

**Musammat Anandi Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Jan-31-1916

**Reported in :** AIR1916All368; 32Ind.Cas.838

**Judge :** Piggott and ;Walsh, JJ.

**Appellant :** Musammat Anandi

**Respondent :** Emperor

**Judgement :**

**Walsh, J.**

1. This is an appeal by an accused who has been convicted of murder and sentenced to death. The case is a typical one of a charge of secret poisoning which is sought to be established against accused person by a chain of circumstances, and it is one undoubtedly of grave suspicion against some one and of a certain amount of suspicion, if not grave suspicion, against the accused. On the whole we have come to the conclusion that the conviction cannot be supported. The learned Judge who tried the case has delivered an elaborate, very pains taking and admirably clear judgment, It is such an admirable composition that it seems almost sacrilege to tamper with it. In its arrangement, its careful and minute analysis of the evidence and in the fact that it goes from time to time into all points of doubt and difficulty as also the affirmative points which arise in favour of the defence, the judgment could, in our opinion, be hardly improved upon. It is only

in respect of certain inferences which the learned Judge draws at the end of his judgment for the purpose of Supplying certain gaps in the case for the prosecution that we feel bound to differ from him. Now three issues are set out by him at page 41 of the printed book: (1) What was the cause of the child's death; (2) Had the accused any motive for committing the murder and (3). Can it be considered proved beyond reasonable doubt having regard to the events of the afternoon of the 16th of April that she committed the murder?As to the first issue, he finds that the child died from arsenic poisoning. The main controversy on this topic was whether the cause of death was arsenic or cholera; but apart from the question of cholera there was also a controversy whether there was arsenic at all. Taking the view we do, it is unnecessary to deal with this issue in detail. It is sufficient to say that the question is one of doubt and difficulty, that the medical evidence was conflicting and that the Judge arrived at his final conclusion on this issue by adopting in great measure the theory of an expert who contradicted the eye witnesses and two other medical experts, who either attended the child before death or subsequently examined the body. There are two matters to which it is perhaps desirable to draw attention. It is quite clear that in the process of the preparation of the prosecution case three bottles had been discovered and were sent to the Chemical Examiner for purposes of analysis. It was pressed upon us very strongly by Counsel for the accused that the mistake which was made with regard to those bottles was a serious mistake affecting the evidence for the prosecution. That a mistake was made there is no doubt and I shall refer to it in a moment. To our mind it does not affect the case for the prosecution, because no matter whether the contents of the bottles were harmless, the vomit of the child which was alleged to contain arsenic did contain the same. The mistake that was made was in describing the bottles as containing vomit when in fact they did not do so. It seems to us a pity that the Chemical Examiner, on receipt of these bottles and on discovering that they did not contain vomit as described, did not at once communicate with the persons from whom he received them pointing out that they did not answer the description. It is more the pity in this instance, because by his report the Chemical Examiner drew attention to the fact that no chemical test for aconite, which was one of the poisons he was considering, was available when a substance was mixed with the vomit. He himself says that he knew that the bottles

did not contain vomit. Under these circumstances it was his duty either to return the contents for correct description or before analysis to communicate with the authorities with a view to have the description corrected. We have drawn attention to this matter with the view that this example may not be followed in similar cases on any future occasion. The other point with regard to the medical evidence is this. Speaking for myself with some experience of investigation of poisoning cases, I am astonished to find a total absence either from the report of the Chemical Examiner or from the medical evidence of any reference to the quantity of arsenic. Scientific precision may be and probably is impossible; but approximate exactitude can be reached. It is the invariable practice in a case of such importance--and if one case can be treated as more important than another it is a case of life and death--to state as precisely as possible in figures the amount of arsenic discovered in each subject submitted to analysis, and in the medical evidence at the trial to lay before the Tribunal such materials as exist tending to show what quantity constitutes a fatal dose or what number of quantity repeated in different doses may become fatal in persons of different constitutions and different ages and in the present case a child of two and half years. All we can say is that there is a total absence of any evidence of either kind in this case and we think as a matter of principle the attention of those who are responsible for the preparation of the case for the prosecution in such charges should be directed to this as soon as possible.

2. Turning now to the second issue, in our view the evidence was sufficient to establish malice on the part of the accused and even motive for murder. It is on the third issue that the case for the prosecution breaks down. It is admitted that no arsenic of any sort or kind and no attempt to possess herself of arsenic has been traced to the accused. Further, there is no evidence that at any material time the accused gave the deceased anything to eat or that their course of life was such that in the ordinary sequence of events she was likely to give the child something to eat. It is, of course, impossible to lay down as a matter of law that in a poisoning case either of these things must necessarily be proved. In my experience it is certainly extremely rare to find a conviction in which both of them were not proved. Still it may well be that mere possession of arsenic by the accused, even without anything tending to show that she gave anything to eat to the deceased, might be

sufficient; or on the other hand if she had recently fed the child without it being shown that arsenic was in her possession, that may also be sufficient. But to our mind the absence of both the circumstances from the evidence is really vital. The learned Judge got over the difficulty in the first case, namely, the absence of proof that the accused had arsenic by saying thus: 'I do not believe that she could not have got some if she wanted it.' That is applicable practically to everybody. It is no more applicable to the accused than it is to any body else. It is tantamount to say 'assuming that she is guilty, in the absence of anything to the contrary there is nothing to show that she could not have obtained arsenic.' In a criminal case it seems superfluous to add that the onus is on the prosecution. That onus is not discharged if it was seeking to prove that she was in possession of arsenic by showing that she had a motive to get it. He gets over the second difficulty by a somewhat similar effort of imagination. The point in the case with regard to this, namely, as to what the child did before its death turns upon what happened between the time when the child was left in the house with the chain at the door by the father and somewhere about 5 o'clock when it was taken ill. The evidence about those two hours is a little obscure but substantially it is this: The child was in the house where the accused and the child's mother both were and at some time or another it may have got outside. At the same time the mother was outside the verandah and at some time the child was in the company of and alone with the accused. The defence had endeavoured to show that the child was outside the house and in coming into contact with other persons obviously it might have received some deleterious thing from the other persons. The learned Judge rejected that evidence and then held that even if their evidence were accepted, there is nothing to show that the child might not have run into the house at 4 o'clock where he was given something to eat by the accused. So that on these two vital questions he arrives at a final decision by saying that there is nothing to show that she might not have arsenic in her possession and that there is nothing to show that the deceased might not have been given something to eat by the accused. In my view that form of finding is a form of finding which is not unlikely to occur from time to time in a Tribunal which at the same time is a Judge of law and a Judge of fact. Everybody performing a judicial function has carefully to guard himself against being insidiously prejudiced against an accused person because

an attempt on the part of the latter to prove something unnecessary, but beneficial when successfully proved, breaks down. It formed for a long time in England one of the chief objections to a great remedial measure which became law in 1908 enabling the accused persons to give evidence on their behalf. It has been urged over and over again by experts in criminal law that if an accused person goes into the witness box and states too much or states something which can clearly be proved to be untrue, there is a danger that both the prosecution and the Jury might be diverted from the real point which the prosecution has to establish, because of assuming things against the defence as the defence has broken down on some unnecessary point, and this is just what the learned Judge seems to have done in this case. Not content to rest upon the absence of proof that the child had anything to eat from the accused, the defence tried to prove that there were persons about who might have given the child something to eat. In the opinion of the learned Judge they failed in this and it seems to him that their failure has lent an additional weight to the case for the prosecution. In my opinion it does nothing of the kind.

3. I want to point out, and I think it is desirable to point out in this matter, that the gap in the case for the prosecution is not a technical gap but a real and substantial gap. The case for the prosecution is that the child must have been given something to eat at 4 o'clock afternoon by the accused containing arsenic. The case for the prosecution is that the relations between the child's mother and the accused were unfriendly and that the child was discouraged from having communication with the accused as far as possible. The three persons, namely, the child, its mother and the accused were together for an hour or so in a small place and it is hard to believe the theory that the accused gave food to the deceased surreptitiously, secretly and wickedly. It would be absurd to suppose that she attempted to do it by force. If she had attempted force, of course, the child would have cried out and its mother's attention would have been drawn. It could not have been done by persuasion with arsenic in crude form. The child might conceivably be given arsenic in crude form up to a certain point, but the moment the child would come to realize its taste it must refuse to take it. It must, therefore, be in our opinion that the arsenic, if it was given at all, was given in some cake or sweet or in some form in some fluid. The hypothesis is that the little child of 2 1/2 years, who was somewhat hale and hearty that afternoon was given a cake or

liquid or sweet to eat and that it was given insidiously, not only without the mother seeing this but also without the child saying anything to the mother. To our mind it is in the highest degree improbable, in view of the relations on which the parties were, that the child could have eaten anything given by the accused without the mother being acquainted of the circumstance under which it was given. The learned Sessions Judge never entered into the discussion how it was given and how it could have been given without the mother's knowing about it, and he found that something was given to the child by the accused because there was nothing to prevent her from doing so. In my view the case cannot be better stated than it was stated by the Committing Magistrate when he was committing the accused for trial. He says that 'it can safely be said that there is very great probability of the accused giving arsenic to the boy and thus causing his death. The evidence is wholly circumstantial and perhaps not very strong.' But a Tribunal in a case of murder has to be satisfied not of the probability but of the certainty beyond any reasonable doubt, that is to say, doubt which would operate on the mind of a reasonable man; certainly it has to be satisfied beyond any reasonable doubt that the accused is guilty. As it has not been shown that the accused had arsenic in her possession or that she gave anything to eat to the child, one cannot say that there is no room for doubt in this case. For these reasons I hold that the conviction should be quashed and the accused be released.

**Piggott, J.**

4. I concur.

5. The conviction of Musammat Anandi and the sentence of death passed under Section 302, Indian Penal Code, are set aside and she is directed to be forthwith released.

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