

Nathu Vs. Emperor

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Court : Allahabad

Decided On : Jun-11-1929

Reported in : AIR1929All855; 118Ind.Cas.46

Appellant : Nathu

Respondent : Emperor

Judgement :

1. This is an appeal by one Nathu Brahmin against a sentence of death passed on him under Section 302, I.P.C., and a reference for confirmation of that sentence. Nathu has not been represented by counsel before us because it was reported that he had sufficient means to employ counsel. He has not done so, but the case has been very fairly placed before us by the learned Government Advocate.

2. The facts are that the deceased Munshi and his brother Kashi Ram who has become a Sidhu owned a half share in an occupancy holding in Sarauth village and the accused Nathu owned the other half share. Nathu formerly lived in a village about a mile from Sarauth called Jasrathpur and in that village also lived one Mt. Rainka who was married to Baldeo Brahmin, and the mother of Baldeo Brahmin was a sister of the mother of Nathu. Baldeo died when Mt. Rainka was a young girl of about 15 or 16 years of age and after his death, she states that she became the mistress of both the accused and the deceased. Subsequently, the accused and deceased removed her to the house in mauza Sarauth and lived with her to the knowledge of each other. In September 1927 Munshi disappeared, and

subsequently his brother Kashi Ram on his return to the village made enquiries from the accused as to what had happened to Munshi. The accused made evasive replies and in consequence of this Kashi made several petitions to the District Magistrate, of which two have been placed on the record. In these applications Kashi Ram accused Nathu and other persons of murdering Munshi. Investigations were made, but the Sub-Inspector was not able to find any trace until 10th October 1928. On that date the Sub-Inspector received information to the effect that the bones of the deceased would be found buried in an old well a few paces from a house where deceased and accused had lived in Sarauth. That information was apparently derived from Ram Narain and Umrao Singh and they in turn had derived that information from the witness Mt. Gomti who is the aunt of the deceased and the accused.

3. Mt. Gomti some two or two and a half months previously had come to stay with the accused in the house in Sarauth and her suspicions had been aroused by the fact that this well had been filled in and that she found the accused putting more earth on it when it subsided during the rains. The Sub-Inspector excavated the well and found in it a number of human bones which have been stated by an expert to be those of a young man and to have been buried for a number of months. The expert found injuries on the bones-one cut on the left lower jaw and another cut on the cervical vertebrae. These two injuries could have been caused by the chopper which belonged to Mt. Rainka. The Sub-Inspector states that the accused handed over this chopper to him on 11th October 1928. The Sessions Judge has allowed evidence to be given of a statement or confession alleged to have been made by the accused on that date to a Deputy Magistrate who is a resident of the village of Sarauth and who was then on leave. As that statement was made in the presence of a Sub-Inspector and a constable who had the accused under arrest at the time, we consider that statement is not admissible in evidence. No record was made of the statement under Section 164, Criminal P.C. We note, however, that the learned Judge has not laid much stress on this confession because he considers that the other evidence on the record is sufficient for the conviction of the accused. That other evidence consists mainly in the very full and detailed statement made by Mt. Rainka. In this she describes how the accused struck the deceased with the chopper two blows at midnight and killed

him and how he subsequently disposed of the body in the blind well two nights after the murder. We consider that statement of Mt. Rainka is worthy of credit. In addition to this evidence there is also the conduct of the accused. After Munshi disappeared, the accused made no report whatever of the disappearance. He falsely represented to Munshi's brother Kashi Ram that Munshi had gone to look for Kashi Ram; and the accused disposed of various articles of property such as a harmonium, books and other things which had belonged to the deceased.

4. For all these reasons we consider that the case has been brought home to the appellant Nathu beyond any doubt whatever and we confirm the conviction under Section 302, I.P.C. and the sentence Of death. The appeal is dismissed.

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