

Jagdeo Vs. Emperor

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Court : Allahabad

Decided On : Oct-19-1916

Reported in : AIR1917All80; 38Ind.Cas.740

Judge : Walsh and ;Stuart, JJ.

Appellant : Jagdeo

Respondent : Emperor

Judgement :

Walsh, J.

1. This case .has been well argued and has given us considerable trouble. It is not necessary to review all the facts. It is impossible to accept in its entirety the statement which the accused himself made as to his treatment by the Police leading up to his confession. On the other hand we are satisfied that the accused was detained in custody, although not in the thana, for a considerable period, and that some inducement or pressure sufficient to produce the desired result (and probably nobody will ever know what it was) was used to obtain a statement from him. That statement in substance he repeated before the Joint Magistrate under circumstances which make it admissible in law, provided the provisions of Section 28 are satisfied. It appears to us, as it appeared to the Joint Magistrate, that at the time the accused made the statement, he had been induced to do so by a promise of pardon. Without expressing, any opinion on the point which Mr Malcomson

urged, namely, that the first statement was not a confession and that the inducement had ceased to exist at the time the confession was made, we think under the circumstances that the Magistrate, before he proceeded with the taking of the statement, must have satisfied himself that the accused was no longer under the impression that he was going to be pardoned. Speaking for myself, I am much impressed with the apparently accurate detail of the confession itself. It has all the appearance of being correct statement by a witness of what he saw and we think, therefore, that while agreeing with the Assistant Government Advocate that, apart from the confession, there really is no evidence upon which the accused can be convicted of anything, the confession was: admissible by law. The question remains whether it is sufficient to support the conviction for murder. It has often been said by this Court, and it cannot be too often repeated, that where the circumstances of a case compel the Tribunal to reject all the other evidence and act only upon a confession, the confession must be used *literatim et verbatim*, and due effect must be given to every statement contained therein, whether in favour of the accused or against him; that is to say, it is not a proper use of the confession, where it is the only evidence which the Tribunal is in a position to accept, to extract from it such portions as are adverse to the accused and support the charge, and to supply the remaining essentials by drawing inferences. Applying that principle to this case, it is doubtful on the accused's statement whether he took any active part in the murder which was contemplated and carried out that night. He knew that he was taking part in a totally unjustifiable, unlawful and violent attack upon the deceased man, but that was all that he knew, according to his own statement, and when the time came he was an unwilling participator in what was actually done. The result is that although we think the confession was admissible, it goes no further than a confession of participation with other persons in a violent criminal attack upon the deceased. Upon the other hand it is a very serious case and the accused, himself according to his own statement is a man of evil reputation. Whether he has been convicted before or not appears to be doubtful. Taking his character into account and the fact that he was under Police surveillance, and the fact that the crime committed had serious results we hold that he must be punished under: Section 825 read, with Section 114 by five years' rigorous imprisonment. We, therefore, reverse the decision of

the Court below and alter the conviction to one under Section 325 and sentence him to five years rigorous imprisonment.

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