

Emperor Vs. Deo Dat

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Court : Allahabad

Decided On : Nov-01-1922

Reported in : (1923)ILR45All166

Judge : Stuart and ;Ryves, JJ.

Appellant : Emperor

Respondent : Deo Dat

Judgement :

Stuart and Ryves, JJ.

1. Deo Dat Koeri, aged 46, has been convicted of the murder of a Kaharin woman, named Musammat Gauri, and sentenced to death. He has appealed. The record is also before us for confirmation of the death sentence passed on him.

2. It appears that Musammat Gauri lived in Chunar, first of all with Sheobaran, after his death with Chhedi, and after Chhedi's death she continued to live in the shop which had been occupied by Chhedi, with the accused Deo Dat, and they together carried on a dairy business. -The woman seems to have been of loose character and, recently, she had formed an intimacy with a young man named Gajadhar. The accused undoubtedly became jealous of this, and there were frequent quarrels between her and the accused on the subject. This is borne out by the evidence of neighbours put forward by the prosecution! and whose

evidence does not seem to admit of any doubt. The accused himself admits that he had no enmity with any one of them. The woman was last seen alive up to 8 or 9 p.m. on the night of the 20th of July; at that time the accused was in the shop occupied by the woman. The next morning the shop was found closed; on the third day, in consequence of an offensive smell attracting the notice of the Police, the shop was opened and the dead body of Musammat Gauri was found lying on her cot. It was evident from the wounds that she had been killed instantaneously, as she slept, by two blows on the neck caused probably by an axe. The axe was found lying near the bed. A pair of shoes and an umbrella, which subsequently were identified as having belonged to the accused, were also found inside the shop. Suspicion at once fell upon the accused, who was not found at Chunar, but was arrested, on the 24th July, in Benares. On the 25th he was placed before a Magistrate of the second class, and made a statement which was recorded by the Magistrate. In that statement he admitted that he had killed Musammat Gauri because she had within the last four months fallen in love with Gajadhar and quarrelled with him and had refused to give him food for three days. He said that he struck her twice on the neck with an axe and she died instantaneously; that he then ran off to Benares and was arrested at Rajghat. Apart from this statement, the only other evidence against the accused is circumstantial; but, in our opinion, it leaves no sort of doubt as to the guilt of the accused. It has been argued that this statement, recorded by the Magistrate, is inadmissible in law because it was taken down in English and in a narrative form. In our opinion Section 533 of the Criminal Procedure Code completely cures any formal defects which might have been made in the recording of the confession. The Magistrate himself was called and he swore that he had all police removed from the courtroom and also had the handcuffs removed from the accused's hands; he asked the accused whether he was tutored by any body and, after being satisfied that the accused was not tutored by anybody, he recorded his confession. He admitted having recorded the confession in English, but says that he translated it to the accused who admitted the statement to be correct and fixed his thumb mark thereto. It is true that the Calcutta High Court, in *Jai Narayan Rai v. The Queen-Empress* (1890) I.L.R. 17 Calc. 862, has held that under such circumstances a confession is inadmissible, but this ruling has been dissented from by the Bombay High Court in *Queen-*

Empress v. Raghu (1898) I.L.R. 23 Bom. 221 and twice in our own Court in Queen-Empress v. Bachanna Weekly Notes 1892 p. 60 and Queen-Empress v. Anta Weekly Notes 1892 p. 60 by a Division Bench. There the facts were almost exactly the same as here and a Bench of this Court has held that under such circumstances Section 533 completely cures any such irregularities or informalities in the recording of a confession. The accused, when he was examined before the Magistrate on the 22nd of August, stated that he had never been in Chunar in his life and that he did not even know Musammat Gauri. He denied that the shoes and umbrella were his and could suggest no reason at all why the charge has been brought against him. He stated that he had made no statement before any Magistrate in Benares. He repeated this statement throughout the case, until we come to his examination on the 26th of September before the learned Sessions Judge. He there admitted, although he denied having made any statement before the Deputy Magistrate in Benares or that the shoes belonged to him, that he did know Musammat Gauri and that he lived at her house. He said that he had a quarrel with Musammat Gauri at 10.30 p.m. when Gajadhar, with whom she had criminal intimacy, came up and told him to go away from the shop and said that if he did not go away, he would kill him. He said he then went away to Benares by the 12 p.m. train leaving all his things in the house of Musammat Gauri. The suggestion, of course, is that the woman was killed, after he had left the shop, by Gajadhar. In his memorandum of appeal, for the first time, he sets up a definite alibi. He said that he was in Benares when the woman was killed and that he had been in Benares for six years and had nothing whatever to do with the woman. Even if we leave out the confession altogether, we think the circumstantial evidence coupled with the contradictory statements of the accused in themselves leave no room for doubt that he murdered Musammnat Gauri in a fit of jealousy. The fact that all her ornaments were found on her person shows that theft was not the object of the murder. Both the assessors would acquit on the ground that there was no eye-witness. In our opinion, there is no room for reasonable doubt in this case. The murder was a deliberate and cruel murder of a defenceless woman in her sleep. We, therefore, see no reason to interfere with either the conviction or the sentence. We dismiss the appeal, confirm the conviction and sentence and direct that the latter be carried out according to law.

