

Emperor Vs. Abdul Aziz

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SooperKanoon Citation : sooperkanoon.com/474571

Court : Allahabad

Decided On : Jul-19-1928

Reported in : 117Ind.Cas.348

Judge : Banerji and ;King, JJ.

Appellant : Emperor

Respondent : Abdul Aziz

Judgement :

1. This is an appeal by one Abdul Aziz, aged 57, resident of Mohalla Malaka, in the town of Allahabad who has been convicted and sentenced to death by the learned Sessions Judge of Allahabad, for murdering a little girl named Lattho, aged 9, the daughter of a neighbour of the appellant.

2. On the 22nd of February, 1923, Lattho, daughter of Abdul Samad, left her father's house in Malaka to play about. She was never seen alive, and the next time when her father saw anything of the little girl was her trunk without the legs, arms and head in a bundle near the railway line which passes through Malaka.

3. At 4 p.m. on the 24th Abdul Samad's wife wanted the little girl Lattho, and two boys Hamid Hussain and Mohammad Ayub were sent out to search for Lattho. These boys were aged 13 and 11 respectively and came back to the house and informed Abdul Samad that the girl could not be found. Abdul Samad and his relations searched for the girl and not finding her till 9 o'clock made a report to the

Police about the disappearance of the girl. This report is Ex. G. In that report is to be found a description of the girl and the clothes she was wearing, and it was also said that she wore a pair of slippers, and all the ornaments that she wore were given in detail in that report. Next morning search was continued, and when the father was going along the railway line he noticed a bundle which on opening was found to contain the trunk of the girl. A report was made at the Police Station, and Sub-Inspector Suraj Narain Singh came to the scene to investigate into the crime. One Wilayat Hussain, a resident of Malaka, informed the Sub-Inspector that his servant Sultan had told him that a man wearing white trousers had thrown something into a well which was a few hundred yards from the residential quarters in Malaka, Sub-Inspector Suraj Narain Singh has stated that he sent for divers and in the presence of witnesses the well was searched and out of it two legs in trousers tied to a brick were taken out of the well. We have it from Sub-Inspector Suraj Narain Singh, and we have no reason whatsoever to any way suspect or criticize the action of Suraj Narain Singh, that some residents of Malaka suggested that he should examine the dahliz and the courtyard of those people and the other residents of Malaka to see whether there were any blood stains to indicate that the girl had been murdered in the house of any one of them. He looked into the courtyard and dahliz of about 12 houses and the third or the fourth house which he looked into was the house of the appellant Abdul Aziz, but not finding anything he proceeded to make other inquiries. Later on he received certain information. The information was that the cries of the little girl Lattho had been heard about 4 o'clock in the house of Abdul Aziz. The result of this information was that at about 4 p.m., he proceeded to search the house of Abdul Aziz. He found on a wire rope in the courtyard a qamarband, pajama and handkerchief which appeared to him to be blood stained and had been washed and he took possession thereof. The Sub-Inspector tells us that although he had a lamp he could not complete the search of the rooms of the house, because they were dark. He, therefore, postponed further search till the next day and kept the house under observation that nothing was removed therefrom. Sultan the servant of Wilayat Hussain was not examined till the afternoon. Abdul Aziz had either been arrested or was arrested after the statement of Sultan, it is immaterial for the purposes of this case. Whether Sultan's statement made to the Police is true or not, but Sultan stated that Abdul Aziz was

the man who had thrown a bundle into the well from which the legs had been taken out. Although Wilayat Husain stated that he had told the Sub-Inspector that Abdul Aziz was the person who had thrown the bundle, we, however, have no hesitation in believing the statement of Suraj Narain Singh that all that he had been told in the morning was that a man wearing white trousers had thrown a bundle into the well.

4. As we have said Abdul Aziz was arrested, and on the 24th of February the Sub-Inspector having obtained a carbide lamp and having had some of the tiles of the roof removed searched the house of Abdul Aziz, taking all due precautions and during the course of this search he discovered ornaments Exs. 6 to 12 and a gandas Ex. 2, knife Ex. 4, a razor Ex. 5 and an angochha along with numerous articles. The articles taken possession of on the 23rd and the articles which appeared to have had blood-stains were sent to the Chemical Examiner to Government, and from his report we have it that the gandas had extensive blood-stains, and so had several other articles found during the search. The ornaments found have been duly identified as the ornaments which Lattho had been wearing, and the other pieces of jewellery found subsequently, which we will mention presently, were entered in the report made at 9 p.m., on the 22nd of February, 1928, by Abdul Samad and have all been duly identified as the jewellery which the little girl had worn.

5. As regards the gandas, Ex. 3, there is no evidence that it belonged to Abdul Aziz, but Abdul Aziz in his statement when examined in Court by Mr. S.W. Bobb, the Committing Magistrate, clearly admitted that the gandas belonged to him. This statement, no doubt, Abdul Aziz said in the Court of Session he had never made. But we have no doubt whatever that Abdul Aziz did make the statement before Mr. Bobb, and that the gandas belonged to him.

6. Abdul Aziz had in the meantime been sent to the lock-up, and the Sub-Inspector sent for Abdul Aziz from the havalat and questioned Abdul Aziz. He pointed out a gold ear-ring, Ex. 7, which was recovered from a surahi kept in one of the rooms of his house, and then led the Sub-Inspector to a well in the lane where the old blind asylum was, which is at some distance from Malaka as proved by the map

exhibited in this case from where the head and two arms of Musammat Lattho were recovered. Abdul Aziz made some statements to the Sub-Inspector in consequence of which he sent Abdul Aziz to the Magistrate to have his statement recorded and which was duly recorded and is exhibited as Ex. T. We have not stated anything about the arrest of Abdul Rafiq, as his appeal is not before us. Abdul Aziz and his son Abdul Rafiq after the completion of the investigation were sent up for trial and were duly tried by the learned Sessions Judge, and convicted of the murder of Musammat Lattho.

7. The learned Sessions Judge has found that the trunk, the head, the legs and the arms have been duly proved to be that of Musammat Lattho. We have no hesitation in accepting this finding, nor is the finding challenged by the learned Counsel for Abdul Aziz.

8. As has been pointed out by the learned Sessions Judge, there was no eye-witness to the murder of Musammat Lattho, and the case entirely depends on circumstantial evidence. In a case of circumstantial evidence we think that the principle enunciated by the learned Sessions Judge that in order to justify the inference of guilt the inculcating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt is correct. We have, therefore, to see in this case whether on any hypothesis--the hypothesis must be a reasonable hypothesis not a wild and vague guess and a hypothesis based on the evidence in the case and the statement of the accused--we can come to the conclusion that it does not point to the guilt of the accused or there is any reasonable doubt as to the guilt of the accused, the accused is entitled to an acquittal.

9. We have, however, in this case to examine the facts. The evidence of the two little boys, namely, Hamid Hussain and Mohammad Ayub has been severely criticized by Mr. Sherwani. But we have no hesitation in accepting the truth of the statements of these two little boys. Hamid Hussain stated that he had seen Musammat Lattho playing with some girls including Abdul Aziz's little girl aged about the same as Lattho in front of Abdul Aziz's house before he went to look for Musammat Lattho after 4 p.m. The learned judge and the assessors saw the

demeanour of these two little boys, and the learned Judge was impressed by the demeanour of the boys, in the cross-examination of the boys they have not stated anything which, in our opinion, throws any doubt upon their statements. The statement of Hamid Hussain is of great importance, in view of the theory put forward by Mr. Sherwani, namely, that even if all the facts proved by the prosecution be accepted, the explanation he suggests is that somebody else in the house may have committed the murder, and Abdul Aziz finding some other member of his house having committed the murder was only trying to screen the offender. We will discuss this later at its appropriate place.

10. These two boys, namely, Hamid Husain and Mohammad Ayub, proved beyond all doubts that Abdul Aziz was in the house at about 4 o'clock, and his statement in Court that he did not return till 7 p.m. on that day is, in our opinion, totally false. Abdul Aziz has no explanation to offer as to the presence of the clothes stained with human blood found in his house on the 23rd of February. The learned Counsel has criticized the evidence of the Sub-Inspector and the search witnesses. But we cannot find anything to raise any suspicion as to any of the search or that the search witnesses were not speaking the truth.

11. The search on the 24th, which was duly made, clearly indicates that the articles were hidden in different parts of the different rooms in the house, and in fact an orhni which belonged to the girl was discovered with an angochha by digging underneath the chulah. Attempt has been made to prove that the angochha belonged to the accused. But we do not think that the prosecution has succeeded in proving that. Thereafter the discovery on the afternoon of the 24th of the Bijli Ex. 7, seems to us to indicate that Abdul Aziz knew perfectly well how that Bijli had come to be in his possession. Abdul Aziz pointed out a dry surahi in which the Bijli was, and it was after breaking the surahi that the Bijli, Ex. 7, could be taken possession of, as there was dry lime inside the surahi. There is no explanation by Abdul Aziz as to how he knew that the head and the arms of Musammat Lattho would be found in a well of the old blind asylum. No doubt, the Sub-Inspector was cross-examined suggesting that it was the result of the general search of wells conducted by him that he discovered the head and the arms, but we have no hesitation in agreeing with the finding of the learned Sessions Judge

that it was Abdul Aziz who took the Sub-Inspector and the witnesses to the well from which the head and the arms were taken out.

12. What is the conclusion to be arrived at from the circumstances set out above. We are of opinion that it points to the guilt of Abdul Aziz, and on no reasonable hypothesis can we hold that he is innocent of murder, though he may be guilty of various other offences under the Indian Penal Code. The only explanation that we can find on the record is Ex. T the statement of Abdul Aziz made under Section 164 of the Code of Criminal Procedure. That statement is on the face of it absurd in that he suggests that three strangers brought his neighbour's little girl into the house and murdered her, and he was given the ornaments to keep, and it was the result of a threat by these three men that he did. This suggests that there was nobody besides himself in the house at the time when the girl was murdered. This also suggests that his wife, daughter-in-law and his little girl were not in the house, although the Sub-Inspector saw the wife and the daughter-in-law in the house on the afternoon of the 23rd. In fact in Abdul Aziz's statement before the Court of Session he stated that the female members of his house were not in the house on the 22nd. The learned Counsel for the appellant has pointed out to a statement of Abdul Samad to be found at page 29. Abdul Samad's statement was that in those days in Abdul Aziz's house were living his daughter-in-law, his daughter, a brother of Abdul Aziz and Abdul Aziz's three sons. But Abdul Samad says that he had never been inside the house of Abdul Aziz. This general statement seems to us to be insufficient to hold that on the date of occurrence that is some time between 3 and 8 p.m., on the 22nd of February besides Abdul Aziz and his son Abdul Rafiq somebody else was in the house. In fact, in our opinion, the statement of Hamid Husain that he knocked at the two entrances to the house of Abdul Aziz to enquire as to whether Musammat Lattho was there or not and the fact that Abdul Aziz and his son answered 'no' suggests that had there been any ladies of any other occupants of the house the boys would not have had to knock at two different doors of the same house to get an answer that Lattho was not in the house. We have, therefore, nothing on the record of this case to enable us to accept the suggestion of Mr. Sherwani that somebody else might have committed the murder, and Abdul Aziz was trying to save him, and that he was an accessory after the fact. Had there been any truth in the suggestion we have no doubt that questions

would have been put to the neighbours, who were the search witnesses, to prove that as a matter of fact there were various other people living in the house and were present in the house on the afternoon of the 22nd of February, 1928.

13. It has been further argued by Mr. Sherwani that there was no motive for this murder. We are unable to accept this contention, and the fact that the murderer did not take all the ornaments belonging to the girl and that the ornaments were only worth Rs. 58 does not make it improbable that the murderer could have committed the murder for greed.

14. The result is that we affirm the conviction and sentence passed on Abdul Aziz and direct that the latter be carried out according to law.

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