

**Raggha Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Jun-05-1925

**Reported in :** AIR1925All627

**Appellant :** Raggha

**Respondent :** Emperor

**Judgement :**

Mears, C.J.

1. This is the appeal of Raggha, caste Kurmi, age 24, from the conviction of the learned Sessions Judge of Farrukhabad, who, on the 21st of April 1925, sentenced him (Raggha) to death in respect of the murder of one Mangli.
2. The curious feature about this case, and which rendered it advisable, in my opinion, to seek the assistance of a third Judge, was that the body of Mangli was never recovered.
3. The facts can be stated very shortly. There had been a long standing quarrel over a piece of land in Balipurwa Raggha, with the aid of other people, had forcibly dispossessed Mangli. Mangli had recourse to the Courts, and on the 5th of December, 1924, he being the plaintiff in a suit, was declared by a judgment on that date to have the right to the possession of this land. That decision, and possibly another circumstance connected with Mangli, namely, that he was said to have taken a Gadaria woman into his keeping, may have made Mangli an object

of enmity to a number of people. But at all events, Mangli was beyond any question alive on the afternoon of the 6th of December, and his movements have been traced on that day with complete accuracy up to the point when he was at the village Beta, about a mile distant from his home. From that time, when probably it was beginning to be dark, Mangli has never been seen alive by anybody. Not having returned home, his relatives, after a time, became uneasy, and having learnt of his movements from the Court towards his home, they began to make a search, and on the 8th of December, probably when the light was failing, Jagan Nath passing along a nala which would be the way which Mangli would take if he were proceeding towards his home, found four patches of dried blood. Jagan Nath went back and brought another witness. They examined the marks, and eventually on that same afternoon they went to the thana and made the first information report. Therein they set out that there had been the litigation relating to land and the name of Raggha, the accused in this case, is the first name suggested as one of the men who might be the cause of Mangli's disappearance. From the 8th to the 15th no step was taken. On the 15th the Sub-Inspector returned to his thana and commenced his investigation. He having seen where the blood stains had been, the blood and the earth having been previously collected and sent to the Imperial Serologist, the Sub-Inspector called certain suspected persons to appear at the nala. Amongst them was Raggha. When Raggha was asked to walk across the place, he showed signs of great uneasiness and apprehension. Laltu, another suspect, was equally agitated. He is not before the Court. The Sub-Inspector thereupon took them back to Balipurwa and questioned them. Raggha made a statement - what that statement was in its terms we do not know. Laltu corroborated the statement with the result that a search was made in a large and deep pool in the river Aisan, about 1 mile away from the place where the marks of blood had been found. A diver having been sent in and this pool having been dragged the result was that various articles of clothing, 4 or 5 in number, were recovered from that pool, and were subsequently satisfactorily proved to have been the property of Mangli.

4. These articles have been exhibited in this Court, and there can be no question that from their appearance they have been bitten through and torn and dragged about by crocodiles and possibly by smaller creatures such as turtles. One

particular garment shows a hole of about 2 feet square and the edges of the garments are frayed and ragged and show teeth marks.

5. Raggha, being under arrest, was taken on the 17th to Fatehgarh, and at 3-30 in the afternoon of that date he appeared before Mr. Chakravarty, a Magistrate of the first class. When he came before Mr. Chakravarty, he had already apparently decided to make a confession. Very probably Mr. Chakravarty, who has been no doubt most rightly described as one of the most experienced Magistrates in the district, did not immediately record that confession but gave Raggha advice and caution. He explained to Raggha that he was not bound to make any confession, and that if he did make a confession, there was likelihood that it might be used in evidence against him. Now in this Court we are all very familiar with those words and they may, to some of us, have lost some sense of weight and consequence, because we have heard them very frequently. But Raggha was a man brought before the Magistrate and told on that afternoon that there was no need for him to make a confession; that the law did not demand it; and that if he did confess, what he said might be used in evidence against him. The Magistrate having given that caution to Raggha sent him away to think the matter over, and did not see him again until 12 o'clock the next day. Therefore Raggha had 20 hours in which to review his position and to think over what he had been told, free from any influence. When he appeared again before Mr. Chakravarty at noon on the 18th, again Mr. Chakravarty cautioned him and Raggha said that he wished to make a confession; that he was doing it freely; that there had been no threat and no inducement; and that nobody had told him that if he were to make a confession he would be acquitted; that he was not in any way being forced; and that he would make a free, full and true confession.

6. Now, in my opinion, there is nothing more than human care can do, than to talk to a man about to make a confession as the learned Magistrate did. The result was that Raggha persisted in his wish to make a confession and he made one, which I propose to refer to, not in its entirety but to extract from it certain passages which I consider to be of great importance. I may state that the impression the confession leaves upon me is that Raggha was a very clear headed, intelligent man, and if any part of the confession need be brought forward in truth of it, I will

refer to the lines 42 to 54 on page 13 of our printed record where he states the facts with a power of compression and clearness as well as a trained advocate could do.

I had 20 bighas of cultivation in Balipurwa. In Asarh last Jodha and Mangli sued me in the Civil Court over that land. The 3rd of December was fixed for delivery of judgment. The judgment was not delivered on that day; but my pleaders told me that I would lose the case. The judgment was delivered on the Friday following. I lost the case. There were ten men with me; they even gave evidence for me. They were Permehri, Brahman of Rakha-ka-purwa, Chatar Kurmi, of Rakha-ka-purwa, Manna Brahman of Rakha-ka-purwa, Kampta Brahman of Rakha-ka-purwa. Gayadin Kurmi of Bali-ka-purwa, Mangli Kurmi of Bali-ka-purwa, Laltu, son of Mangli, of Bali-ka-purwa, Ishri Kurmi of Bali-ka-purwa, Ruttu Kurmi of Bali-ka-purwa, Anga Kurmi of Bali-ka-purwa. All these ten men were present in Court on Wednesday, and on Friday only Mangli, accused, and I were present. We all eleven men conspired both on Wednesday and Friday to murder Mangli.

7. As will be seen there appears what may be a printer's mistake in the use of the word 'accused' after Mangli instead of the word 'deceased.' I am impressed by the clarity of that statement. Now the confession makes it perfectly clear that Raggha took a leading part in this matter. He started to track Mangli, deceased, who went to Sarai Mian. He and another followed him from Sarai Mian to Behta and met the other nine men at a nala, a distance of 3/4ths of a mile from Balipurwa. They gave to them the information that Mangli was near at hand in Balipurwa, and then they lay in wait. The confession shows that this man was such a close participant in the murder that a dhoti which he had used as head-dress was 'spattered' over with blood.

8. The confession also records that it was owing to the information which he gave to the police that the cloths were recovered from this deep pool one and-a-half mile away from the scene of the attack. Now I have intentionally left out for the moment the story of what is said to be the murder. The accused describes the assault in this way:

Mangli, deceased, arrived at the said nala when it was dark. As soon as he got down the nala, Putbu hit him hard with a lathi. Mangli, deceased, cried out and ran. The others then followed him and caught hold of him. Puttu and I were on the other side of the nala. They dragged Mangli, deceased, 20 or 25 paces to the east and beat him very badly with lathies. Village Bahadurpur is at a distance of 9 or 10 fields from that place. There was heard some noise there. Thereupon we left Mangli, deceased, lying there and ran away. We came back there two hours after. On our return we found that Mangli was dead. We tied up the dead body of Mangli in his dhussa (wrapper). There were some articles in his jhola (bag), such as lota, string, shoes, etc. There were also his lithi. We took the dead body and the said articles and went to the river. We loaded the jhola (bag) and the dhussa (wrapper) with earth and threw them into a kund (deep place in the river). We also threw the lathi into the river which floated away.

9. Corroboration of this confession is to be found in the fact that the place where Raggha said the clothes had been thrown, in fact proved to be the place. When the clothes were brought to the surface they were found to have been at one time loaded with sand, and indeed the sand was still in them. It happened that the search proved unavailing in so far as the finding of any trace of the body of Mangli, and that is The circumstance which has been spoken of as creating a difficulty in the case.

10. The circumstances, apart from the confession, which point to Mangli having met his death, have been summarised by Mr. Dillon, and he points out that Mangli was last seen on the afternoon of the 6th of December within a mile of his house and half a mile from the nala and at a point where in the ordinary course he would have crossed the nala on his way to his house. He states that apparently there was no motive for Mangli to disappear. He had in fact been the winning party in the litigation and Mr. Dillon, relies of course upon the information by which the clothes were recovered, and he calls in aid the fact that the very appearance of the clothes, presented to us in this Court, showed beyond any doubt that 'something edible' had been wrapped in those clothes, something which would appeal to crocodiles. There is evidence that crocodiles and alligators lived in this river.

11. On The 18th of February Ragha withdrew the confession and said:

I made such confession through the fear of The Darogahji. Darogahji caused me to be in water till midnight, and caused my dhoti to be removed, and both my hands to be tied to a cot. This was why I made the confession. I made the confession as I was asked by the Darogahji to do so.

12. When The darogah was in the box, not a single question of any kind was put to him in cross-examination, to suggest that he had done any of these monstrously improper things, or that he had done anything at all in violation of his duty. One knows the common argument that is used when one points out the omission. It is that the darogah would have denied it. The answer to that is that if you are going to charge a man with such conduct, you ought to give him an opportunity of explanation by putting the charge definitely to him. The darogah might have been able to prove that three or four persons were throughout in the company of the darogah and the accused throughout the time, or the darogah might have been able to prove convincingly that his interview with the accused lasted only a few minutes. Ram Dayal, who has come forward, says that the Sub-Inspector shouted at him and threatened him. That was not followed up and one does not know when that was supposed to have been done, but there is nothing to prove the suggestion that the man was put into water till midnight. I do not accept this statement of the accused in the slightest degree, any more than I accept the grounds of appeal which were furnished to this Court in which the darogah is said to have told him that if he did what the darogah advised, he would be made witness for the Crown, and thus be acquitted.

13. In these cases of confession whenever one wishes to draw the ordinary inference from the plain statements of the accused, one is invariably told that he is 'only an ignorant villager.' 'Ignorant villagers' give evidence in Civil Courts with great acumen, they carry on agriculture or village trade with success, they are united in the normal village life and take a greater or less degree of interest in affairs, local, provincial and national. I think 'ignorant villager' is a misnomer and that whatever useful function that phrase may have served in influencing Courts in the past, its range ought to be restricted in this, the year 1925. I am of opinion that

a man of sound mind and full age, who makes a statement in ordinary simple language, must be bound by the language of the statement and by its ordinary plain meaning. If the statement is believed by the Court to be true, and if the Court is satisfied that there was nothing of the nature referred to in Section 24 of the Evidence Act, no improper conduct of anybody, but that the man of his own motion made a confession, I am of opinion that, if that confession can legally be receivable in evidence and is corroborated, the plain simple meaning of the words used by him must have their full and proper significance, and the act spoken to be given its legal consequence I dissent entirely from the view that when an ordinary villager says that he hit a man on the head with a lathi that those words are not to be given the weight which would be attached to them if they issued from the lips of an educated man, provided always, as I have said, that the man has not been the victim of malpractice, threat or inducement in making such statements. People must be responsible for what they say as well as what they do.

14. This case furnishes a most excellent illustration of what I mean, and I need seek no other. The principal questions we have got to consider in this case are. Was Mangli killed on the evening of the 6th of December in such circumstances as to constitute a murder? If so, was the accused one of the murderers? The first essential is that we must be satisfied that Mangli was a dead man on the evening of the 6th of December. I have already mentioned the various circumstances that Mr. Dillion points out as being indicative of the death of Mangli. When we come to the confession of Ragga, we find that he says : 'On our return we found that Mangli was dead.' He then described how the body was carried away to the pool and how disposed of. How can Government or the work of these Courts be carried on in any degree satisfactorily if we are to say that a statement of that simple kind, given under circumstances of the gravest solemnity, is not to be accepted as of well understood import by the man who uttered it? He may of course be wrong in his inference that Mangli was dead, but his confession must at least be taken against him to the extent that he believed Mangli to be dead. I believe Raggha when he says that there was a quarrel of long standing, that there was litigation ending adversely to him, that he tracked out Mangli, that he gave information to the other persons, that there was a general (agreement to murder him. I accept the way in which he describes the assault, the dispersal of the assailants because they

believed that the villagers of Bahadurpur were aroused. I accept the fact that they returned to Mangli and I certainly accept his statement that eventually Mangli was found to be dead. I also accept the story as to what happened subsequently.

15. In these circumstances what is the position? Why should not the ordinary consequences follow? Here we have a brutal murder, perpetrated undoubtedly by a considerable number of persons; at all events, there were enough men to enable them to carry the body 1 miles. The man was struck down, dragged, beaten and eventually found to be dead. There is as far as I can see no extenuating circumstance whatever. Raggha was a participant in the matter from the beginning, the known object of it being to kill Mangli.

16. It is said by Mr. Laghate that we should not pass the sentence of death, but should pass the lesser sentence of transportation for life. Why? If one is satisfied that murder was committed, why should not the appropriate punishment follow? It is the murder which is the thing to be regarded, that is to say, the killing of a human being by one or more human beings without just cause or excuse. It is not the finding of the body. The absence of the body is a circumstance which makes it necessary to proceed with care and caution. But I say that in every case of murder one has to proceed with the greatest care and caution, and one must never confirm a sentence of death, unless one feels completely satisfied about it. If there is such an element of doubt as to render a Judge in the least degree uneasy of mind, the proper course is not to change the nature of sentence, from death to transportation for life, but to acquit the man altogether. Having myself not the slightest degree of uneasy feeling about this matter. I believe it is my positive duty in the circumstances to accept the plain, definite unqualified statement of Raggha 'on our return we found that Mangli was dead.' Believing it to be my duty to accept that, recognising that it is the death which constitutes the crime, and not the recovery of the body, and recognising also the excellent reasons which have been given for the failure to find the body, I am of opinion that the decision of the learned Sessions Judge was in every way correct, and that he passed upon Raggha the only sentence that should have been passed, namely, that of death. In these circumstances my opinion is that the decision of the learned Sessions Judge should be confirmed, and that the sentence of death passed upon Raggha should

be duly carried out.

## **Banerji, J.**

17. Three points arise in this case. The first is : Was Mangli killed on the 6th of December? The second is : Was Raggha one of the persons responsible for the murder of Mangli? The third is; Which of the two sentences, namely, death or transportation for life, is the proper sentence in this case

18. It has been proved by the evidence of Laltu and Jagan Nath that on the 5th of December Mangli came back to his house and informed his brother and relations that he had won the case against Raggha and that he was going the next day to deposit in Court the costs of execution. Laltu and Jagan Nath say that on the morning of the 6th Mangli left his house with a certain number of articles and with some money, for the purpose of getting the decree, he had obtained against Raggha, executed. We have the evidence of Ram Narain to prove that Mangli was seen on the way from his house to the Court and it has been proved beyond all reasonable doubt that Mangli was in Court, that he identified one Mullu in the Court of the Munsif where Mullu had a case which was compromised. It is further proved by the two clerks of the pleader Jogeshar Prasad that Mangli deposited Rs. 24 for executing the decree which he had obtained against Raggha forthwith. The next we hear of Mangli is from Mullu, who says that he left the Court at about 4 Oo'clock and he was followed by Mangli. They came together to Behta and there they parted, Mangli going in the direction of his house in Balipurwa and Mullu to his house. That was when Mangli was last seen. It is not suggested anywhere by the defence that there was any object or reason why Mangli should have disappeared without leaving any trace. It is not suggested that there were wild animals prowling about the jungles, which could have eaten up Mangli. Lallu went and made a report at the police station on the night of the 8th of December where he not only described the enmity he had with Raggha but also gave details of the search he had made, the information which he had got from Mullu, and described the clothes that Mangli had on him. It is not controverted that in consequence of the report the head constable proceeded to a spot near a nala which was between Behta and Balipurwa, and which Mangli would have had to cross if he was going

to Balipurwa where his home was. The head constable proves that several patches of bloodstained mud were found there. The bloodstains have been proved to contain human blood. We hear nothing further until the 15th of December when the Sub-Inspector came on the scene. The Sub-Inspector tells us that he made enquiries in the village, took the statement of Mullu, and then took the persons mentioned in the first report as suspects to the scene of occurrence, where the blood patches were found, and on account of the suspicious conduct of two of the persons, Raggha and Lallu, he arrested them. Raggha made some statements to the Sub-Inspector, and in consequence of that statement the Sub-Inspector, Raggha and some witnesses proceeded to a place 1 1/4 miles from the nala, where the blood had been found, and there in the presence of witnesses Raggha said he would show the place where the body and the clothes had been thrown. Raggha showed the place where the body had been put clown, the place where earth had been taken from, the position in the river where the body had been thrown. He said the earth had been taken in order that it might be put in the clothes to prevent the body from floating. There was a hole showing where the earth had been taken from. In the presence of Lalman, the mulha, Raggha showed the pool in which the body had been thrown, and certain articles which have been put up as exhibits in this case, were found in the pool, and it has been proved beyond doubt that those articles belonged to Mangli and that Mangli had them on the morning of the murder.

19. I am of opinion that this is sufficient to prove that Macgli is dead.

20. The next point for consideration is whether Raggha was one of those who were responsible for the death of Mangli. I have no doubt in my mind that Raggha was one of those persons who were responsible for the death of Mangli. It is proved beyond all doubt that early in July Raggha came back to this village and forcibly took possession of 20 bighas of land, which has been found by a Court of competent jurisdiction to be that of Mangli, but which Bagga still persists in calling 'my occupancy holding' in the petition which he has submitted to this Court. It is not shown that Raggha had ample means, or funds, and that these 20 bighas meant nothing to him. It is unusual to find that a villager would execute his decree the day after he obtained it, and in this case we find that Mangli intended and did

intend to execute his decree forthwith. Mangli had not taken the law into his own hands in trying to forcibly eject Raggha, a state of things which we ordinarily find when a man takes forcible possession of another's land. So that Raggha had not only a motive, but a very good motive for getting rid of Mangli. He was exasperated at this all and it is not at all surprising to me that he would conspire with others to kill Mangli. The only evidence which conclusively shows the guilt of Raggha is his own 'confession. I must state that the confession as recorded by Chakravarty, was recorded with, much greater care than is ordinarily done. It is proved beyond all doubt that Raggha was sent back from the Magistrate's Court to the Jail, and not in the custody of the Sub-Inspector who was investigating the case, on the day when he was first put up before the Magistrate for his confession to be recorded. Raggha was brought back at 12 o'clock from the Jail, and I cannot lose sight of the fact that the policeman, who must have been in charge of Raggha, could not have been the policeman of the police station concerned with the investigation of the case. Although various pleas have been urged by Mr. Laghate on behalf of the accused to show that this confession must be held to have been brought about by some inducement, I cannot find anything from the record to suggest any act by any of the policemen concerned which I would call suspicious, and unless and until I am of opinion that something suspicious had been done, I cannot wipe out the confession which I believe, taken with other evidence, shows to me that Raggha was one of the persons concerned in the murder of Mangli, and that he was one of the chief offenders in the case. Nothing has been shown to suggest that anybody else in the village had a greater motive than Raggha to kill Mangli. Nothing has been shown why I should assume that Raggha had taken a minor part in the killing when he had the greatest motive for the killing.

21. The last point is what is a suitable sentence to pass under the circumstances of this case. If I had the slightest doubt as to the guilt of Raggha, I would certainly give him the benefit of it, and direct him to be acquitted. I have none. There are no circumstances in this case, such as an act of Mangli which had been of great annoyance to Raggha, or an act of Mangli although legal yet morally wrong, or such provocation by Mangli which might not come under the definition of grave and sudden provocation but provocation as understood in the ordinary language,

so that I would give Raggha a lesser sentence. I have no hesitation in agreeing to confirm the sentence of death passed upon Raggha.

**Mukerji, J.**

22. I have the misfortune to differ slightly from the judgments that have just been delivered in the case.

23. The facts of the case have already been given and I will state only so much as may have a direct bearing on what I am going to say.

24. About 11 to 12 years ago one Murli died and there was a dispute about the property held by him (some lands) between the appellant's father Jhunni and the deceased Mangli and his brothers. There was a litigation in which the appellant's father lost. The father and son then left the village and went to live in the adjoining district of Cawnpore. In July 1924, apparently on the invitation of some of the people of the village, Bali-ka-purwa, in which Murli lived, the appellant came there and tried to recover by force possession over the property which had been lost in suit by his father. Mangli, the deceased, lodged a complaint before the police and filed a civil suit. The suit succeeded on the 5th of December, 1924. On the 3rd of December 1924 the appellant knew that he was going to lose the case although the judgment had not yet been delivered. On the morning of the 6th of December the deceased went to the place where the Munsiff, was situated viz., Sarai Miran, with a view to hand over the costs of execution to his counsel. It appears, on the confession of the appellant, that he also followed Mangli apparently with a view to see what he was doing. It has been definitely established that Mangli went back home-wards towards the evening and arrived as far as the village of Behta. There he took a little rest at the house of the witness Ram Narain and then started for home. There is no evidence, apart from confession of the appellant, as to what happened to Mangli after that. The witness Mullu, who had seen the deceased at Sarai Miran on the 6th of December, asked casually the deceased's brother Lain, where the deceased was. He was informed that the deceased had not come back. Mullu told Lalu that the two had left Behta together, each on his way home. This caused some anxiety in the minds of Lalu and his brothers, and a search was

made. On the evening of Sunday, the 8th of December, some blood marks were found beside the foot-path that led from Behta to Bali-ka-purwa and it was suspected that Mangli had been murdered. A report was accordingly lodged at the thana at 8 p.m. on the 8th of December. A head constable was in charge of the thana. He at once went to the spot and collected what blood marks were to be found on the spot. It appears that between the 9th and 14th of December nothing further was done. On the 15th of December the Sub-Inspector appeared on the scene (he was away between the 8th and the 14th December) and started investigation. In the first information report certain names had been mentioned and among them was prominently the name of the appellant. The Sub-Inspector collected the people who had been mentioned in the report and tried a sort of experiment in order to guess which of them, if any, took part in the murder. He thought that one Laltu and the appellant Raggha showed some sign of nervousness and he got them arrested. Then, says the Sub-Inspector, some information was furnished by the appellant and on foot of that information a deep place in the bed of the river Aisan was dragged and clothes and other articles, which were subsequently identified as the property of the deceased, were recovered. The appellant was sent, on the ground that he was inclined to make a statement, to the head-quarters, and he arrived there on the 17th of December 1924. He was placed before a Magistrate who took the precaution of sending the appellant back into jail custody with the idea that he should think over the matter before he made any statement. The appellant was produced before the Magistrate on the 18th of December, and he made a long statement which has been accepted by my learned brothers and myself as substantially a correct statement of facts.

25. The appellants stated the facts, including the litigation that had taken place between the appellant and the deceased and his brother. He mentioned certain persons who, he said, had taken part in the murder and added that he handed a dhoti which had blood stains to the Sub-Inspector

26. It has been conceded that apart from the confession of the appellant, there is not enough evidence to show that the appellant was concerned in the murder of Mangli. Apart from the confession, there is no evidence to establish conclusively

that Mangli was in fact murdered. On the question of conviction I am quite satisfied that there is no clear reason to reject the confession of the appellant, he having failed to raise in my mind any doubt as to the genuineness of such confession, I hold with my Lord Chief Justice and my brother Banerji that the appellant was present at the time of murder, that he was one of the persons who had planned the murder and that he is guilty under Section 302 of the Indian Penal Code read at least with Section 114 of the same Code.

26. The point on which I have the misfortune to differ is the question of sentence. What I am going to say must not be taken as a rule laid down for all cases irrespective of the facts of the present case. Indeed it is always dangerous for a Judge to attempt to lay down a rule of law for the decision of a case, the facts of which are not before him, and I am not going to do anything like that. In the circumstances of the present case, in my opinion, sentence of transportation for life is the only suitable sentence and my reasons are these:

As already stated, the conviction of the appellant is mainly, though not entirely, based on the confession of the appellant. A confession in a criminal case is another name for an admission in a civil case. Both are dealt with in the Evidence Act and under Section 31 of that Act an admission is not conclusive. Indeed, so far as a confession goes, a special section has been enacted in the Act. It is Section 24. The language used will show that to reject a confession it is not necessary that there should be positive proof to establish that the confession has been obtained by use of threat, persuasion, etc. It has been held in many cases, the last case on the point may be quoted as *Emperor v. Panchkowi Dutt* : AIR1925 Cal587 , that anything from a barest suspicion to positive evidence would be enough for a confession being discarded. The weight, therefore, that has to be attached to a confession, in the view of the Legislature, is small. Such is all the more the case where, as in this case, the confession was withdrawn at the earliest possible opportunity. The reason for the rule is not far to seek. It is difficult indeed to believe why a person accused of a guilt should confess at all without some undue inducement even if he be really guilty of the charge that has been brought against him. He does everything that lies in his power to conceal the crime he is going to commit. He takes all possible precaution to make the result of his action disappear

and irrecoverable. Under the circumstances, it is difficult to believe why a man should confess at all unless he has some inducement. There are indeed some cases in which a man would be so very careless of his life and his determination so strong that he would after committing the crime, himself go to the authorities and give himself up and hand over the instrument of the crime. But such cases are rare. In the majority of cases a culprit tries his best to hide his crime and to escape punishment. In this particular case, it will be noticed, every attempt was made to do away with the dead body. The appellant did not appear before the Sub-Inspector till several days had elapsed between the murder and the appearance of the Sub-Inspector on the spot. Under the circumstances, the confession of the accused person is not a thing which is entirely normal. I must not be misunderstood, and I do not for a moment suggest that there is anything on the record which shows that the confession should be rejected in accordance with Section 24 of the Indian Evidence Act. If that had been the case, I would have acquitted the man entirely-But what I do mean to say is this that a confession in its normal state, is an entirely suspicious article. A retracted confession is worse. The language which is oft quoted of Mr. Justice Cave, in the case of Queen v. Thompson (1893) 2 Q.B.D. 12, will bear repetition. Mr. Justice Cave delivered himself as follows:

I would add that for my part I always suspect these confessions which are supposed to be the offspring of penitence and remorse, and which nevertheless are repudiated by the prisoner at the trial. It is remarkable that it is of very rare occurrence for evidence of a confession to be given when the proof of the prisoner's guilt is otherwise clear and satisfactory; but when it is not clear and satisfactory the prisoner is not unfrequently alleged to have been seized with the desire born of penitence and remorse to supplement it with a confession, a desire which vanishes as soon as he appears in a Court of justice.

27. If this could be said of a country like England where the Police is by far more efficient than here in India, where the people are by far more literate than the people in India, what is to be said of a country like this? It is true that under the Evidence Act it is for the accused person to show by something that there are reasons to discredit his confession. But, is it possible for an accused person to be

in a position, in majority of cases, to show anything like that? He is arrested and placed before a man in authority, usually a Sub-Inspector of Police. Nobody, connected with the accused person, is allowed to approach the place where he is kept. Those, in whose presence the Sub-Inspector talks to him or deals with him, are persons who would not come forward to give evidence of the talk that took place between the accused person and the police officer or of the treatment meted out to him. What evidence, then, can be brought forward by the person in the position of an accused person, to prove that his confession is due to something which was told to him by the Sub-Inspector or to the treatment received by him. Few would accept his bare word mouth. It is said that the fact that the accused person confesses before a Magistrate, after due warning, should be enough for the acceptance of the confession. I entirely agree and that is the law. But we cannot lose sight of the fact that, assuming that a prisoner had been induced to confess, he will not unlikely assure the Magistrate that his confession was voluntary, knowing that, he will leave the Magistrate's presence in the custody of the police and remain in their custody for many days to come. See remarks of Westropp, C.J. in *R. Kassinath Dinkar* 8 Bom. H.C. 126. That being the position of a person confessing, I would not place more weight on a confession than it would reasonably bear. I may here point out that it was held by two learned Judges of The Bombay High Court that the use to be made of a confession is really a matter of prudence rather than of law. See *Queen-Empress v. Gharya* (1895) 19 Bom. 728. It is this idea of prudence that dictates to me that, in this particular case, the sentence to be passed is to be lesser of the two sentences prescribed by the law.

28. I have already stated and I need not repeat that I am perfectly satisfied that the appellant took part in the plot and was present at the time of murder. I may further add that there is no reasonable doubt in my mind as to what I already stated. If there were any reasonable doubt the appellant would have been acquitted by me. But there are degrees of doubt and there is no harm in being cautious. On certain facts, a man may be quite prepared to risk a sum of Rs. 600 but when it comes to risking a sum of Rs. 5,000 he may very well be cautious and not act on them. If the sentence of death were the only sentence awardable under the law, I would have been obliged to pass that sentence on the appellant. But in this particular case, the factum of death of Mangli is proved by the retracted confession of the appellant

alone and by no other substantial evidence. The fact that the clothes were recovered from thro water does not necessarily prove that Mangli's dead body was consigned to the water. There are at least four cases in the books in which it has been held that the lighter sentence might be passed where the dead body of the person alleged to have died is not forthcoming or where the facts were not quite clear. One of these cases is to be found in Queen v. Buddruddeen 11 W.R. Cr. 20. In the case quoted before viz., Queen-Empress v. Gharya (1895) 19 Bom. 728. The Judges, Jardine and Ranade, accepted an appeal from an acquittal but passed the sentence of transportation and one of the grounds given was that all the facts of the case were not clear. Again, in a case the full report of which is unfortunately not available, but which will be found mentioned at pp. 660 and 661, of Ratan Lal's Law of Crimes, 8th edition, two learned Judges of the Bombay High Court convicted the accused person before them of the offence of attempted murder, where the body of a child of two was thrown into a heavy river. Again, in this very Court, so late as last year, two learned Judges, in Bandhu v. Emperar A.I.R. 1924 All. 662, held that where the dead body was not recovered, the crime was one of attempted murder only. The circumstances of this last mentioned case were briefly these; A man was beaten till he became unconscious. He was dragged along the ground and taken towards the river. The man was never again seen alive. The probabilities were that the body of the man had been thrown into the river. As I understand the judgment, the dead body not being forthcoming and therefore, the factum of death not being absolutely certain, the learned Judges thought that a sentence of transportation for life, under the charge of attempted murder, would be the safer sentence to pass. It will be perhaps said that they were more logical than I am. But I would further explain the reason of the view that I take.

29. I have already mentioned that the amount of doubt that arises in the mind of a man may be of different degrees. It is only when there is a reasonable doubt about the guilt of an accused person that he is entitled to an acquittal. Doubts will always arise in human mind, but all doubts are not entitled to respect. There may be, as in this case, in my mind, a doubt which is less than a reasonable doubt, but which still is a doubt that is entitled to respect and which is entitled to ask me to be cautious in passing the sentence. I need not quote again the judgment of the

Bombay High Court where it was said that the amount of weight to be attached to a confession is a really matter of prudence than of law.

30. Under Section 302 of the Indian Penal Code two sentences are provided, for a case of murder, viz., the capital sentence and that of transportation for life. Section 367 of the Criminal Procedure Code enacts that where in a case of murder the Court does not pass a sentence of death it is for it to explain the reasons. I think it is a perfectly legitimate reason to say that where, as in a case like this, the dead body does not appear and the factum of death is established by nothing but a retracted confession, there is a suitable case where a sentence of transportation may be awarded instead of the heavier sentence. If, in acting like this, a Judge errs he errs on the side of prudence alone.

31. For reasons given above, I would convict the appellant under Section 302 of the Indian Penal Code read with Section 114 of the same Code and sentence him to transportation for life.

32. The order of the Court is that the conviction by the Sessions Judge be confirmed and sentence of death be carried out in accordance with law.

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