

**Mt. Nojali Vs. Sarkar**

**Mt. Nojali Vs. Sarkar**

**SooperKanoon Citation :** [sooperkanoon.com/750554](http://sooperkanoon.com/750554)

**Court :** Rajasthan

**Decided On :** Oct-20-1949

**Reported in :** AIR1950Raj5

**Judge :** Nawal Kishore and; Bapna, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 8; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154, 164 and 288; [Indian Penal Code \(IPC\), 1860](#) - Sections 300

**Appeal No. :** Criminal Appeal No. 13 of 1949

**Appellant :** Mt. Nojali

**Respondent :** Sarkar

**Advocate for Def. :** Sumerdan, Adv. for;Government Adv.

**Advocate for Pet/Ap. :** Thanchand, Adv.

**Disposition :** Appeal allowed

**Judgement :**

1. This is an appeal by the accused Mt. Nojali, wife of Durga Jat against the judgment of the learned Sessions Judge convicting and sentencing her under Section 302, M. P. C. to rigorous imprisonment for life for causing the death of Idan, sou of Karnia, Jat, a lad of 8 years of age, on the morning of 6th May 1939.

2. The houses of Karnia and Mt. Nojali are situated close to each other and it appears that the deceased Idan used to go to the house of Mt. Nojali to play with her son Kana who was of the same age. The prosecution story is that on the morning of 6th May 1948 at about 8 O'clock, Idan went to Nojali's house but never came back. In the evening when Karnia, father of the deceased, came home, the latter's mother informed him that Idan was not present. Karnia went to the Kot and informed the Hawaldar P. W. 2 Shankerlal of this fact. Shankerlal accompanied by P. W. 4 Kalyansingh, P. W. 6 Rambuxsingh, P. W. 7 Bhuria and two other persons came to Nojali's house and inquired from her whether she knew anything about the whereabouts of Idan. It is stated that in the presence of all these persons, Mt. Nojali admitted that she had killed Idan and also pointed out the place where she had buried him. P. W. 7 Bhuria dug the ground about 9' to 12' deep and saw one arm of the dead body. Thereupon Shankerlal sent the First Information Report Ex. P-1 to the police station Jaswantgarh with Karnia. In this report all the details, subsequently furnished on the record as regards Mt. Nojali having confessed the guilt were not mentioned nor was it stated that the dead body had been recovered at her instance. On the contrary it was mentioned that after considerable search the dead body had been found to be lying inside the Bara of the house of the accused. Investigation was taken in hand and the dead body was dug out and identified as that of Idan. The Farsi with which the offence is alleged to have been committed was also recovered from the house of Mt. Nojali and blood-stained earth and stones were also collected from the spot. The dead body was sent for post mortem examination and 4 lacerated wounds in different parts of the body were found to have been inflicted by some sharp-edged weapon. In the opinion of the doctor, injury NO, 1 on the right side of the neck was sufficient to have caused instantaneous death. The accused Mt. Nojali was arrested on 8th May 1948 and produced before the First Class Magistrate, Didwana on 10th May 1948 at about 4.15 P. M. for her confession being recorded. The confession was actually recorded on 11th May 1948. Ultimately the accused was charged under Section 802, M. P. O. and committed to the Sessions Court to take her trial. The confession was retracted by her both in the Court of the committing Magistrate and in that of the learned Sessions Judge. She denied having committed the offence and produced no defence. The prosecution relied upon the statement of Mt. Heeran,

the retracted confession, extra-judicial confession and the evidence regarding recovery of the corpse, the Farsi and and the blood-stained earth and stones. The learned Sessions Judge relying upon all this material came to the conclusion that the accused had committed the offence and accordingly convicted and sentenced her as stated above.

3. In our opinion, the material which has been placed on the record by the prosecution is far too meagre for the conviction of the accused being upheld. In the first instance there is absolutely no evidence of any motive which could possibly have induced the accused to commit the offence. Admittedly there was no greed on the part of the accused for having killed Idan as much as the dead body was recovered with all the ornaments intact. What else could the poor boy have done in order to induce the accused to do him to death, the prosecution has not deemed it fit to develop on the record. It was suggested by Mt. Heeran in her statement in the Court of the committing Magistrate that Mt. Nojali had set up an illicit connection with one Asu Brahmin and that this Asu had suddenly disappeared after the commission of the murder. What was exactly intended by the prosecution in making this witness depose to this effect, it is difficult to understand. Probably, it was intended to suggest that the boy had seen Mt. Nojali and Asu in some awkward position and since they were afraid of this matter leaking out, Mt. Nojali killed the boy. That would, however, leave an important fact unexplained and that is, why Asu disappeared after murder. If it was intended to suggest that it was Asu who had killed the boy, it would rather be far fetched as there is absolutely nothing on the record to connect him with the offence and it would also weaken the prosecution story placed on the record. Even this suggestion that the accused had been seen with Asu in some awkward position is a poor conjecture and no possible conclusion can be based upon it. In the circumstances, the fact remains that if Mt Nojali had committed the murder, she had done so without any motive whatsoever. It is true that in criminal cases the evidence of motive is immaterial so long as there is sufficient evidence on the record to connect the accused with the offence. Accordingly in this case, the question is whether such evidence is forthcoming on the record.

4. As stated above, the prosecution relied upon the statement of Mt. Heeran in the first instance. She is the real sister of the accused Mt. Nojali and definitely connected her with the offence. What were the details furnished by her in that statement, we will deal with them presently. In the Court of the learned Sessions Judge, however, she went back upon her statement and stated in so many words that she only heard the cries of someone while sitting in her house and did not come out to see what was happening. The learned Public Prosecutor urges that where a witness in the Sessions Court resiles from the statement made by him or her in the Court of the committing Magistrate, the presiding Judge has a discretion whether or not to admit the statement and this discretion would be deemed to have been properly exercised where he has reason to think that the witness had deposed truly before the committing Magistrate and was not telling the truth before him. This principle of law is enunciated in *Narain v. Sarkar*, 1941 M. L. R. 51 and is correct so far as it goes. It has been pointed out that according to *Parita v. Emperor*, A. I. R. (33) 1946 Lah. 48: (47 Or. L. J. 232) and *In re Muruga Goundan*, A. I. R. (36) 1949 Mad. 628: (50 Gr. L. J. 887), it would be wise not to act upon the statement of the witness unless it is corroborated by some other independent evidence. The view, that unless corroboration by independent evidence is forthcoming, does not seem to have found favour in *Hanuman Prasad v. The Crown*, A. I. R. (36) 1949 Nag. 254: (50 Or. L. J. 597), where it was held that the statement of the witness, who has been won over, as made by him in the Court of the committing Magistrate, is a substantive piece of evidence and does not require corroboration from other sources. A careful perusal of all the authorities leads us to the conclusion that although corroborative evidence need not be insisted upon, the Court must find that the evidence given by him in the committing Magistrate's Court was true and that it can act upon it in preference to the one given in the Sessions Court. This principle of law is substantially in accord with the one enunciated in *Narain v. Sarkar*, 1941 M. L. B. 51 and accordingly the important consideration which arises is whether Mt. Heeran's statement as made in the Court of the committing Magistrate is true and correct and therefore, could be relied upon. We have subjected this statement to a careful scrutiny and have no hesitation in coming to the conclusion that the statement of this witness does not bear the ring of truth.

5. Next there is the confession of the accused Mt. Nojali. It is in the statement of the learned Magistrate who recorded this confession that he was sufficiently careful in remanding the accused to judicial custody for about 48 hours after she had been brought to him but we must say that the confession has not been carefully recorded inasmuch as it contains a certain version which does not appear to make any sense. The learned counsel for the accused as well as the learned Public Prosecutor has subjected this confession to considerable scrutiny and it is not possible for them to satisfy us that the last portion of this confession makes any sense at all.

In this confession, the accused merely stated that the deceased Idan had visited her house that day and that she caught hold of him and killed him with a 'Parsi'. She also stated and in fact stated twice that she had inflicted only one blow upon him and this killed him. She did not state in this confession that she had helped in the recovery of the dead body nor the fact that she had produced the 'Farsi' from her house. This confession as stated above was retracted by her at the earliest possible opportunity in the Court of the committing Magistrate and later on also in the Court of the learned Sessions Judge. Accordingly, it is a rule of prudence that this confession should not be acted upon unless it is corroborated in material particulars. Material particulars obviously mean those which are mentioned in the confession itself and also connect the accused with the offence. That is necessary that these particulars before being corroborated should be mentioned in the confession, is frankly conceded by the learned Public Prosecutor and is also the subject-matter of *Emperor v. Chhadamani Lal*, A. I. R. (23) 1936 ALL 373: (37 Cr. L, J. 730). In this authority, the dacoity was committed in a house and there was a well near the house on the platform of which a box had been opened and a pit was also pointed out by the accused where, according to him one dacoit fell down breaking his arm. None of these places had been mentioned in the confession and consequently it was held that the mere fact that these places were pointed out would not amount to corroboration of any matter in the confession. Apart from this the evidence of corroboration even if it could be held to be corroborative at all is not reliable. The witnesses who have deposed to it viz., P. W. 2 Shankerlal P.

W. 4 Kalyansingh and P. W. 5 Karnia are persons in whose presence according to the prosecution story, the accused had confessed the guilt but it is hard to believe that this was correct inasmuch as the First Information Report which was sent by Shivilal and Kalyansingh through Karnia does not bear out this fact at all. We agree with the learned Public Prosecutor that generally it is not at all necessary to stuff the first information report with all sorts of facts and that all that is intended is to lead the police to undertake investigation but where certain facts have come to light before the First Information Report is sent, it is against the ordinary course of human conduct that they should be withheld from a document of this nature. In any case, one would not expect that where a dead body has been recovered at the instance of the accused the language used in the First Information Report would be so utterly different that it would not be possible on a perusal of it to come to that conclusion. In this case, it was set out in the First Information Report that a search had been made for the dead body and that it had been found lying in the 'Bara' of the accused. The evidence which was led in the Sessions Court by way of corroboration was that it had been found at the instance of the accused. Surely, the two positions are poles apart and it becomes very difficult to believe that the dead body had really been recovered at the instance of the accused. In any case, even if that be correct, it would merely show that she had only the knowledge of the fact that the dead body was lying there and is not at all sufficient to connect her in any way with the commission of the crime. The learned Public Prosecutor also referred to the statements of the above mentioned witnesses for the purpose of relying upon another piece of corroboration and that was the recovery of the 'Farei' from the house of the accused and also the blood-stained earth and stones. As pointed out already, there is no reference to these facts in the confession of the accused. Apart from this, these articles were not sent to the chemical analyser and, therefore, there is absolutely no evidence on the record to show that the blood on them was human blood. As held in 1941 M. L. R. 28 where the accused produced a sword with blood on it and said that he had killed the deceased with it, but the prosecution failed to prove that the blood on the sword was human blood, it was presumed that the blood was not human blood and consequently the sword would not be said to have any connection with the crime. The only other evidence relied upon by the learned Public Prosecutor consists of

the statements of P. Ws. 2, 4, 5, 6 and 7 as regards the extra-judicial confession, but he conceded that this evidence is of the weakest type and generally very unsafe to be relied upon. In this case, we have already pointed why this evidence should not be relied upon.

6. For all the above mentioned reasons, the case against the accused is not established beyond all manner of doubt. We accordingly hereby accept the appeal, set aside the conviction and sentence and acquit her. She shall be set at liberty forthwith.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**