

1921
 ———
 ABDUL
 SALIM
 v.
 EMPEROR.

We hold, therefore, that no ground has been established which would justify our interference with the verdict of the Jury. The sentences passed are appropriate to the offences of which the appellants have been convicted. We, accordingly, dismiss this appeal.

E. H. M.

Appeal dismissed.

CRIMINAL REFERENCE,

Before Newbould and Ghose JJ.

1921
 ———
 Nov. 4.

EMPEROR

v.

SADHU CHARAN DAS.*

Dying Declaration—Verbal statement—Reply to questions by signs by a person unable to speak—Evidence Act (I of 1872) s. 32.

A reply made by signs by a person unable to speak, in answer to a question put to him, taken together with the question, amounts to a "verbal" statement within the meaning of s. 32 of the Evidence Act.

Queen-Empress v. Abdullah (1) followed.

THE accused, Sadhu Charan Das, was tried by the Sessions Judge of Pabna and a jury, on charges under ss. 302, 304 and 326, of the Penal Code of having caused the death of his wife, Dasi Sundari Dasya. The jury by a majority of 3 to 2 found him not guilty. The Judge disagreed with their verdict, and referred the case under s. 307 of the Criminal Procedure Code.

* Criminal Reference No. 49 of 1921, by P. K. Mookerjee, Sessions Judge of Pabna and Bogra, dated July 20, 1921.

(1) (1885) I. L. R. 7 All. 385.

The facts of the case were as follows :—The accused and his wife slept together on the night of the 13th April 1921 in the north room of their hut. In the early morning of the 14th a boy named Kokan was opening the *jhap* of the south room, which was used as a shop, when the accused stopped him. Immediately after the accused vomited twice, whereupon his wife sent the boy to fetch Sadhu's mother and brother. Shortly after two charcoal cake vendors passed by and heard cries from the south room, and saw the deceased come out of the room holding a blood stained *dao* in her hand and with her throat cut. She dropped the *dao*, and proceeded towards the house of Adhar Chunder Das, the landlord of the accused. She met him on the road, uttered a cry and collapsed. He had her conveyed to hospital. Two constables who were passing along went to the south room, and on hearing of the occurrence arrested the accused and took him to the thana.

1921
 ———
 EMPEROR
 v.
 SADHU
 CHARAN
 DAS.

The condition of the woman was found to be critical, and accordingly, at about 1 P.M., her dying statement was taken by Mr. B. K. Bose, Sub-deputy Magistrate, and recorded as follows :—

The dying declaration of Dasi Sunlari Dasya. She is identified by Ram Dasya Das.

As she is unable to speak she cannot be given an oath. But on my asking her to tell the truth, she made signs signifying that she would.

Three persons, including Sadhu Charan, her husband, were made to stand before her, and I asked her to point out which of the three wounded her, and she distinctly pointed out her husband to be the person who wounded her.

The accused was also sent to hospital, and after his injuries were attended to he made a confession to the same Magistrate at about 3-15 P.M. It was simply to the effect that he had cut his wife's throat with a *dao*, while standing in front of her, and that he did so because her character was bad.

1921
 ———
 EMPEROR
 v.
 SADHU
 CHARAN
 DAS.

A preliminary inquiry was held by a local Deputy Magistrate who committed the accused to the Court of Session with the result indicated above.

Babu Santosh Kumar Bose, for the accused. The evidence points to the wound being suicidal. The confession of the accused was made under the influence of opium. The dying declaration is not admissible under s. 32 of the Evidence Act, as the deceased made signs which cannot be treated as a "statement." The dying declaration should have been recorded in the form of question and answer: *King-Emperor v. Mathura Thakur* (1). The Allahabad Full Bench case is distinguishable.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown, contended that the evidence was ample to support a conviction: The injuries were not suicidal.

NEWBOULD AND GHOSE JJ. This is a reference by the learned Sessions Judge of Pabna and Bogra. The accused, Sadhu Charan Das, was put on his trial on the charge of having committed murder by causing the death of Dasi Sundari Dasya, his wife. He was also charged with having committed culpable homicide not amounting to murder, and also with having caused grievous hurt with a dangerous weapon to the said Dasi Sundari Dasya. The jury by a majority of 3 to 2 found the accused not guilty on all the charges. The learned Sessions Judge being clearly of the opinion that it was necessary for the ends of justice to submit the case to the High Court has forwarded the record with a recommendation that the accused should be convicted under section 302 of the Indian Penal Code.

(1) (1901) 6 C. W. N. 72.

The main facts of the case are as follows :—On the night of the 13th of April last the accused Sadhu Charan and his wife Dasi Sundari slept together in the northern room of their house. At 6 A.M., in the following morning, their servant, Kokan Chunder Das, a boy of 12 years old, came to open the *jhap* of the accused's sleeping room, but the accused did not allow him to do so. After this Kokan said that the accused Sadhu was vomiting, and Dasi Sundari asked Kokan to call Sadhu's brother and mother, and Kokan went to fetch them. A short time after Kokan had gone, two sellers of charcoal cakes who were passing by heard cries from the accused's room and saw Dasi Sundari coming out of the shop with a blood stained *dao* in her hand and with her throat cut. She went towards the house of Babu Adhur Chunder Das, a pleader. Adhur Chunder Das was coming from his house and met her and she fell on the ground. Adhur Babu secured a *dooli* and sent her off to the hospital. The medical examination discloses that she had one incised wound about four inches long and one inch and-a-half deep in front of the neck, the upper portion of the larynx and pharynx being divided. There were also two other slight incised wounds on the front of her left hand. Two constables who happened to be passing by Sadhu's shop saw a collection of people on the roadside. They entered the shop where Sadhu was seated and found blood stains on Sadhu's person and abrasions on his fingers. Sadhu was arrested and taken to the police-station. The Sub-inspector found the accused slightly dosing and sent him to the hospital for treatment where he was admitted as a suspected case of opium poisoning. The doctor washed out the stomach and sent the washings to the chemical examiner who detected opium in the washings. At 2-45 P.M. that afternoon, Dasi Sundari made what is described

1921
 ———
 EMPEROR
 v.
 SADHU
 CHARAN
 DAS.

1921
 ———
 EMPEROR
 v.
 SADHU
 CHARAN
 DAS.

as a dying declaration which was recorded by a Sub-deputy Magistrate. She was unable to speak; but, in answer to the question put to her, she pointed out the accused as the person who had inflicted the wounds on her. At 3-15 that afternoon, the accused made a confession which was recorded by the same Sub-deputy Magistrate. In that confession the accused stated that he had cut the throat of his wife as she was of bad character. Dasi Sundari died at about 11 P. M. on the following day, the 15th of April.

The case against the accused rests mainly on the statement of his deceased wife and on his confession, and there is also certain circumstantial evidence. On the circumstantial evidence there can be no doubt that the deceased woman, Dasi Sundari, was cut in the room where she and her husband, the accused, had slept, and that she and the accused were the only persons present at the time. The only question, therefore, is whether, as is contended by the learned pleader on behalf of the accused, the wounds were self inflicted or whether they were inflicted by the accused. As regards this point the main evidence, as already stated, consists of the woman's statement and the statement of the accused. Objections have been taken to the admissions of both the statements. As regards the statement of the deceased, it is contended that it cannot be regarded as a statement admissible under section 32 of the Indian Evidence Act, because it is not actually a statement, as the woman was unable to speak and could only make signs in answer to the question put to her. This point was considered by a Full Bench of the Allahabad High Court in the case of *Queen-Empress v. Abdullah* (1). The facts of that case, so far as this point is concerned, cannot be distinguished from the facts of the present case. We

(1) (1885) I. L. R. 7 All. 385.

are in entire agreement with the majority of the Full Bench which held that the questions and the signs taken together might properly be regarded as a "verbal statement" made by a person as to the cause of her death within the meaning of section 32 of the Evidence Act, and were, therefore, admissible in evidence.

As regards the confession of the accused we see no reason why it should be rejected *in toto* because the accused at the time of making it was under the influence of a dose of opium. From the evidence of the Assistant Surgeon and of the Sub-deputy Magistrate, we are satisfied that the condition of the accused was such that he could understand the questions put to him. Also the confession itself, though not very elaborate, shows that the accused was in full possession of his senses at the time he made it. There is one noticeable point as regards this and that is that, when the statement was read over to him, he made an important correction. In the answer বদ চরিত্র বলিয়া তাহাকে কাটরাছি which was recorded by the Magistrate he corrected the word বলিয়া to দেখিয়া making the answer mean that he cut her throat seeing that her character was bad. There seems to be no reason to suspect that there was any undue influence or inducement of any kind that led the accused to make this confession, and we can see no reason why he should have stated that he had cut his wife himself unless he had actually done so.

As regards the statement of the deceased, it is not quite clear what was the question put to her as there are slight variations in the different accounts. From the statement recorded at the time it would appear that three persons including the accused were made to stand in front of the woman, and she was asked to point out which of these persons had wounded her and she pointed to her husband. We think that it is to be regretted that the question was put in a form

1921
 EMPEROR
 v.
 SADDH
 CHARAN
 DAS.

1921
EMPEROR
v.
SADHU
CHABAN
DAS.

which suggested that the injury was homicidal. But nevertheless, the fact that the injured woman, shortly after she had received the injury, showed her husband as having caused it is a very important piece of evidence against him. There are other minor points in the case which support the theory that the wound was inflicted by the husband and not by the wife herself. The opinion of the Medical Officer is that the wound was homicidal and not suicidal. He has given his reasons for his opinion, and, though it cannot be taken as a conclusive proof, we think his opinion is entitled to some respect. It is true that the wound was inflicted from left to right which would be consistent with a suicidal wound. But this is not the only point that has to be considered in determining the nature of the wound. There is evidence that the accused about a week before the occurrence purchased a *dao*. To this we attach no importance whatever. A *dao* is a common domestic implement and there is no reason for thinking that it was bought with the intention of being used in the manner in which it was actually used. The fact that the woman had a *dao* in her hand at the time she left her house is not inconsistent with the case for the prosecution that the injuries were not self inflicted. The marks found on the accused's fingers appeared to the Assistant Surgeon to be such as might have been caused by biting by teeth and the marks on the woman's hand would indicate that she tried to seize the weapon at the time she was attacked. If this were so, it is not improbable that she succeeded in wresting away the *dao* from her husband's hand and ran away with it in the manner described. On the evidence, the whole of which has been read by us, we are satisfied that the view, taken by the learned Sessions Judge is a correct view and that the injury was caused to the woman, by her husband

the accused. Having regard to the nature of the injury there can be no other conclusion than that the person who inflicted it intended to cause death, and that the offence committed is that of murder. The murder was undoubtedly committed, as the accused said, because he believed his wife to be of bad character. From the relations between the parties on the previous night, as described by their servant Kokan, it seems probable that the murder was committed suddenly on a quarrel arising between the husband and the wife after Kokan had left the house. Possibly, the accused suspected that his vomiting was caused by some poison administered by his wife, and that led him to attack her. But this is purely a conjecture. What actually happened, the husband can alone say. But we think, that, under the circumstances of the case, the lessor punishment provided for such an offence will be sufficient. We, therefore, convict the accused Sadhu Charan Das, under section 302 of the Indian Penal Code, of having committed murder by causing the death of his wife, and sentence him under that section to transportation for life.

1921
—
EMPEROR
v.
SADHU
CHARAN
DAS.

E. H. M.