

**In Re: Samiruddin and Vs. Samiruddin**

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**SooperKanoon Citation :** [sooperkanoon.com/874727](http://sooperkanoon.com/874727)

**Court :** Kolkata

**Decided On :** Dec-14-1881

**Reported in :** (1882)ILR8Cal211

**Judge :** Pontifex and ;Field, JJ.

**Appellant :** In Re: Samiruddin and ;The Empress

**Respondent :** Samiruddin

**Judgement :**

**Field, J.**

1. In this case one Samiruddin has been convicted of murder by the Sessions Judge of Furreedpore sitting with Assessors, and has been sentenced to death. This sentence has been referred for confirmation; and the prisoner has appealed at the same time.

2. In referring the case the Sessions Judge forwards a copy of a letter received by him from the Civil Surgeon, and expressing an opinion as to the nature of the wound inflicted upon the person of causing whose death the prisoner has been convicted. We cannot receive, or in any way act upon, this extra-judicial matter. The only opinion of the Civil Surgeon which can be considered in judicially dealing with the case, is an opinion expressed by him when examined as a witness under the usual tests to which witnesses are subjected.

3. The Assessors were of opinion that the prisoner should be convicted of murder. But the value of this opinion is very much diminished when we find that some important matter which should not have been admitted as evidence, was admitted to influence their minds.

4. The piece of evidence to which this observation relates is the dying statement of the deceased Baber Ali. This was recorded by the Deputy Magistrate as a 'deposition'; but it does not appear that Baber Ali was examined in the presence of the accused Samiruddin, and unless he were so examined by the Deputy Magistrate exercising judicial jurisdiction, the writing made by such Magistrate could not be admitted to prove the statement made by the deceased. This statement must have been proved in the ordinary way by a person who heard it made. If the Deputy Magistrate had been called to prove it, he might have refreshed his memory with the writing made by himself at the time when the statement was made.

5. The prisoner was charged with 'causing the death of one Baul Mir, alias Baber Ali, by inflicting on him a wound with a 'chheni' with the intention of causing bodily injury such as was sufficient, in the course of nature, to cause death, or which he knew to be likely to cause death.' This charge was probably intended to refer to the second and third clauses of the definition of murder contained in Section 300 of the Penal Code. But it is defective and inexact as regards both clauses. With reference to the second Clause it should have run thus--'Likely to cause the death of Baber Ali, the person to whom the harm was caused.' With reference to the third Clause it should have said 'ordinary course of nature.'

6. The medical evidence in the case is the deposition of the native doctor who was not examined in the Court of Sessions, as we think he should have been. This deposition goes to show that deceased 'died from gangrene of the left lung and pleura brought on by' the injuries observed on his body. The native doctor further says, that the wound inflicted on the deceased was sufficient to bring on gangrene.

7. There is no evidence that the injuries were sufficient, in the ordinary course of nature, to cause death. There is no evidence that gangrene was a likely or probable result of the injuries inflicted, or that death was a likely or necessary

result of gangrene. The native doctor was not even asked, and did not say, whether the injuries inflicted were likely to cause death.

8. Upon the evidence on the record we think that the prisoner cannot be convicted of murder or of culpable homicide not amounting to murder. Upon his own confession and the evidence of the witnesses Palon Mandal and Holodhur Das we are satisfied that he wounded or injured the deceased with a 'chheni,' and we think that he ought to be convicted under Section 326 of the Penal Code of causing grievous hurt by a dangerous weapon. We set aside the conviction and sentence for murder: and convicting the prisoner Samiruddin under Section 326 of the Indian Penal Code, sentence him to ten years' rigorous imprisonment.

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