

Queen-empress Vs. Uzeer

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SooperKanoon Citation : sooperkanoon.com/861309

Court : Kolkata

Decided On : May-15-1884

Reported in : (1884)ILR10Cal775

Judge : McDonell and ;Field, JJ.

Appellant : Queen-empress

Respondent : Uzeer

Judgement :

Field, J.

1. The appellant in this case, Sheikh Uzeer, has been convicted of the murder of his wife, and has been sentenced under Section 302, Indian Penal Code, to transportation for life.

2. We have read the proceedings of the Sessions Judge, and we are of opinion that the conviction cannot be supported. The prisoner and his wife were sleeping alone in their homestead on the night of the occurrence; the woman's throat was cut, and she died from the injury thus inflicted, and the consequent loss of blood. The theory of the prosecution is that the prisoner cut his wife's throat. The medical evidence does not support this theory. On the contrary, the native doctor considered that the wound might have been self-inflicted. It may be said that the opinion of a native doctor on a question of this kind is not of very great value, but

this is the medical evidence whatever it may be worth. There is no testimony of a medical expert to support the theory of the prosecution that the wound was inflicted by the prisoner, and the only medical evidence on the record is against that theory, and in favour of the statement made by the accused on more than one occasion. The Sessions Judge permitted the witness Sarai Bibee to say that the accused said to the darogah that his wife refused to give him water when he wanted to go out and ease himself, so he struck her once and she fell insensible, and then he cut her throat. This evidence being inadmissible, the Sessions Judge should not have recorded it, The conviction is mainly based upon a confession alleged to have been made by the accused to the Deputy Magistrate. This confession is prefaced with the following note: 'After excluding from my presence the Police Officers who brought him, I warned the accused that what he would say would go as evidence against him; so he had better tell the truth.' A Magistrate of the first class ought to know that to tell a prisoner that he had better tell the truth is a violation of the provisions of the law. (See Section 163 of the Code of Criminal Procedure.) The use of this language has been repeatedly decided to render a confession inadmissible, and we think that in consequence of this inducement having been held out to the prisoner, the confession in the present case must be rejected. We may observe that it is no part of the duty of a Magistrate to tell an accused person that anything he may say will go as evidence against him. Putting aside the inadmissible confession and the evidence of a further confession made to the Police, there remains no legal evidence upon which the prisoner can be convicted. We therefore set aside the conviction and direct that the appellant be acquitted and released. A copy of this judgment should be sent to the committing Magistrate.