

Emperor Vs. Mominuddi Sardar

Emperor Vs. Mominuddi Sardar

SooperKanoon Citation : sooperkanoon.com/879975

Court : Kolkata

Decided On : Sep-19-1934

Reported in : AIR1935Cal591,158Ind.Cas.67

Appellant : Emperor

Respondent : Mominuddi Sardar

Judgement :

Patterson, J.

1. This Reference relates to the case of one Mominuddi, Sardar who has been tried on a charge of having murdered his brother Amiruddi. The jury returned a unanimous verdict of guilty, and the Judge, agreeing with the verdict, convicted the accused under Section 302, I.P. C, and sentenced him to death. The matter has now come to this Court on a reference for confirmation of the death sentence and also by way of appeal. The facts according to the prosecution are briefly as follows: On the afternoon of 2nd April 1934, Aminuddi, the murdered man, went to the house of one Meher Sardar of Kukrail to listen to some singing. He was accompanied by Sahar Ali Sardar and Sahar Ali's brother Belatali Sardar. Accused Mominuddi Sardar joined the party later in the afternoon. While the singing was going on, a quarrel arose between Mominuddi and Aminuddi over a sum of money which was said to be owing by Aminuddi to Mominuddi. As a result of the quarrel Mominuddi left the place in an angry mood, but returned at nightfall and suggested

to his brother Aminuddi that they should go home.

2. According to the case for the prosecution and the confession of the accused himself, Mominuddi had, during the interval that elapsed between his departure from Meher's house after his quarrel with Aminuddi and his return, obtained a dao from the house of one Samir Sardar and had concealed it in a drain pipe by the side of the road leading from Meher's house to his own house. When the moon rose, that is to say, at 7 or 8 p.m., Aminuddi, Mominuddi, Sahar Ali Sardar, Belatali Sardar and one Ramjan, who is the uncle of Sahar Ali and Belatali, left Meher's house together. After they had gone a distance of some 7 or 8 rasis, that is to say about 300 yards, Mominuddi sat down on the road beside the drain pipe in which he had concealed the dao ostensibly for the purpose of relieving himself. The other four went on, Ramjan being in front, Aminuddi coming next, and Sahar Ali and Belatali last. Presently, Mominuddi ran up from behind and gave Aminuddi a cut on the neck with his dao. Aminuddi at once fell to the ground, and his companions ran away. They re-assembled at Meher's house almost immediately after; and there they informed Belatali and Sahar Ali's father Nabu, (who it may be added, is the brother of the third eye-witness Ramjan) of what had occurred. They also informed two persons named Jonab and Omar Ali who were with their father, as well as two other persons known as Bajtulla and Dildar. All these persons, except the last named, have been examined as witnesses. The party at Meher's house then broke up and the alleged eye-witnesses, as well as the persons whom they had informed of the occurrence, went away to their respective homes without saying anything further to anybody about what had happened, and without taking any steps to have information given to the deceased's relatives or to the police.

3. Later in the evening however a Hindu gentleman named Hemendra Nath Ghose, who lives with his uncle Lalit Mohan Ghose, in a house just beside the place of occurrence, was informed by passers by that a man had been killed; and on going outside he found a man lying dead on the roadside, with cuts on the neck and shoulders. He informed his uncle, Lalit, and the latter too went and saw the dead body, and immediately sent his driver Sachindra Nath Ray Chaudhury to the thana to lodge information. The place of occurrence was only about a mile distant from the thana, and an information to the effect that a man was lying dead by the

side of the road was lodged by Sachin at the thana at about 11 p.m. The Sub-Inspector at once proceeded to the spot and took up the enquiry. After holding an inquest, he sent the dead body to the morgue for post mortem examination, and it may here be observed that the accused Mominuddi together with his mother were found by the Sub-Inspector at the place of occurrence and that Mominuddi was one of the persons sent to the morgue by the Sub-Inspector for the purpose of identifying Aminuddi before the doctor. A small pair of sandals were found by the Sub-Inspector beside the dead body and on enquiry he came to know that they belonged to Belat Ali Sardar, who it appears is a small boy of about 13 or 14. Belat Ali, on being questioned, made a statement to the Sub-Inspector as a result of which the Sub-Inspector sent word to the thana to have Mominuddi arrested.

4. The Sub-Inspector then proceeded to search Mominuddi's house and there he found a blood-stained shirt, which has been identified as belonging to Mominuddi, lying concealed behind some paddy bags inside the house. Shortly after the search in Mominuddi's house, Mominuddi was brought back from the morgue and was placed under arrest. The dhoti which was on his person was found to be blood-stained, and was accordingly taken possession by the Sub-Inspector. Shortly after, apparently as a result of a statement made to the Sub-Inspector by the accused, the Sub-Inspector went to the house of Samir Sardar, where he took possession of the sheath or cover of the dao with which the murder is said to have been committed; the dao itself has not been found. On his return to the thana in the evening, the Sub-Inspector placed on record a formal first information of murder, according to the information which he had obtained upto 7 a.m. that morning. The substance of this information had actually been recorded by the Sub-Inspector at 7 a.m. on a piece of plain paper, and the record thereof merely set forth the facts which had come to the knowledge of the Sub-Inspector up to that time. No mention was made therein of the fact that Mominuddi had been suspected of having committed the crime nor was any mention made of the names of any of the alleged eye-witnesses, the reason being that upto that time Belat Ali and his companions had not been examined. The accused was kept at Satkhira thana that night, that is to say the night of the 3rd April, and on the following day at 1-15 p.m. he was produced before a Deputy Magistrate for the purpose of having his confession recorded. He was carefully questioned by the Magistrate with a

view to ascertaining whether or not he was really desirous of making a confession, and he was then given an hour and a half in which to think things over before making any confession. At the end of that time, the accused made a detailed confession which was recorded by the Magistrate and which had been admitted in evidence at the trial. I may say at once that, apart from all other considerations, the very contents of this confession leave no room for doubt that it was made voluntarily, nor has the learned advocate appearing for the accused, suggested that the confession was other than a voluntary one.

5. When examined by the Committing Magistrate, the accused stated that he had been distracted at the time and that he knew nothing, and when questioned by the Sessions Judge at the close of the trial he stated that he had not been feeling well at the time, and that he did not know what he has said. The confession is thus, in a sense, a retracted confession, and according to the usual practice it would require corroboration before it could be relied on. The Sessions Judge has not, in his charge to the jury, drawn their special attention to the necessity for having corroboration of a retracted confession before placing reliance on it, but no point has been made on this by the advocate appearing for the accused, presumably for the reason that the other evidence in the case, if believed, not only affords the fullest possible corroboration of the confession, but is of itself sufficient to justify the conviction.

6. It may further be remarked at this stage, that the advocate appearing for the accused has not attempted to criticise the charge to the jury on the ground of any misdirection. The charge is in fact an admirable one, the law has been carefully and correctly explained, and the evidence has been fully and impartially summed up. The advocate for the appellant has therefore very properly refrained from arguing that the verdict of the jury is vitiated by any misdirection contained in the charge and has contented himself with drawing our attention to certain circumstances which he suggests, throw some doubt on the evidence of the alleged eyewitnesses, and has contended with very great force that whatever view be taken of the matter this is not a case in which the death penalty ought to be inflicted.

7. All the persons named above in my summary of the case for the prosecution have been examined as witnesses, as well as the investigating officer, the medical officer and certain other less important witnesses. From what has been said above, it is clear that if the evidence of the alleged eye-witnesses be relied on, there can be no doubt about the guilt of the accused, inasmuch as the medical evidence discloses the fact that the injuries inflicted on the deceased were such as could only have been inflicted with the intention of causing death. As regards the alleged eye-witness, the main contention that has been put forward on behalf of the accused, is that their conduct immediately after the crime was unnatural, and especially their conduct in not disclosing what they knew to any impartial person and in not taking any steps to inform the police of what had occurred. I am unable to accept this contention. The usual reluctance to give evidence, especially in a murder case, which is so very noticeable in this country, must in the present case have been accentuated by the apprehension lest the alleged eyewitnesses should themselves fall under suspicions and by the sympathy which they must have felt towards the mother of the accused. She had lost one son, and the witnesses may well have felt reluctant to disclose anything that might result in her losing her other son. It is probable that it would never have become generally known that these persons had witnessed the occurrence if it had not been for the fact that Belat Ali had accidentally left his sandals behind at the place of occurrence, and the fact that the Sub-Inspector came to the spot almost immediately, and so was able on finding these sandals, to get hold of Belat Ali and his companions. In my opinion, the fact that the alleged eyewitnesses were disposed at the outset not to disclose what they knew is one which should not in any way be regarded as tending to discredit their evidence. It has further been contended on behalf of the accused that his own conduct was that of an innocent man, as he went to the spot after the occurrence and accompanied the dead body to the morgue. It is true that his conduct was consistent with his innocence, but it may well have been that he had no other alternative but to accompany his mother to where the dead body was lying, and that he could not very well refuse to accompany the dead body to the morgue for the purposes of identification. Having regard to the overwhelming evidence of his guilt I am not prepared to hold that the accused's conduct was in any way indicative of his innocence.

8. In these circumstances, I have no hesitation in accepting the evidence of the alleged eye-witnesses in its entirety and I am clearly of opinion that their evidence, taken together with the medical evidence, establishes the guilt of the accused beyond all reasonable doubt. The facts that the accused was wearing a dhoti with bloodmarks on it and that a bloodstained shirt was found concealed in his house as well as the fact that a dao had disappeared from the house of Samir Sardar immediately after the accused had been there on the evening of the occurrence, these facts and also the fact that the accused made a full confession of his guilt shortly after the occurrence, merely serve to fortify me in my conclusion, based on the evidence of the eyewitnesses, that the accused is guilty of the murder of his brother.

9. On the question of sentence, various considerations have been urged on behalf of the accused. It has been said that he being the only surviving son of his widowed mother ought not to be sentenced to death. In my opinion that is not a matter in which any Court ought to take any consideration, in deciding whether or not the death sentence should be inflicted. It has also been urged that the accused's confession shows that at that time at any rate he was sincerely penitent and filled with remorse and this has been put forward as a reason for imposing the lesser of the alternative sentences provided by the law. This contention too I am not prepared to accept. Whether or not a man who has committed an atrocious crime like this, is truly penitent, is a matter which ought not to be taken into consideration in deciding the question of sentence, at any rate so far as the Courts are concerned, though it might perhaps be a circumstance which might induce the Local Government, in the exercise of its prerogative, to remit the death penalty. An argument which ought to carry much greater weight than either of the considerations referred to above is that the circumstances as disclosed by the evidence for the prosecution, and especially the confession of the accused, goes to show that the accused was overcome with passion at the insults which his brother (so he says) had heaped on him in the presence of his friends, and that it was under the influence of a passion almost amounting to insanity that he procured and concealed the dao, made his preparations for the crime, and actually committed the crime.

10. The crime was, in a sense, premeditated, inasmuch as the accused appears to have thought it out carefully beforehand, and to have procured and concealed the dao for the purpose of killing his brother. At the same time, the period that lapsed from the moment that the idea of killing his brother entered the accused's mind, to the time when he actually carried out his purpose, was very short, perhaps only one or two hours, and during this period the accused must still have been smarting under the insults which his brother is said to have heaped upon him in the presence of the gathering at Meher's house. The accused clearly had some provocation, although that provocation was not such as could operate to take the offence out of the section, that is to say, to convert the offence from one of murder to one of culpable homicide not amounting to murder. At the same time the fact that the accused did commit the murder under the influence of such provocation, is one on which great weight ought to be attached in considering the question of sentence. The accused is a young man of 22 or 23, and considering his age and the class to which he belongs, it may well be that the sudden fury caused by his brother's insults was such as to banish from his mind every idea except the idea of revenge. It may well be that he correctly described the state of his mind at that time when he stated as follows in his confession, in answer to a question put by the Magistrate as to why he had committed such an act. The Magistrate has recorded his answer thus:

(He weeps and says):

How can I say your honour, why it happened to be so on that day? Everybody knows that we two brothers were on best terms. My brother heaped all sorts of abuses on me. What satanic thoughts possessed me I was not conscious of what happened and how. (He continues weeping).

11. In view of all these circumstances, I am of opinion that this is a case in which the lesser penalty may properly be inflicted. The reference is therefore rejected, and the appeal is allowed in part. The conviction is upheld but the sentence is altered to one of transportation for life.

Cunliffe, J.

12. I am of the same opinion and I have little to add. I consider that it is impossible for us to escape confirming the conviction for murder, more specially having regard to the extremely clear evidence of the eyewitnesses which was quite unshaken in cross-examination and which was in no way contradicted by any testimony brought forward on behalf of the defence. With regard to what my Lord has proposed in relation to the reduction of the sentence from that of death to transportation for life I am also prepared to agree that course should be taken but not without considerable hesitation. It cannot be too strongly insisted, as my Lord has pointed out, that the circumstance that the appellant is the only remaining son of the widow and the circumstance that he afterwards displayed considerable remorse ought not to be taken into consideration at all. What ought to guide us in a question of this character is the ascertainment, so far as we are able to ascertain it, of the state of mind of the appellant at the time when the crime was committed.

13. There is no doubt that there was considerable provocation and there is also evidence that from the moment the provocation took place the appellant was seized with a kind of blind hatred against his brother. In the study of psychology we so often come across cases of lack of self control in people of the appellant's station of life and that is why a confession is so valuable; it is valuable here not in recording subsequent remorse but in showing the reaction from the state of mind of the accused at the time when the crime was committed. It is so often found that blind and hysterical hatred is succeeded by a state of mind as was seen in the present appellant when he made his confession, before the Magistrate of abject self revelation and, as my Lord has pointed out, he described himself as having been seized by some satanic power at the time when the murder of his brother took place. Of course comment might be made though it has not been made by the Crown that the appellant's confession to the Magistrate was a piece of acting. But in view of the carefully recorded remarks of the Magistrate in which he addressed the accused encouragingly by saying 'my boy' and so on it appears that the Magistrate was sincerely impressed by the sincerity of what he had said. For these reasons, although I think that this is a borderline case, and the provocation was not such as to take the crime out of the ambit of Section 302, I think we are justified in imposing the lesser penalty.

