

Sheikh Sohali Vs. Emperor

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Court : Kolkata

Decided On : Jan-13-1910

Reported in : 5Ind.Cas.773

Judge : Stephen and ;Carnduff, JJ.

Appellant : Sheikh Sohali

Respondent : Emperor

Judgement :

1. The appellant in this case, one Sheikh Sohali, has been convicted of the offence of abetment of murder under Section 802 read with Section 114, Indian Penal Code. The first objection that is urged in appeal is that, as the charge was under Section 302, he ought not to have been convicted under the sections named. There is no question that his conviction has taken place for abetting the murder, and on the facts of the case it is obvious that he ought originally to have been charged with the offence of abetment. We need not, however, consider this point because there is a more substantial one which goes to the merits of the case.

2. The deceased man was one Abdul Majid, and the circumstances of the murder are such that there is no direct evidence at all of how he came by his death. He was killed obviously in a cowshed a little more than 100 yards of the place where his body was found, and there is no one who says that he saw or heard anything which can be directly connected with the occurrence. The evidence against the

present accused rests almost entirely upon a confession, subsequently retracted, that he was present at the murder under circumstances which, if believed, would, we think, render him guilty of abetment. We need not discuss the question of the effect of the confession fully, because we consider that there is no corroboration of it, and, therefore, it cannot be relied on. And we must point out that it was taken under circumstances which made it necessary that it should be supported by very good corroboration. It was taken in jail with a Police officer in the next room. The Magistrate who took it at first received a statement which contained nothing of very importance. He went on his duties round the jail, came back and received the confession which is before us. In so doing we have no doubt he acted quite properly and with complete fairness, but the fact that the confession was made in this way is one which, we think, renders strong corroboration necessary. The only possible corroboration which can be suggested, brought as supporting it, is that after the murder the accused man absconded from the village. We have, however, perused the evidence which is put forward in support of this suggestion, and we can only say that there is nothing to show he did abscond. We, therefore, need not consider how far the absconding alone could be treated as a corroboration in this case.

3. We hold accordingly that the confession in this case has not been corroborated, and that it ought not to have been acted on; and consequently this appeal must succeed and the conviction of the appellant must be set aside and he must be released from jail.