

Jiwan Vs. Emperor

Jiwan Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/464245

Court : Allahabad

Decided On : Jan-17-1936

Reported in : AIR1936All470; 163Ind.Cas.661

Appellant : Jiwan

Respondent : Emperor

Judgement :

Allsop, J.

1. This is an appeal by Jiwan, son of Pitam Kachhi, who has been sentenced to death for the murder of Reoti Kachhi. The two men were living in a village or group of huts which had newly been established near some land which was being brought under cultivation. It is in evidence that they had been on good terms and had been in joint cultivation of some land but had quarrelled and separated. There was a dispute between them about some fields and there was an indication in a statement made to the police which was put to witnesses in cross-examination that there had been improper relations between the appellant and the wife of the deceased. The body of Reoti was found in a field on 6th July 1935. The medical evidence shows that his throat had been cut. He had suffered three injuries. One was an incised wound 5 inches long 1 inch wide and 2 1/2 inches deep on the right side and front of the neck cutting all the blood vessels and the nerves of the neck and also the trachea and the gullet. He had also received two superficial

cuts, one four inches long and the other 2 1/2 inches long on the shoulder and under the chin.

2. The Civil Surgeon who made the post mortem examination of the body was produced as a witness and he deposed that the first injury must have been caused with some weapon such as a gandasa and that the other two injuries might also have been so caused or might have been caused with a spear. The first information report was made by a man called Dhan Singh who was sent to the police station by the headman of the village with a note in writing stating that the body had been found. Dhan Singh made a statement to the Sub-Inspector of police in which he said that the wound in Reoti's throat was caused with a spear. The Sub-Inspector went to the village or the group of huts where the crime was committed and from there we suppose to the parent village where he stayed in the house of one of the zamindars. We have before us three witnesses Rup Singh, a zamindar of Pindara, Puttu Singh, the lambardar of Pindara, who lives in Umar-pur and Mulaim Singh, another zamindar of Pindara. They say that the Sub-Inspector asked them to make enquiries and to try to discover who had committed the crime. We suppose that some suspicion must have been attracted against the appellant because of his relations with the deceased. The witnesses say that they summoned the inhabitants of the village in order to make enquiries from them and that the appellant did not appear with the other people who were living in the neighbourhood. The three zamindars therefore went to look for him and they found him next morning in a field or in a part of the waste land near the fields which had been newly cultivated. They say that they questioned him and he admitted at once that he had committed the murder and asked the zamindars to intercede for him with the police and to arrange that he should not be punished. There is no evidence whatsoever that any inducement was offered or any promise made to the appellant by the zamindars.

3. The story is that the appellant after making his statement to these zamindars took them to his house and produced the gandasa with which he had said that he had committed the crime. This gandasa was sent to the Chemical Examiner and the Imperial Serologist and it was reported that it was . stained with human blood. The appellant was then taken by the zamindars to the Sub-Inspector who arrested

him and sent him to prison. After he had been in prison he was produced before a Magistrate and he again made a confession which he afterwards retracted in the Court of the committing Magistrate, and in the Court of Session.

4. The main evidence against the appellant is that of the two confessions, viz., the confession made to the zamindars and the confession made to the Magistrate. It has been suggested to us in the first place that these confessions are irrelevant and should not have been admitted in evidence. We have already mentioned that there is no suggestion at all in the evidence that the zamindars offered any inducement to the appellant to make a confession or made any promise to him having relation to the charge against him. It has been suggested that these persons might be considered to be persons in authority. We have been referred to the case in *Emperor v. Ganesh Chandra Goldar* 1923 50 Cal 127 and to the case in *Kunja Subudki v. Emperor* 1929 8 Pat 289. We agree with the learned Judges who decided the case in *Emperor v. Ganesh Chandra Goldar* 1923 50 Cal 127 that a person in authority is one who has authority to interfere in the matter of the charge against the appellant. Whatever the circumstances may be in other provinces, we are satisfied that a zamindar holds no official position and a lambardar who is only appointed to collect revenue from cosharers in a Mohal has no authority whatsoever in these Provinces to interfere with criminal matters, and we are also convinced that no villager, however ignorant, would ascribe any such power to persons of this kind.

5. We cannot hold that the confession alleged to have been made to the zamindars was irrelevant under Section 24, Evidence Act, because there is nothing to suggest that any inducement or promise was offered or made because the persons to whom the confession was made could not possibly be described as persons in authority within the meaning of the section. Whether the confession if admissible is to be believed or not is entirely a different matter. It is possible if there had been nothing else that we might have been doubtful whether it would be prudent to accept this evidence as establishing the guilt of the appellant because we can understand that a man who is suspected and who may feel that he is to be harassed and worried may possibly in some circumstances make a confession to save himself trouble. But in this case, besides the mere fact that the appellant

made the statement, there is the further fact that he was able to produce this gandasa stained with human blood. We regard this as a circumstance which strongly corroborates the confession. If we are to believe that the appellant is innocent we must be prepared also to believe his story that he did not produce the gandasa, and we must be prepared further to believe that either the Sub-Inspector of police or the zamindars of the village were prepared to go to the length of getting a gandasa and having it stained with human blood in some way so as to secure the conviction of the appellant. We cannot find that anybody had any motive whatsoever for procuring the conviction of the appellant if he was not guilty.

6. It has been suggested that the zamindars were anxious to recover certain fields from the appellant which they would be able to do if he were sentenced to death. It appears that the zamindars have been establishing tenants in a part of their village in order to bring new land under cultivation, and we cannot see why they should have any motive in getting rid of a tenant whom they themselves had placed upon the land. Even if the zamindars had some interest in recovering the land from the appellant we find it impossible to believe that they would have been so callous and immoral as to procure false evidence against the appellant in order to get him convicted of an offence of murder which he did not commit. As for the confession before the Magistrate, it was made after the appellant had been in prison and had had time to consider his position and after he had been duly warned that it would be read in evidence against him. It is true that the appellant retracted his confession afterwards, but that alone is no sufficient reason for believing that the confession must have been false.

7. Much has been said about the difficulty of understanding why a man should at one time make a confession and afterwards retract it. This is not a question of law but a question of human psychology and of experience. It seems to us that it is not really at all difficult to understand that a man who has committed a murder and who knows that all his neighbours and friends are well aware that he must be the guilty person should not have the hardihood to continue denying his guilt when he is confronted by persons who are making enquiries from him. We think that it would probably be much more difficult in these circumstances for a man to maintain his innocence than for him to confess his guilt. Afterwards, when he has

time to consider his position and when he is removed from his every-day surroundings and possibly advised by others that it is foolish of him to confess his guilt, it is natural that he should retract his confession. We are convinced in this case that the confession was a true one and that the appellant was guilty of a deliberate and cruel murder. That being so, we dismiss his appeal. For an offence of this kind there can be only one punishment and that is the punishment of death. The learned Sessions Judge has referred the case to us for confirmation of the sentence passed on him. We dismiss the appeal and confirm the sentence of death passed on the appellant. We direct that that sentence shall be carried out according to law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com