

Emperor Vs. Nuri Sheikh

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SooperKanoon Citation : sooperkanoon.com/855280

Court : Kolkata

Decided On : Jan-31-1902

Reported in : (1902)ILR29Cal483

Judge : Prinsep and ;Stephen, JJ.

Appellant : Emperor

Respondent : Nuri Sheikh

Judgement :

Prinsep and Stephen, JJ.

1. The jury unanimously acquitted the accused Nuri Sheikh of murder of his younger wife, Safina Bibi. The Sessions Judge has referred this case to us because he considers that on the evidence the jury should have returned a verdict convicting the accused.

2. The evidence is that the prisoner slept alone with the dec(sic)ised, and that some time in the morning at about 8 or 9 o'clock the villages became aware that she was dead. Their suspicions were, however, aroused, and accordingly the chaukidar gave the first information to the police-station distant about four miles. The Sub-Inspector arrived shortly afterwards, and has told us in his evidence that he examined all the witnesses and sent the accused to the Subdivisional Magistrate at Jamalpore, who released the accused on bail, stating that there was

nothing but mere suspicion against him. At the post-mortem examination of the body it was found that the deceased woman had died from strangulation. The police then renewed the investigation, and on the 22nd, that is to say, three days after the Subdivisional Magistrate had released the accused on bail, the Sub-Inspector sent in seven witnesses before an Honorary Magistrate of Sherpore, that is to say, a Magistrate living on the spot, for examination under Section 164 of the Code of Criminal Procedure, stating as his reason for wishing that such proceedings be taken that there was every chance of those witnesses being gained over. The statements of these witnesses were recorded by the Honorary Magistrate, and on the following day the Sub-Inspector sent in the accused to the same Magistrate in order that his statements, might be recorded.

3. The next step in the proceedings taken was that the accused was placed before the Subdivisional Magistrate of Jamalpore, a Magistrate having jurisdiction to deal with it. The Honorary Magistrate, we observe, is a member of what is described as an independent Bench which exercises powers of a third class, and it does not appear that he had any authority to act independently, that is to say, when not sitting on the Bench. It is a matter of surprise, moreover, that, inasmuch as the accused had already been sent to a Magistrate having jurisdiction, that is to say, to the Subdivisional Magistrate of Jamalpore, the police should have thought proper to interpose another Magistrate, and we are not aware, having regard to the distance of this place from Jamalpore, that there was any reason for such a proceeding. It may be added also that there was no ground whatever for asking the Magistrate to act under Section 164 of the Code of Criminal (sic). The proceedings are therefore irregular. They, more-over, bear the appearance of a desire on the part of the police to have unwilling, or it may be untrue, evidence obtained under some pressure placed on the record so as to bind the persons who had up to that time been under their influence, and prevent them from afterwards making voluntary statements and possibly from telling the truth without risk of being prosecuted for perjury. We desire to express our strongest disapproval of such proceedings on the part of the police. The law (Section 162) declares that a police officer shall not record any statement made to him by a person under examination. Its object is defeated if, while a police officer cannot himself record such a statement, he can do so by causing certain persons to appear before a

local Magistrate not competent to deal with the case and to get the statement of these persons recorded, as he has done in the present case. He had no authority to place those witnesses before the Magistrate. They did not appear voluntarily. The action of the police officer is as if, because he had some reason to believe that these persons were likely to be gained over by the accused or his friends, he was entitled to require their statements to be recorded, though they did not volunteer to make them. In such a case the police officer should rather have sent in the witnesses and the accused without delay and before the witnesses had been 'got at,' as the police apprehended: he did not do so probably because the Magistrate had discharged the accused, as he considered that no case had been elicited against him except one of suspicion. But that in no way justified the police in acting in this unusual and irregular manner. The accused was then brought before the Magistrate, and his statement was also recorded under Section 164, and the case was then placed before the Subdivisional Magistrate of Jamalpore, who committed the accused to the Sessions Court.

4. In considering this case, the first matter for inquiry naturally is how did the death of the woman become known. The evidence shows that it did become known in the course of the morning after her death. But no attempt has been made to show how this happened. This was a matter of very great importance because under the circumstances it would be known only to the accused, her husband, or the inmates of the house, and the communication of this information must ordinarily give evidence of the conduct of the accused. The fact that the woman was found dead and that the post-mortem examination of her body showed that she died of strangulation might raise grave suspicion against the accused, her husband, but taken by itself it would not be sufficient to convict him of having killed her. There is no evidence at all to show what the accused did when the death of the woman became known beyond the statements of witnesses that, when they went to his house, they found him there and the deceased on the bed. There was something said specially in the first information that the prisoner had left his house and gone to Chur Sherpore, from which we understand the suggestion was that he had desired to avoid attendance at any inquiry likely to be held. There is, however, absolutely no reason to suppose that the accused was not present throughout at the village. As regards the evidence of the first information of the death received

by the villagers, we learn that Nur Mahomed Sarkar obtained information, so he says, from Nedu, who told him that he had got it from Aniuddin. Aniuddin has not been examined on that point either in the Magistrate's Court or in the Sessions Court. It does not appear that Nedu was examined in the Magistrate's Court or at the trial. Another man mentioned in connection with this matter was Nur Mahomed Sarkar. He was examined before the Committing Magistrate, but not with reference to this point, and, although present at the Sessions Court, the prosecution did not think it necessary to examine him at all. The absence of information on this very important point is, we think, a most serious defect in the case against the prisoner.

5. Some admission is said to have been made by the prisoner before the village panchayet. We can find nothing in the evidence of this witness to show that the accused really admitted that he killed the woman, and we may observe that evidence so obtained must be accepted with great caution. The police investigation had been commenced, and was really only suspended, as the proceedings subsequently taken show, and there can be little doubt that there was pressure on this account, as is shown by the evidence of some of the witnesses. The case, therefore, against the prisoner rests entirely upon the fact that he slept with his wife alone on that night and in the morning she was found dead, her body showing that death was caused by strangulation.

6. We have the evidence of one witness, who says that he was for some months on terms of great intimacy with the deceased, and on the previous afternoon he was seen by the other wife of the accused, who told her husband of it. This is said to be the cause of the murder. We are not prepared to accept this uncorroborated evidence of Maham Sheikh. The case therefore is one only of grave suspicion, but it is not one upon which we should be justified in convicting the accused. We therefore direct that he be acquitted and released.