

Fekoo Mahto Vs. the Empress

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Court : Kolkata

Decided On : Apr-21-1887

Reported in : (1887)ILR14Cal539

Judge : Tottenham and ;Ghose, JJ.

Appellant : Fekoo Mahto

Respondent : The Empress

Judgement :

1. This case has been referred to this Court by the Sessions Judge of Birbhum under Section 374 of the Criminal Procedure Code for confirmation of the sentence of death passed by him on the prisoner. The prisoner has also appealed against the conviction and sentence. He has been convicted of two murders-that of his sister named Basseja, and of her child. The sentence of death has been passed in respect of the murder of Basseja, and in respect of the other murder the prisoner has been sentenced to transportation for life. He appeals against both convictions.

2. The case depends, we may say, mainly upon the confessions put in evidence in the Sessions Court. There were two confessions made by the prisoner before the Magistrate. The first was apparently under Section 164 of the Criminal Procedure Code while the case was still under investigation by the police. This confession was made on the 22nd of November last. The other confession was made in

prisoner's examination before the Magistrate during the inquiry after the case had been sent up by the police. This examination was under Section 364. The examination and the confession under Section 164 have the defect that the questions put to the prisoner were not recorded. The answers were given in narrative form. As regards the examination under Section 364 there is no other defect. In that case the Magistrate made a memorandum in English at the time the examination was recorded, and the proper certificate was signed by him. As regards the confession recorded under Section 164 we find that there was no English memorandum made by the Magistrate, but the certificate required by that section was duly recorded. Both the confessions were admitted in evidence in the Sessions Court, and the conviction is based mainly upon them. Now Section 533 provides that 'if any Court before which a confession or other statement of an accused person recorded under Section 164 or Section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded.' We have had some little doubt as to whether the confession recorded under Section 164 was admissible without the evidence referred to under Section 533, because there was no English memorandum made at the time that it was recorded. But upon examination of the section we think that it was not necessary that any such English memorandum should be made in respect of that confession. Section 164 provides that such confession shall be recorded and signed in the manner provided by Section 364. Section 364 sets out the manner in which examinations of accused persons should be recorded. It appears to us that the manner in which such examinations should be recorded is fully set out in the first two paragraphs of that section. The provision for an English memorandum is contained in the 3rd paragraph. That paragraph provides that the Magistrate or Judge shall be bound 'to make a memorandum thereof in the language of the Court or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record.' This shows that the memorandum is not itself the record of the examination. What is tendered in evidence is the examination or confession recorded in the manner provided by the first two paragraphs of Section 364. The

confession of the 22nd November was recorded in the manner prescribed excepting, as we have said, that the questions, put were not committed to writing. But that this omission is not fatal where the accused is not prejudiced by it is shown by a Full Bench decision in *Titu Maya v. The Queen*, reported in a note to the case of *In the matter of the petition of Munshi Sheikh* 8 C. 616. The case itself was decided by a Division Bench of this Court, but the note to it contains the Full Bench decision referred to by us. That being so, we do not think that it was necessary for the Judge in the present case to take evidence under Section 533 in respect of either the confession under Section 164 or the examination under Section 364. And that these confessions were substantially true we think there is no reasonable cause to doubt, The interval between the two was more than three weeks, during which time the prisoner was in custody. But on the 25th December when examined during the inquiry he fully Confirmed the statement made by him on the previous 22nd November, and stated that it was all true. The circumstances under which the murder was discovered and suspicion fell upon the prisoner are set out in the judgment of the Sessions Court, and were such that we think it highly probable that the prisoner, a simple peasant, would suppose it to be useless to deny his guilt and would make a full confession. There seems to us no reason to discredit the other evidence in the case, which evidence shows that the prisoner followed up his confession by pointing out the precise scene of the murder, and by pointing out and giving up various articles which had been in the possession of the deceased, and some of which the prisoner had concealed after her death.

3. In the Sessions Court the prisoner retracted his confession, and told two stories in connection with it. One was that the confession recorded was not made by him at all, and the other that it was extorted from him by torture, the torture alleged being branding with a hot iron on the arm. Neither of these stories we think can be believed. The first story that he did not make the confession is absolutely negatived by the Magistrate's certificate. As to the other story it is simply incredible that the police sending in a prisoner to have his confession recorded should have branded him with a hot iron in such a manner that the fresh marks would be conspicuous. Besides that this story of the torture was never told by the prisoner till he was on his trial in the Sessions Court. We find therefore no reason to doubt the truth in the main of the confessions made by the prisoner upon which his

conviction is chiefly based. In addition to the confession there is evidence to show that the prisoner was the last person with whom the deceased was seen alive, and upon his trial in the Sessions Court when examined he admitted what he had at one time denied, that the deceased came to his house, and that he had seen her out of the village, the motive of her removal being the threat on the part of his caste fellows to excommunicate him if he allowed her to continue in his house.

4. Finding no reason for differing from the Sessions Judge, we must confirm the sentence of death, and dismiss the appeal.

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