

Abdul Latif Vs. Emperor

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Court : Kolkata

Decided On : Apr-02-1941

Reported in : AIR1941Cal533

Appellant : Abdul Latif

Respondent : Emperor

Judgement :

Bartley, J.

1. The appellant in this case was placed upon his trial before the learned Sessions Judge of Murshidabad on the charge of having murdered his wife. The jury by a majority verdict of 7 to 2 found him guilty and the learned Judge convicted him and sentenced him to transportation for life. The case for the prosecution was briefly that the accused and his wife were not on good terms with each other because the former wanted his wife to reconvey certain property to him, which he had previously made over to her. On the night of 17th June last the husband and the wife went to bed together in the same room. Next morning his brother, who is prosecution witness Jamiruddin, looked into the room and found the wife lying dead with her throat cut and no sign of her husband. He reported this fact to other people. Information was lodged to the thana. The accused was arrested about a fortnight later, sent up and ultimately convicted.

2. In our opinion, the majority verdict of the jury in this case and the conviction based thereon cannot possibly be upheld. The charge delivered by the learned Judge contains serious misdirection on points of law and equally serious errors where he was dealing with the substantive evidence in the case. The prosecution case, as stated by the learned Judge to the jury, was, in the first place, that the accused and his wife went to bed together in the same room on the night of the murder. Next morning Jamir, brother of the accused, discovered that the wife was lying there with her throat cut and the husband absent. In point of fact, there is no evidence on the record coming from Jamir or from any other witness that the accused and his wife went to bed together on the night of the murder. In the committing Court, the evidence of Jamir was that his brother had left the village towards the end of Jaistha, and he implied if he did not actually say, that his brother was not at home on the night of the murder. No direct evidence at all was given by any other witness that the accused and his wife retired together to sleep on the night of the murder. One other witness, P. W. 5, deposed that on the morning after the murder Jamir came and told him that his sister-in-law had been murdered and that his brother was away. Both these witnesses were declared hostile in the committing Court and their cross-examination permitted. In the Court of Session their evidence-in-chief was not taken at all. They were declared hostile and cross-examined by the prosecution.

3. We are unable to hold that this procedure is permissible under the law. It is, of course, permissible with the consent of the Court to cross-examine one's own witness; but we can find no warrant for a procedure, by which a Judge permits a witness, whose evidence-in-chief he has not heard and whose evidence before the committing Court cannot be put in under the law until that witness has been examined, to be treated at once as a hostile witness and cross-examined by the side which called him. Apart altogether from this defect in the conduct of the case before the learned Judge there are, as previously pointed out, very serious misdirections in the charge. When dealing with the petition of complaint filed to the Magistrate by one of the witnesses in the case seven days after the occurrence the learned Judge directed the jury that this petition could only be used as corroboration of the deposition of the witness in the Sessions Court. This is a clear misdirection because such statements obviously can be used to contradict the

witness under the terms of Section 145, Evidence Act, or to impeach his credit under Section 155 as well as to corroborate him under Section 157 of the Act. To say therefore that such a statement can only be used as corroboration is a clear misdirection. In dealing with the first information report the learned Judge made an equally grave error of law. He said that the value of the first information was as corroboration of the present depositions of the witnesses referred to in it. Of course, this, as is admitted by the learned advocate for the Crown, is also an entirely erroneous view. Again, the learned Judge told the jury that in the present case they had to rely mainly on circumstantial evidence. In point of fact, there is no direct evidence whatever as it is not contended that there was an eyewitness to the crime.

4. The learned Judge further told the jury that the strongest piece of circumstantial evidence against the accused is the allegation that the accused and his wife slept together that night. As a matter of fact, there is no such allegation to be found in the evidence. There is evidence to show that the accused was in the village on the day of occurrence although the main prosecution witnesses now deny that fact. With regard to this point the direction given by the learned Judge to the jury was that if the accused was present at the village it will follow that he slept with his wife that night. This direction is clearly erroneous. It does not necessarily follow that because a man was seen in the village on a particular day he must have slept with his wife on the night. In view of the misdirections both on points of law and on questions of fact contained in the charge delivered by the learned Judge to the jury and of the manner in which the evidence of the material witnesses, P. Ws. 5 and 9 was put before them by the learned Judge, the majority verdict of the jury and the finding and the sentence based upon it cannot be upheld. This appeal is accordingly allowed. The conviction of the appellant and the sentence passed upon him by the Court below are set aside and the case remanded for retrial in accordance with law by some other Judge.

Mohamad Akram, J.

5. I agree.

