

Emperor Vs. Mathura

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Court : Allahabad

Decided On : Oct-04-1933

Reported in : AIR1934All43; 147Ind.Cas.653

Appellant : Emperor

Respondent : Mathura

Judgement :

ORDER

Iqbal Ahmad, J.

1. The learned Second Additional Sessions Judge of Cawnpore has made this reference by a letter dated 6th September 1933, asking this Court to sanction the prosecution of Mathura under Section 339(3), Criminal P.C. As I have come to the conclusion that the reference ought not to be accepted and the prosecution of Mathura should not be ordered, I need not consider the question, whether application for sanction to prosecute Mathura should have been made by motion on behalf of the Crown in open Court and not by a letter of reference which has been submitted by the Sessions Judge in the present case. One Mata Din Mullah, resident of village Keotra, was murdered on 21st May 1933. On the morning of the 22nd May his corpse was found in the Khalyan of one Chunna. This threshing-floor of Chunna is at a distance of about 800 paces from the cucumber field of Mata Din which is situate on the banks of Jamna and which is at a distance of

about half a mile from the abadi of village Keotra. A report of the incident was made in the police station on 22nd May. Pt. Inder Kuwar, the station officer, reached village Keotra the same day at about 6 p. m He recorded the statements of some witnesses and suspected Matbura and five other persons, viz., Makhan, Mata Din, Babu Earn, residents of Koatra, Sheo Prasad, resident of Kathri, and Kali Charan, resident of Teonga, as being the persons responsible for the murder of Mata Din. It is said that the five persons named above could not be found on 22nd May. They were all, however, arrested on 23rd May and their houses were searched. Nothing incriminating was found in the house of any persons except Kali Charan. Kali Charan handed over to the Sub-Inspector a Gandasa and a dhoti. The Chemical Examiner found : blood stains on both and the Imperial Serologist found that the Gandasa was stained with human blood.

2. Mathura is alleged to have been arrested on 10th June. He was produced before a Magistrate on 11th June with a view to his statement being recorded under Section 164, Criminal P.C. The Magistrate did not record his statement on that date and sent him to the jail look up. On 12th June Mathura's confession was recorded. All the five persons named above and Mathura were sent up by the police. Mathura was however offered pardon by the Committing Magistrate and was examined as an approver by him. The Magistrate committed the five persons to the Court of Session. In that Court Mathura was examined as a witness for the prosecution, and he resiled from his previous statements and stated that he made the confession and the statement in, the Court of the Committing Magistrate at the instance of the police. As Mathura admitted that the previous statements made by him were false the learned Judge has made the present reference-for sanction to prosecute Mathura under Section 193, I.P.C. The learned Judge acquitted all the five persons named above. He rightly observed that as against four of them there was no evidence worth the name and as against Kali Charan there was not sufficient legal evidence. The motive for the murder alleged by the prosecution did not appear convincing to the learned Judge and I share his view. The case for the prosecution was that all the five accused had illicit intimacy with, the deceased Mata Din's wife Mt. Mathuria, and, that Mata Din was murdered by them in order that they should have free access to her. While dealing with the question of motive, the learned Judge made the following observation:

No doubt Mt. Mathuria appears from her own evidence and the evidence of Mathura to be a woman of loose character, but that five or six men, one of whom, Makhan, is an old man of 50 or 60 years, should combine to do away with, her husband in order to enjoy her freely is not-easy to believe.

3. It is, obvious that if an approver resiles from a previous statement made by him incriminating himself and certain other persons and makes a statement directly contradictory to the one previously made by him, one of his two statements must be false, and, as such he must necessarily be guilty of giving false evidence. But the fact, that the legislature has prohibited the prosecution of an approver for the offence of giving false evidence without the sanction of the High Court, demonstrates that the mere fact that the two statements are contradictory cannot in every case be a warrant for directing the prosecution of the approver. The discretion vested in this Court by Section 339(3), Criminal P.C. to sanction the prosecution of an approver for the offence of giving false evidence must, in my judgment, be exercised with extreme caution. It appears, to me that when this Court is asked to exercise the powers vested in this Court by the enactment referred to above, the cardinal question for consideration is whether the confession and the, incriminating statement made by the approver were or were not true. If the circumstances point to the conclusion that the confession and the incriminating statement were not true, the irresistible inference must be, that those statements were put into the mouth of the approver by some one by inducement or by threat and, in such a case, it would be opposed to public policy to prosecute and to punish an approver for the offence of giving false evidence, when as a matter of fact he did not voluntarily make the incriminating statement. On the other hand, if it appears that the confession and the incriminating statement represented the true state of facts, and the approver in collusion with the accused resiled from the statement previously made by him, his subsequent statement must be false and in such a case it is not only desirable but expedient to order his prosecution for giving false evidence. The exercise of the discretion must depend on the answer to the question whether the confession was or was not voluntary and all the circumstances must be carefully considered in order to arrive at a conclusion on the point. In the consideration of this question the fact that, on the promise of pardon being tendered to him, it is very easy to persuade an illiterate villager to

make a confession should not be lost sight of.

4. In the case before me I am not satisfied that the confession and the statement made by Mathura in the Court of the Committing Magistrate were true and were voluntarily made. On the other hand, I consider that the case for the prosecution was not true and that the evidence for the prosecution was fabricated. The rest of the judgment is not necessary to the report.

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