

**AlimuddIn Vs. Queen-empress**

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**SooperKanoon Citation :** [sooperkanoon.com/867494](http://sooperkanoon.com/867494)

**Court :** Kolkata

**Decided On :** Oct-11-1895

**Reported in :** (1896)ILR23Cal361

**Judge :** Ghose and ;Hill, JJ.

**Appellant :** Alimuddin

**Respondent :** Queen-empress

**Judgement :**

**Ghose and Hill, JJ.**

1. The appellant in this case, Alimuddin, has been convicted by the Sessions Judge of Noakhally of the offence of culpable homicide not amounting to murder under Section 304 of the Indian Penal Code. The case for the prosecution is that one Habibulla and the appellant, on the 29th of March last, severely assaulted the deceased Husseinuddin and carried him to a field, where they left him in a most helpless condition, the result being that he shortly afterwards died. It would appear that a prosecution was had against Habibulla alone, Alimuddin being then not forthcoming; and in the course of the inquiry that was then held by the Committing Magistrate, two women, Ayesha and Latifa Banu, were examined as witnesses for the prosecution; and they deposed before that officer that both Habibulla and Alimuddin were implicated in the grievous assault that was committed upon the deceased. In the Sessions Court, however (Habibulla having been committed to

take his trial in that Court), these two women retracted the statements they had made before the Committing Officer; but notwithstanding this Habibulla was convicted of the crime of culpable homicide not amounting to murder. The present prosecution was against Alimuddin, and before the Committing Officer the same two women, Ayesha and Latifa Banu, were examined as witnesses, and they denied having seen any assault being committed upon Husseinuddin by either Habibulla or Alimuddin. Their statements made in the course of the inquiry in the case against Habibulla were, however, put to them, as we understand it, under the provisions of Section 145 of the Evidence Act, in order to contradict the statements made by them upon the present occasion; and, though they admitted having made those statements, they said they had been compelled by the maltreatment which they received at the hands of the police to make them, Then we have two other witnesses examined in this case, Yasin and Bunde Ali, who support to some extent the case for the prosecution.

2. The success of the prosecution in this case rests mainly upon the statements of Ayesha and Latifa Banu made in the case of Habibulla before the Committing Officer, and upon the evidence of Yasin and Bunde Ali.

3. As regards the statements of Ayesha and Latifa Banu it seems to us that, though no doubt they could be used for the purpose of contradicting the statements made by them in the present trial, they could not be treated as independent evidence of the guilt or innocence of the accused, for the simple reason that they were not made in the presence of the accused. Mr. Donogh, however, on behalf of the prosecution has contended, referring to Section 288 of the Code of Criminal Procedure, that, inasmuch as the statements of these two women made upon the former occasion were put to them and referred to in the course of the evidence that they gave before the Committing Officer in the present case, therefore those statements themselves could properly go in and be used as evidence establishing the guilt or innocence of the accused. We are unable to accept this contention as correct. Section 288 provides as follows: 'The evidence of a witness, duly taken in the presence of the accused before the Committing Magistrate, may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.' Now, in the first

place, the statements in question were not made in the presence of the accused; and, in the second place, it seems to us that the argument assumes that the said statements were evidence against the accused; for if they were not, they could not be made evidence against him, merely because they were put to the two women in the course of their evidence in this case.

4. Then, as regards the evidence of Yasin and Bunde Ali, it would appear on a perusal of it that they took an active part in carrying away the deceased while he was in a most helpless condition, knowing full well, as we take it, that a grievous assault had been committed on him, and then leaving him in a field in that helpless condition, which resulted, as we gather from the evidence in this case, in his death. We cannot but regard the evidence of these two witnesses as no better than that of accomplices; at any rate, they took such a part in this transaction as to make it most unsafe for the Court to rely upon their evidence, unless corroborated in some material respects, in convicting the accused. Mr. Donogh has called our attention to some of the incidents or facts in this case, which, according to his view of the matter, do corroborate the evidence of these two witnesses; but we are unable to accept his view. We do not think that there is any real corroboration of the statements made by them, nor do we consider it to be safe to proceed upon their evidence in holding that the accused took any part in the grievous assault upon Husseinuddin.

5. Upon the whole, we are of opinion that the judgment of the lower Court, based as it is mainly upon the two classes of evidence to which we have referred, cannot stand.

6. We accordingly set aside the conviction and sentence and direct the release of the appellant.