant daughters aged seven years and five months respectively were murdered. It is clear that the murder was effected by more than one person. It was a cold-

blooded murder, a murder premeditated, organized and executed with fiendish malignity.

6. Syed Mohammad Mohsin Jaffery, Sub-Inspector posted at the. Etah Kotwali received information through Ishtiak Ali, constable on 15th January 1929 that the corpses of a woman and two girls had been recovered from a well. The well was beyond the houses of Mt. Khuban and Mt. Jawwa deceased and beyond the octroi post.

7. There is nothing on the record to indicate the distance between the well and the house of Mt. Khuban.

8. The bodies were sent in usual course to the Civil Surgeon of Etah for a postmortem examination. The post-mortem examination was held on 16th January 1929. The Civil Surgeon was of opinion that the death of the two small girls was caused possibly' by strangulation. In the case of Mt. Jawwa, he was of opinion that cause of death was 'probably' a deep wound on the neck of Mt. Jawwa.

9. Mt. Jawwa had no less than seven incised wounds. One of these was a large gaping incised wound 8' long from ear to ear cutting the neck above the larynx, cutting the upper part of aesophagus and deep vessels of the neck on either side notching the spine behind. It is not impossible that this wound was caused by a butcher's knife used with tremendous force. The four incised wounds on the fingers indicate that there may have been a struggle.

10. The age of Mt. Jawwa was about 35 years. Her first husband was Azim Ullah. Upon the latter's death, she married one Chand, who was a different person from Chand the accused. Upon the death of the second husband, she had some connexion with Chand the accused. She left Chand and then she either had nikah with or passed into the keeping of Akbar, butcher, husband of Mt. Khuban.

11. Akbar with his wife Mt. Khuban lived in one house. Mt. Jawwa with her children, one of whom was a grown up lad called Mahboob, lived in a different house.

12. When Mt. Jawwa left Chand the accused, the latter could not be expected to treat the matter with philosophical equanimity. He might well have conceived a grievance against Mr. Jawwa on that account.

13. Mt. Khuban appears to have conceived an intense hatred towards Mt. Jawwa, who was her rival in the affection of her husband.

14. This case is illustrative of the limits of brutal savagery to which a woman may be driven whose passions have been roused by jealousy.

15. On the night between 14th and 15th January 1929, there was a wedding, a 'butchers' wedding in Barla in the district of Aligarh. Most of the butchers of Etah had gone to this wedding and Akbar, the husband of Mt. Khuban had also joined the throng. The time was opportune. The coast was clear. Mt. Khuban went to Mt. Jawwa's house and entreated her to come to her house and sleep for the night, as she was alone. The instinct of Mt. Jawwa warned her and she at first refused; but she was prevailed upon by the entreaties of Mt. Khuban and went to Mt. Khuban's house with her two daughters; on this fateful night Mt. Jawwa and her two daughters did not emerge from that house alive.

16. The evidence of Mahboob is of some importance. He times the first visit of Mt. Khuban to Mt. Jawwa's house at about 10 p.m. He gives the details of the conversation between Mt. Khuban and Mt. Jawwa and how the latter was prevailed upon to go to Mt. Khuban's house. He is positive that his mother and two sisters accompanied Mt. Khuban to her house and did not come back in the morning. He saw Mt. Khuban standing on the chabutra of one Fakirey. Mt. Khuban asked him where his mother was. He replied that she might have gone somewhere. Mt. Khuban said that Mt. Jawwa might have been taken by some orderly peon to cook food at the house of some officer.

17. Mr. Jaffery, the investigating officer had examined the house of Mt. Jawwa and he found nothing in the house to indicate that any murder with violence had been committed there. He next visited the house of Mt. Khuban. He found that the ground of a kotah and the thatch in front of it had been recently plastered. He found blood stains on the wall of the kotah and blood marks on a corner of a

doorleaf of the room on the inside. He also noticed blood marks on the patti and band of a cot in the kotah. He also recovered a knife having faint marks of blood. He took the earth of the wall and cut a specimen out of the doorleaf. These were sent to the Chemical Examiner and the Imperial Serologist in due course. Upon analysis, it was discovered that the stains were those of human blood.

18. The above evidence is sufficient to bring home the guilt to Mt. Khuban. She had motive for the offence. Her house was searched shortly after the recovery of the corpses. The recent plastering of certain portions of the room and the finding of stains of human blood on the wall and the doorleaf of the said room and also on the cot are unexplained. It is proved that the stains were of human blood and not of goat's blood which one might expect to find in the house of a butcher. It is further proved that Mt. Khuban had decoyed Mt. Jawwa to her house and that Mt. Jawwa and her two infant children were not seen returning from the house alive.

19. On 19th January 1929, the statement of Mt. Khuban was recorded by a Magistrate of the First Class under Section 164, Criminal P.C. This statement is full of circumstantial details. The Magistrate, who took down the statement, certifies that the statement is voluntary. There is nothing on the record to suggest that this statement was extorted by the police by threat or ill treatment or procured by persuasion.

20. On the same day, the aforesaid Magistrate recorded the statement of Bhagwanta alias Bhanta. There is nothing on the record to indicate that this statement was not voluntary.

21. The statements of Mt. Khuban and Bhanta agree on all material points. There are certain variations in the two statements which are indicative of the fact that the statements were not the result either of preconcert or tutoring.

22. Mt. Khuban states that about two or three years before the murder, there was liason between Chand accused and Mt. Jawwa. Mt. Jawwa gave up Chand and contracted an intimacy with her husband Akbar. She became pregnant by him and Akbar married her. For this reason, Chand began to cherish ill-will. When her husband was away from home, Chand sent Bhanta Ahir to her. Bhanta instigated

Mt. Khuban to go and to bring Mt. Jawwa to her place to sleep for the night. Bhanta and Mt. Khuban went to take Mt. Jawwa. During her absence from home Chand was sitting on the roof of her house in the company of another Ahir. When Mt. Jawwa was coming to the house of Mt. Khuban, Bhanta was at the head of the party. On reaching Mt. Khuban's house Mt. Khuban took one charpai and Mt. Jawwas with her two daughters went to sleep on the other charpai in the same room. Bhanta, Chand and another Ahir, unnamed, killed Mt. Jawwa. Mt. Akbari woke up and wept Mt. Khuban called the girl to her but Chand caught hold of the girl, sent for a rope through Bhanta Ahir and throttled Akbari. Chand also killed Anwari by throttling her. Chand tied the dead body of Mt. Jawwa into a bundle and made Mt. Khuban to hold the knots of the bundle. The three dead bodies were carried out of the house in two bundles. When they were carrying the bundles, Chand told her that she should whitewash the house so that there be no trace of blood in the house. Chand also told her that she should bury the knife with which the murder had been committed. She whitewashed the house but did not bury the knife. She washed the knife and kept it. She admits having shown marks of blood to the Sub-Inspector. She admits having pointed out the charpai on which the murder was committed. She also admits that she made over the knife to the Sub-Inspector.

23. The aforesaid confession is corroborated in material particulars. The corpses were found in two bundles. The house was found by the Sub-Inspector newly whitewashed and plastered. A blood stained knife was found in the house and this was given by Mt. Khuban to the Sub-Inspector. The statement of Mt. Khuban is self-incriminating. She admits having decoyed Mt. Jawwa to her house; she knew that Mt. Jawwa was going to be murdered. She helped in the tying up of the bundles. She was present when Chand knifed Mt. Jawwa and throttled the two daughters. The chain of evidence against her is complete.

24. If ever there was a case which deserved capital punishment this was one. We dismiss Mt. Khuban's appeal, affirm the conviction and sentence and direct that the same be carried out according to law.

25. We are clearly of opinion that Bhagwanta alias Bhanta has been improperly acquitted by the Court below. The learned Sessions Judge was wrong in holding that the statement of Mt. Khuban under Section 164, Criminal P.C., was not a confession. We accept the definition of confession as given by Stephen and which has been quoted in the judgment of the trial Court:

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime.

26. We have quoted the major portion of the statement of Mt. Khuban and it would appear from the same that the statement fits in with the definition of 'confession' as given by Stephen. The statement is self-incriminatory and it also implicates Bhanta. The self-implication is the guarantee for the truth of the accusation against the co-accused and may be taken to be a substitute for the sanction of oath. Under Section 30, Evidence Act:

When more persons than one are being jointly tried for the same offence, and a confession made by one of such persons affecting himself and some other' of such persons is proved, the Court may take into consideration such confession as against such a person as well as against the person who makes such confession.

27. The confession of Mt. Khuban was affecting herself and also affecting Bhanta. This confession is, therefore, admissible in evidence against Bhanta.

28. Illustration (b), Section 114, Evidence Act, is an authority for the proposition that an accomplice is unworthy of credit unless he is corroborated in material particulars.

29. We have already shown above that the statement of Mt. Khuban is strongly corroborated in material particulars by clear and cogent evidence, the authenticity of which is not open to doubt.

30. The statement of Mt. Khuban chimes in with all the important particulars narrated by Bhanta in his confession before the Magistrate. It is true that both these confessions were subsequently retracted. It was observed by a Full Bench of this Court in *re, Raggha v. Emperor* : AIR1925 All627 that a confession in its

normal state is an entirely suspicious article and that a retracted confession is worse.

31. There is nothing in law to prevent a Court from convicting a person upon a confession which has been subsequently retracted provided that the Court is convinced that the statement is voluntary and true. If there be anything from the barest suspicion to positive evidence that the confession had been obtained by threat, persuasion, etc., such confession has, of course, to be discarded. But where the confession is made by a person who is sui juris before a Magistrate, in an atmosphere, untainted by the influence of the police or by any other influence and there are no suspicious features about it, there does not seem to be any reason why the statement should not be accepted. Where two such confessions are made by two different persons and both of them are self-incriminatory and each of them affects the other co-accused, this is an important circumstance, which may be and ought to be taken into consideration at the trial.

32. Bhagwanta states that in the month of Asarh, Akbar butcher's wife told him that she had a co-wife and asked him to do such a thing that is, to kill the co-wife and promised to pay him some money. Bhagwanta said that it was beyond his power to commit such a deed. She said that she had a man in hand and asked Bhagwanta to take one man in addition. Bhagwanta refused. On the day when the murder was committed, Akbar Ali, the husband, had gone out. His wife met Bhagwanta at noon and told him:

Now is the chance to do such a thing my husband is not at home. Kill my co-wife now.

33. At 10 or 11 O'clock at night, he found there Chand and Buddha. She concealed the three men in the house and went to call her co-wife. The co-wife with her two daughters came. Akbar's wife lay down on one charpai. The co-wife with her two daughters lay down on the other charpai and fell asleep. Chand had kept a knife under the charpai of Akbar's wife. Akbar's wife came and informed these people that her co-wife had gone to sleep. 'Kill her now.' Chand took up the knife, pressed the throat of the co-wife and plunged the knife into her person. Akbar's wife throttled the two daughters. The corpses were tied into two bundles:

Akbar's wife, Chand and I tied the dead body into two bundles one of which was made of a printed sheet and the other of a red sheet of quilt.

34. Buddha, Chand and Bhagwanta went away taking the bundles with them.

35. The statements of Bhagwanta and Mt. Khuban agree in important particulars but there are variations. All though each of the accused persons assigns to himself or herself a less prominent part, the statements are clear acknowledgments of participation in the murder of Mt. Jawwa and her two daughters.

36. The confession of Bhagwanta is corroborated by certain particulars:

(1) There is the medical evidence that Mt. Jawwa was killed with a knife and her two daughters died of strangulation.

(2) Corpses in two bundles were recovered from a well.

(3) A knife was recovered from the house of Mt. Khuban, which bore stains of human blood.

(4) The murder had taken place inside Mt. Khuban's house as was proved to a demonstration by the condition of the room, the recent plastering and whitewashing and from the things recovered in the room.

37. Mt. Khuban was actuated by jealousy, a frailty common to women. Bhanta was a hired assassin. He got Rs. 10 from Mt. Khuban as blood money-Rs. 10 for three human lives.

38. It may be incidentally mentioned that Mt. Khuban had made a clean breast of the whole affair to Gulzari and had admitted that Rs. 10 had been agreed to be given to Bhanta as the price of murder.

39. We have no reasonable doubt that Bhanta alias Bhagwanta took part in the murder and is guilty of an offence under Section 302, I.P.C.

40. We allow the Government Appeal No. 724 of 1929, set aside the order of the Additional Sessions Judge dated 28th May 1929, acquitting Bhagwanta. We convict Bhagwanta alias Bhanta under Section 302, I.P. C, and sentence him to death and direct that the said sentence be carried out according to law.

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