

**Emperor Vs. Sikandar**

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**SooperKanoon Citation :** [sooperkanoon.com/455118](http://sooperkanoon.com/455118)

**Court :** Allahabad

**Decided On :** Mar-18-1930

**Reported in :** AIR1930All532; 125Ind.Cas.585

**Judge :** Boys and; Young, JJ.

**Appellant :** Emperor

**Respondent :** Sikandar

**Judgement :**

**Young, J.**

1. Sikandar was charged under Section 302, I.P.C., before the Sessions Judge of Aligarh with having poisoned one Mt. Tufania by administering arsenic to her. The learned Sessions Judge acquitted the accused, and the Government has appealed.

2. The case for the prosecution was that the accused, who had illicit relations with the deceased woman, and also was in the habit of committing sodomy with her son, because the woman refused to leave the place in which she was then living and go and live with him, administered arsenic to her in gur on 22nd June 1929 and thereafter, within some twenty-four hours, she died as a result of arsenic poisoning.

3. The prosecution called three eye-witnesses who deposed that they had seen the accused giving the deceased gur. The witnesses also gave evidence that shortly afterwards the woman became very ill and vomited and purged. There was also on the record the statement of Mt. Tufania herself made to the police, which was admitted in evidence as a dying declaration. In that statement the woman said that the accused had illicit intimacy with her and also with her son; that she refused to go to Aligarh with him, and that afterwards he gave her gur to eat saying that it was a 'parshad' from a Pir; that shortly afterwards she began to feel giddy and thirsty and drank water from a jar and that the water was bitter. She also said that the gur tasted bitter, and that she charged Sikandar with administering poison to her mixed with the gur. As regards the evidence of the three eyewitnesses, the learned Sessions Judge discards it on the ground that he was not satisfied that they were speaking the truth. We have carefully examined their evidence, and we have no reason to disagree with the finding of the learned Sessions Judge on this point. There remains, then, the evidence of the deceased woman herself as given in her dying statement. As regards the statement, the learned Sessions Judge came to the conclusion, from the internal evidence in the statement itself, that the statement was not given in the woman's own words but that it was merely a note of the substance of what she told the police. The learned Sessions Judge came to the conclusion that it would not be safe to convict the accused merely on the statement. We are in agreement with the learned Sessions Judge in the finding to which he came, and we see no reason to upset that finding and to convict the accused.

4. While we agree with the Sessions Judge we think we ought to put it on record that there are several other more important reasons than have been given by the learned Sessions Judge, or even discussed by him, for acquitting Sikandar. There is, in our opinion, no evidence on the record worthy of the name to prove that Mt. Tufania died of arsenic poisoning. In a case of arsenic poisoning two things must be proved: firstly, that the person alleged to have been murdered did die of arsenic poisoning; and, secondly, that the arsenic was administered by the accused person. The only evidence in this case of arsenic poisoning is the evidence of the Civil Surgeon who says in his original report that the cause of death was probably some irritant poison.' Later on the Civil Surgeon was more definite, He said: 'Death

was due to some irritant poison.' But he did not say that death was due to arsenic. Nor was he questioned either by counsel for the defence or by the Judge as to whether the condition of the stomach and the intestines which he found in the post-mortem examination was not consistent with gastro enteritis, cholera, or some similar complaint. Further, some of the vomit and the matter purged was collected from the ground and sent to the Chemical Examiner for report; also the jar which had contained the water which she had drunk and in which, as was alleged by the prosecution, she had washed the gur, was sent to the Chemical Examiner. The Chemical Examiner reported, after using the Reinsh test, that arsenic 'was detected' in the vomit of Mt. Tufania and also in the night-soil, but arsenic was not detected in the mud jug. The report of the Chemical Examiner is wholly insufficient to prove that the cause of the woman's death was arsenic poisoning. A very small and harmless quantity of arsenic can be 'detected' by the Reinsh or Marsh test. It is of the utmost importance in a case of arsenic poisoning that the prosecution should prove that a lethal dose of arsenic that is, two grains or upwards, had been administered. The authorities, such as Taylor, are agreed that there must be unequivocal proof:

that some rational quantity of arsenic was found in the viscera, or good evidence of such a lapse of time after the administration of the last dose as to give a satisfactory explanation of its possible absence.

5. In this case there is no lapse of time. In other words, there ought to be a careful examination of the viscera of the body and an analysis by a competent analyses showing from the amount of arsenic found in the viscera that at least a lethal dose must have been administered. Mere examination of vomit or night-soil is totally insufficient and it would be extremely dangerous to rely upon some traces of arsenic found in either of these two things. Arsenic might have been put in the vomit or night-soil after death. Arsenic on the other hand may be legitimately in the body through various causes. Arsenic in some forms is obtained from earth, and as in this case the vomit and night-soil was taken from the earth, it is not beyond the bounds of reasonable possibility that traces of arsenic might have been detected in these two substances from that cause. It is usual where the matter to be examined has been contaminated with earth to send a sample of the earth from

a neighbouring spot to be analysed in order to show whether there is arsenic in the earth or not. In India arsenic is used as a medicine in all manner of diseases, and it is also used as an aphrodisiac. It is, therefore, impossible to take the mere evidence that arsenic was detected as sufficient to prove conclusively death from arsenic poisoning. It is of the utmost importance, before a Court could find any individual guilty of murder by the administration of arsenic, that a very much more complete chemical analysis should be made than in this case. There are several methods of analysing the viscera of a dead body and of making a quantitative analysis. Reference to any of the books on this subject can easily be made. That such analysis has been made in India in the past is clear from a reference to Dr. Cheyer's Medical Jurisprudence, published in 1870, where he observes at p. 116: 'Dr. Macnamara discovered considerable quantities of arsenic in both stomachs.' Given the necessary knowledge and the necessary instruments, modern science has no difficulty in coming to a conclusion as to the approximate quantity administered.

6. There is one other point to which we would like to allude as regards this particular case. From the evidence on the record it is not impossible that the gur taken by the deceased did not contain arsenic. The woman said that the gur tasted bitter. The authorities are unanimous on the point that arsenic is tasteless, and at p. 507 of Taylor's Medical Jurisprudence it is said:

Sir T. Stevenson has known announce of arsenic homicidally put into a pint of rice pudding. The pudding was eaten without suspicion.

7. It seems to be a common error to consider that arsenic tastes bitter at the moment of eating, and, therefore, it is suspicious, when the fact is otherwise, to see in the statement of this woman that the gur was bitter when she ate it. The most that can be said is that later it produces a burning sensation in the throat. In every murder case in Britain, where arsenic poisoning is alleged, the contest always is over the evidence as to the amount of arsenic found in the body. We are told that quantitative analyses have been for some years unknown in this country in arsenic cases. It is our opinion that without such evidence as can be obtained from a proper scientific enquiry it would in most cases be very unsafe to convict

any person of murder by arsenic, especially in view of the common diseases in this country whose symptoms are almost indistinguishable from that of arsenic poisoning.

8. The appeal is dismissed. If Sikandar is under arrest he will be set at liberty immediately if he is not wanted on any other charge.

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