

Ram Sanehi Vs. Emperor

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Court : Allahabad

Decided On : Jan-03-1911

Reported in : 9Ind.Cas.148

Judge : George Knox and ;Karamat Husain, JJ.

Appellant : Ram Sanehi

Respondent : Emperor

Judgement :

1. Ram Sanehi Brahman has been convicted of the offence of murder of one Musammat. Sheoradni, his wife, and sentenced to death. The case has been submitted to us by the Court of Session at Banda for confirmation of sentence. The prisoner has appealed and has been represented by, a learned Vakil of this Court. The plea taken in the memorandum of appeal is to the effect that the evidence on the record is insufficient for, the purpose of bringing home the offence of murder to the appellant. In a paper sent by the convict from jail, it is further said that the accused knows nothing about how his wife was killed. He says that he was absent and on his return he heard that some body had killed his wife and that he went to the Thanadar then and there. He was arrested and sent to the Sadar.

2. The learned Sessions Judge has gone very fully into the evidence He starts his judgment by saying that there is no direct evidence in this case and we find on looking into the record that this is correct. The evidence immediately relating to the

death of Musammat Sheoratni, is to the effect that on the 29th of July, the prisoner had his meal with the rest of the family and one witness says that he had the day before spoken of an intention to go to Sundi a village where some of his relatives reside. There is no evidence showing where the prisoner spent the rest of the 29th of July but there is evidence to show that Musammat Sukhdeia saw the woman Sheoratni go into her room at sunset on the 29th, spread her bed and lie down on it. On the morning of Friday, the 29th of July, her dead body was found lying on its back in a field to the south-west of the village and by the side of a road.

3. The medical evidence is to the effect that the probable cause of death was asphyxia caused by heavy pressure on the upper part of the chest. There was a mark of a rope round the neck; but the Assistant Surgeon, who conducted the post mortem examination, says that this mark was for certain made after the death of the woman.

4. Report of the finding of the dead body was made at the Pahari Thana on the 29th of July at 9 A.M. The report was made by Hanuman Din, Brahman, father-in-law of Musammat Sheoratni and father of the accused. It contains nothing that tells us further about the movements of the prisoner and although Hanuman Din does charge his son with the murder of Musammat Sheoratni, he gives no reason or foundation for making'; such a charge and there is evidence to show that Hanuman Din and his son were on ill terms with each other. The prisoner could not be found at the village but on Sunday the 31st of July at half past eight, he came himself to the Thana at Sakrauli and was arrested. He appears to have been kept at Sakrauli during the night and on the following day August 1st, he was sent at noon in the custody of Abdul Shakur and Baldeo Prasad, constables, to Karvi. As we shall presently show, the movements of the prisoner and the Police, after they left the Thana of Pahari on the morning of the 2nd of August at 6 A.M., are uncertain. We have a statement made by the prisoner in the Court of the Tehsildar Magistrate of Karvi on the 3rd of August and in this statement Ram Sanehi says that his wife ran away during the night, he pursued her and caught her at a distance of 100 paces from the house. There was another man with her. He caught hold of his wife by her neck and threw her down on the ground and she died. He adds that he did not slap her or strike her with stick or fist.

5. We need not enter into the question, how far this statement is or is not true. The Tehsildar Magistrate before whom it was recorded omitted to make a memorandum at the foot of the record to the effect that he believed that the confession was voluntarily-made; Without the confession there is not sufficient evidence on the record of the conviction of the accused upon the offence charged and it became necessary to look very carefully into the circumstances under which the confession was made, the more so as in a statement made by the accused before the Court of Session, the accused said as follows: That he made the confession owing to the pressure brought to bear upon him by the Thanadar of Pahari.' We accordingly sent for the Tehsildar Magistrate. The Tehsildar Magistrate tells us that he had no doubt he wrote the statement made by the accused, that the accused made the statement of his own accord and that the words 'I believe that his confession was voluntarily made were inadvertently omitted. Ordinarily speaking a statement made by a Magistrate to this effect would be received by us with full confidence and we do not mean in this judgment of ours to throw any doubt upon what this Magistrate says. Unfortunately, many circumstances have gathered round the case at this point which are full of suspicion and which have not been satisfactorily explained. The Tehsildar Magistrate tells us that he has been a Magistrate for 14 years and that he has had to write memoranda of this kind hundreds of times. The fact that he omitted to record the memorandum accurately points at any rate to a certain amount of want of care on the part of the learned Magistrate when he made the record. When we find in addition to this that the Tehsildar Magistrate was not the Magistrate to whom the accused was sent for the purpose of having this statement recorded, further that although the accused left the Thana of Pahari at 6 A.M., on the 2nd of August and as the head constable of Pahari tells us and as may be judged from the fact that Pahari is only 9 miles distant from Karvi, he was produced before the proper Officer on the 2nd of August and no statement was recorded although the Police had asked that his statement should be recorded; further that although the order passed on the 2nd of August was that the accused should be taken to the jail lock-up at Karvi, he was taken instead to the Police Thana lock-up at Karvi in the custody of Pahari constables; further that when he got to the Karvi lock-up, he was, owing to a real or supposed want of Karvi constable, kept in the lock-up

under the guard of the Pahari constable Baldeo Prasad further that when he was taken out of the lock-up at Karvi on the morning of the 3rd, he was not produced before the Sub-Divisional Magistrate, but taken before the Joint Magistrate in charge of Karvi; further that from there he was again taken by the Pahari constables back to the Court of the Tehsildar Magistrate and then that statement was recorded and lastly the fact that he was not received into the jail lock-up until late of the 3rd of August, are all matters full of suspicion.

6. We have examined every one connected with the matter and no satisfactory explanation has been given by any one of all this round about procedure on the part of Pahari police. Abdul Shakur constable, who accompanied him from Pahari and remained with him apparently throughout the 1st, the 2nd, and the 3rd of August gives a most lame account of his dealings with the accused. The accused should have been {vide Section 167 of the Code of Criminal Procedure) transmitted to the nearest Magistrate and it was for this Magistrate, whether he had or had no jurisdiction to try the case, to authorize the detention of the accused in such custody as he might think fit. If we assume that Deputy Mamnun Husain Khan was the Magistrate to whom the accused was sent it is clear from the papers and from the depositions of Deputy Mamnuu Husain Khan that the proper order was passed by him that the accused should be kept in detention in the jail lock-up. The jail lock-up at Karvi, so we have it on the evidence, is a very short distance from the Magistrate's Court and the constables and the accused would have to pass it on their way to the thana lock-up which is more or less a mile distant from the Magistrate's Court. No explanation is given of why the police passed the jail lock-up on the 2nd of August and did not, as they were ordered to do by a written order, hand over the accused to the custody of the Jailor. The whole procedure of the police from this point onward calls for careful inquiry.

7. We have no reason to believe the statement of the prisoner that he was beaten by the Thandar of Pahari till he was senseless; but are other methods of torture than a torture by the rod and an accused who found himself being dragged about for two days from court to court in the custody of police, by whom he was arrested, may have thought better to make statements which he did. The police have themselves to thank for the suspicion which surrounds this case.

8. We think that assessors were right in the view they took that the accused was not guilty and that it was not proved that Ram Sanahi had murdered his wife. We have come to the same conclusion. We set aside the conviction and sentence. We find the offence not proved and we direct that Ram Sanahi be at once released.

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