

**Emperor Vs. Aushi Bibi**

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**SooperKanoon Citation :** [sooperkanoon.com/880608](http://sooperkanoon.com/880608)

**Court :** Kolkata

**Decided On :** Feb-10-1916

**Reported in :** 33Ind.Cas.828

**Judge :** Chitty and ;Walmsley, JJ.

**Appellant :** Emperor

**Respondent :** Aushi Bibi

**Judgement :**

1. This is a reference under Section 307, Criminal Procedure Code, in the matter of Aushi Bibi who was charged before the Additional Sessions Judge of Dacca and a Jury with offences under Sections 302/115 and 328/116, Indian Penal Code. The case against Aushi Bibi was that she suspected an intrigue between her husband and Adarjan. She accordingly gave a powder, which was subsequently found to contain arsenic, to Chandra Ban, a girl of 13 years of age, the wife of Jarip. This girl was a relation of the accused. Aushi Bibi told Chandra Ban to give the powder to Adarjan by mixing it with lime in a pan or by mixing it with rice. The powder which was wrapped up in a red paper was taken by Chandra Ban; and as her aunt Nekjan came to the bari shortly afterwards, she showed it to her aunt and told her what had happened. Nekjan told her not to give it to Adajan but to throw it away. Nekjan tested some of it by putting it in water when it is said to have become dark. Chandra Ban also said that Nekjan further tested it by placing it on the rind of a jambura or lemon. This incident Nekjan does not mention. This was on

Wednesday. On the Friday the matter got about in the village and a salish was summoned and Aushi Bibi and Chandra Ban were called before the assembly. Manu Mandal, the president, questioned them both; and, though Aushi Bibi at first denied having got the poison, she eventually went and produced it. Manu Mandal is dead; but the witnesses who speak to what took place in the salish prove that she at first denied the occurrence but, on being told that the salish would compromise the matter, she went and brought the powder of her own accord. It should be stated that Aushi Bibi had asked Chandra Ban to give her back the powder and that Chandra Ban had given her back a portion retaining a portion herself. This other portion Chandra Ban also produced before the salish. Both the portions were placed together and sent eventually to the chemical analyser, who reported that traces of white arsenic were found in the powder. That is the case against the accused; and, on the evidence, the Jury returned a unanimous verdict of 'not guilty.' The learned Additional Sessions Judge disagreeing with that has referred the case for our decision.

2. In the first place, we should mention that the learned Judge has possibly misdirected the Jury in the matter of the confession to the members of the salish. He says in his charge: A confession made under these circumstances is not inadmissible because (1) the members of the salish were not persons in authority, (2) the accused was not then charged with any offence.'

3. As to the first reason, there are decisions of this Court holding that the president of a panchayat in such circumstances is, or may be, a person in authority within the purview of Section 24 of the Indian Evidence Act. We may refer to the two cases of Nazir Jharudar v. Emperor 9 C.W.N. 474 : 2 Cr. L.J. 255. and Emperor v. Jasha Bewa 11 C.W.N. 904 : 6 Cr. L.J. 154. It would depend on the question of fact, whether the confession was caused by any inducement, threat or promise, having reference to the Charge against the accused person. It should therefore, have been left to the Jury to say whether there was any such inducement, threat or promise in this case; but to tell them that the president of a panchayat was not a person in authority within the meaning of Section 24 of the Evidence Act was clearly erroneous.

4. The second reason given by the learned Judge is also incorrect, because the salish was undoubtedly summoned to consider the case which was being made against Aushi Bibi of having given poison to Chandra Ban to be administered to Adarjan. She was, therefore, before the salish on that charge.

5. In this case there appears to have been a direct inducement from the president and members of the salish that if she confessed they would compromise the matter. It is, therefore, extremely doubtful whether this confession should have been allowed to be placed before the Jury at all. It certainly ought not to have been placed before them without an explanation as to how they should value it, having regard to the circumstances in which it was made.

6. Excluding that confession from consideration, there remains only the evidence of Chandra Ban corroborated, so far as it is corroborated, by the evidence of Nekjan. We feel unable to say, in these circumstances, that the Jury were wrong in rejecting this evidence against the accused Aushi Bibi. They had these facts before them and they were entitled to reject that evidence for any reason that they thought proper.

7. There is the further fact that the chemical analysis does not disclose how much arsenic was found in this powder. There is, therefore, no evidence on the record against the accused as to the amount of poison which was proposed to be administered to Adarjan.

8. It would be difficult, therefore, to say whether the case would come under Section 302 or Section 328, Indian Penal Code, or whether there would be any offence proved against Aushi Bibi at all. We accordingly direct that the verdict of the Jury be upheld and that Aushi Bibi be acquitted.