

In respect of this charge the prosecution would be well advised to have an alternative charge also framed against the accused in respect of an offence under section 302 of the Indian Penal Code read with section 149 of the Indian Penal Code.

As regards the third charge also it is essential for the prosecution that the charge should be framed to the effect that in the course of the riot the accused voluntarily caused grievous hurt to constable Kalbe Husain in his discharge of his duties as a public servant and thereby committed an offence punishable under section 333 of the Indian Penal Code read with section 149 of the Indian Penal Code.

This case is a very simple one but owing to the haphazard manner in which it has been presented in the Court of Session it has created serious difficulties for us in appeal, and we trust that the fresh trial in the Court of Session will be free from all such difficulties.

Finally we may point out that the sentence of 14 years' transportation passed upon some of the accused in respect of a charge under section 396 of the Indian Penal Code is an illegal sentence and ought not to have been imposed. We note this fact for the guidance of the learned Sessions Judge, who will try this case afresh.

Case remanded.

APPELLATE CRIMINAL*

*Before Mr. Justice E. M. Nanavutty and Mr. Justice
Rachhpal Singh*

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RESPONDENT

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Evidence Act (I of 1872), section 24—Confession—Retracted confession untrue and uncorroborated—Conviction whether can be based on such retracted confession—Blood stained article recovered from accused—Stains not proved to be of human blood—Inference whether deducible that stains were of human blood—Witness making recklessly false statement—Evidence whether to be relied on.

*Criminal Appeal No. 98 of 1934, against the order of Ch. Akbar Husain, I. C. S., Sessions Judge of Sitapur, dated the 4th of April, 1934.

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A court is at liberty to base a conviction on the retracted confession of an accused person if it thinks that the confession has a ring of truth about it. But where the confession is not corroborated by any other satisfactory evidence and the court is not much impressed by it, it should not base a conviction on the retracted confession of the accused.

If an article stained with human blood is recovered from the possession of an accused or from a place pointed out by an accused, then the case against him becomes very serious. He has to explain that point away. But if the prosecution fails to establish that there were stains of human blood on any of the articles so recovered, then a court would be wholly unjustified in drawing an inference that the blood stains were of human blood.

Mr. *Moti Lal Saksena*, for the appellant.

The Assistant Government Advocate (Mr. *H. K. Ghose*) for the Crown.

NANAVUTTY and RACHHPAL SINGH, JJ.:—Imamuddin, accused appellant, was tried in the court below under section 302 of the Indian Penal Code. The charge against him was that on the night between the 17th and 18th of December, 1933, he had murdered one Musammat Mantuna. The learned Sessions Judge who tried the case found that the charge was made out against the accused and he, therefore, passed a sentence of death against the appellant who has appealed against his conviction and sentence. The record of the case has also been sent to this Court by the Sessions Judge for confirmation of the death sentence passed against the appellant.

Musammat Mantuna was the daughter of one Salaru, P. W. 3, a resident of Bahrwa. She was at first married to one Bakridi who was sentenced to transportation for life for murdering the wife of Salaru and who subsequently died in jail about six years ago. Salaru married Musammat Mantuna to one Imami, P. W. 4 about five years ago. Salaru came and settled down in village Muradpur in Baisakh last year, and then married the widow of one Alawal. Musammat Maikin is the sister of the first husband of his second wife. The

statement of Salaru, P. W. 3, is that in Asar last year, Imami and Musammat Mantuna came to live with him at Muradpur and both stayed in his house for about two months, but owing to insufficient accommodation in his house, Salaru asked them to make separate arrangements for their lodging and then Imami and Musammat Mantuna went and began to live in the house of Musammat Maikin, the own sister of the first husband of Salaru's second wife. The prosecution story is that Imamuddin, accused, who is a darzi by caste, and who is a resident of Katulia village, was in the habit of visiting the place of Musammat Maikin. There Imamuddin, accused, made the acquaintance of Musammat Mantuna. Salaru deposes that Imami, the husband of Musammat Mantuna, suspected the existence of illicit intimacy between her and Imamuddin accused and because of this he left village Muradpur and went with his wife to village Katulia. It may be stated here that the distance between Muradpur and Katulia is about three *kosas*. Imami, P. W. 4, deposes that when he was living in the house of Musammat Maikin in Muradpur, Imamuddin, accused used to pay visits there and he suspected that there existed illicit connexion between his wife and Imamuddin, accused, and so he left the house of Musammat Maikin and took away his wife with him to Katulia. About one month after this he again went to Muradpur because he had been given a field by his father-in-law, Salaru, for cultivation and he went there to plough it. His wife followed him. His statement is that on the night between the 22nd and 23rd of November, 1933, his wife Musammat Mantuna was taken away by Musammat Maikin to her house on account of Khudarat celebration and after that Musammat Mantuna never returned to her husband Imami. On the 30th of November, 1933, Imami, P. W. 4, made a report at the police station against Angnoo Buddha, Musammat Maikin, Musammat Hafizan and Nanhoon under section 498 of the Indian Penal Code. This report is printed

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at pages 17 and 18 of the paper book. He stated that Angnoo had enticed away his wife, Musammat Mantuna, and that all the accused named in the report were the cause of her leaving him (Imami). He further stated that Musammat Mantuna was taken away by Musammat Maikin on the pretext of singing and from there she had been taken by Angnoo. From the evidence of Imami, P. W. 4, it appears that after making this report, he took no further interest in this matter. He does not seem to have made any attempt to find out where his wife was or what had happened to her.

On the 18th of December, 1933, a report was made at Mahmudabad police station at 3 p.m. by Madho chaukidar to the effect that the dead body of Musammat Mantuna was found in an *arhar* field of one Auseri Kurmi. It was mentioned in the report that it was Musammat Maikin who had made the discovery of the dead body. It was further mentioned in the report that seventeen or eighteen days before the date of the report, Musammat Mantuna had run away from her husband who was residing in Muradpur at the time, and also that her husband had made a report about this matter to which we have made a reference above. The police investigation started about this report, exhibit 1, which had been made by Madho chaukidar. During the investigation, Imamuddin, accused, was arrested. There are no eye-witnesses to the murder. The case against the accused depends on circumstantial evidence, and on his own retracted confession. The question for our consideration is to determine whether the evidence which has been produced in the case proves the guilt of the accused.

There is quite satisfactory evidence on the record which goes to prove that Musammat Mantuna left her husband on the night between the 22nd and 23rd of November, 1933, because we find that he, in his report exhibit 10, mentioned that she had disappeared on the night of the 22nd of November. There is no reason

for disbelieving the statement of Salaru and Imami which proves that on the night of the 22nd of November, 1933, there was a Khudarat celebration at the house of Musammat Maikin where Musammat Mantuna had been taken by the former. We may point out here that Imamuddin, accused, is a resident of Jugtapore which is about a mile from Muradpur. There does not appear to be any doubt that it was the dead body of Musammat Mantuna which was discovered in a field of Auseri on the 18th of December, 1933. The first link in the chain of circumstantial evidence against the accused is the statement of Sita Ram Teli, P. W. 5, a resident of Muradpur. The evidence of this witness is that on Saturday (16th December, 1933), he was going to a bazar about four gharis after sun-rise when he saw Imamuddin accused in the company of Musammat Mantuna. He says that he asked the accused why he was going about with that woman when a report had been made against five different persons about her being enticed away by them. The accused abused the witness and passed on towards his own village. The witness also makes a further statement which is to the effect that on the night between Saturday and Sunday (16th and 17th December), he was working in a field which is about five or six fields from that of Auseri Kurmi, where the dead body of Musammat Mantuna was discovered, and that he heard the following cry: "*Are dada khande darat hai*". The learned Sessions Judge has rightly disbelieved this part of the statement of the witness about his having heard the aforesaid cry, but he has come to the conclusion that the rest of his evidence is true. We find ourselves unable to agree with this view of the learned Sessions Judge. The witness stated that he had seen Imamuddin, accused, in Muradpur on the night of the 22nd of November, 1933, when there was a Khudarat celebration at the place of Musammat Maikin. One of the reasons given by the learned Sessions Judge for believing this part of the story of the witness is that the

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accused in his confession has mentioned this incident. In our opinion, that is no reason why the statement of Sita Ram should be accepted as true. The accused may have wrongly stated in his confession that he had met Sita Ram. Here we have a case in which this witness makes a most damaging statement against the accused which, if believed, would be very strong proof against the accused. The learned Sessions Judge himself finds that that statement is not true. In our opinion, when a witness makes a reckless statement which appears to be altogether false then the safest course to adopt is not to place any reliance on his evidence. The next witness on whose evidence the learned Sessions Judge has placed reliance is Husaini, P. W. 13. He deposes that on Saturday, the 16th of December, 1933, he saw Imamuddin accused in the bazar with a woman who was wearing a yellow *lehnga* and a pink *orhni* at about 8 or 9 a.m. and that on the next day (Sunday) in the evening three gharis after night-fall he saw the accused passing by his house along with a woman. This evidence does not prove anything. The witness did not know Musammat Mantuna and we cannot presume that the woman in the company of the accused was Musammat Mantuna simply because she was wearing a yellow *lehnga* and a pink *orhni* like the *lehnga* and *orhni* found on the person of the dead body. No particular value can be attached to the statement of a witness of the type of Husaini, who states that on the night of the murder he saw the accused and one woman going together. It would be most unsafe to draw a presumption that because there was a woman in the company of the accused, that woman must be Musammat Mantuna. It may also be pointed out that this evidence is in conflict with the statement of Sita Ram. If we believe the statement of Sita Ram, then the murder was committed on the night between Saturday and Sunday, while if reliance is placed on the evidence of Husaini, then it would appear that the woman, Musammat Mantuna, was alive on Sunday.

The next point taken by the learned Sessions Judge against the accused is that he went to the house of Dillu Khan, P. W. 14, on Monday night and deposited one *razai*, one *lungi* and one *banian* which were recovered later on from that house. No value can be attached to this piece of evidence in view of the fact that no marks of human blood were found on these clothes mentioned above. We may point out that the learned Sessions Judge was altogether wrong in saying that "although the blood on the two articles has not been ascertained to be human blood, it is probable in the circumstances of the case, that it was human blood". No such presumption should have been made against the accused. It is the duty of the prosecution to establish this point most clearly against the accused. If an article stained with human blood is recovered from the possession of an accused or from a place pointed out by an accused, then the case against him becomes very serious. He has to explain that point away. But if the prosecution fails to establish that there were stains of human blood on any of the articles so recovered, then a court would be wholly unjustified in drawing an inference that the bloodstains were of human blood. Another witness is Liaqt Hussain, P. W. 15. We have read his evidence and we do not think it in any way affects the case against the accused. All that that witness proves is that about five months before the date on which the witness gave evidence, the accused had gone to his house and had lived there for some days with a woman. The witness made conflicting statements in the Committing Magistrate's Court and in the court of Session, and we, therefore, cannot rely on his evidence. Even if that evidence is believed, it does not carry us very far. The fact that the accused went with a woman to the house of this witness does not improve the prosecution case, unless it can be established that that woman was Musammat Mantuna, and on that point the witness does not say anything. It is true that in the court of the Committing

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Magistrate he stated that the woman who had gone to his house was wearing *lehnga*, exhibit I and *orhni*, exhibit II which were found on the person of Musammat Mantuna deceased. But we consider it altogether unsafe to fix the identity of the woman merely on account of a similarity in the clothes. Bulaqi P. W. 16, is a resident of Katulia. All that he proves is that he saw the accused speaking with Musammat Mantuna in village Katulia. That fact by itself does not help us in coming to any definite conclusion against the accused. Then there is the evidence of Din Ali, P. W. 17, who states that a woman came with Imamuddin accused and stayed at his house on Shubrat, the 2nd of December, for two or three days. This evidence is also of no value. The evidence produced in the case proves that a *gandasa* stained with human blood was recovered by the accused from the house of his uncle, Mohammad Husain. This recovery was made on the 20th of December, 1933, and the evidence shows that it was hidden in a heap of *bhusa*. We have carefully considered over this piece of evidence and are of opinion that not much importance can be attached to this recovery. The uncle of the accused who is D. W. 1 has explained about the bloodstains on this *gandasa* in his evidence, and we do not see any reason for not believing him. He has stated that about four or six days before the recovery of the *gandasa* from his house, he had cut his finger with that *gandasa* which explains the existence of blood on it. The story of this witness, Mohammad Husain, D. W. 1, appears to be quite probable. If the accused had used this *gandasa* in killing Musammat Mantuna, it is not likely that he would have allowed the bloodstains to remain on it when he had more than ample opportunity to have them washed off. There remains the retracted confession of the accused which he made before a Magistrate on the 22nd of December, 1933. The learned Assistant Government Advocate in his argument has contended that this confession, although retracted, was a piece of very strong

evidence against the accused as he had made it after he had an opportunity to think over his position. We have very carefully perused this confession and are not inclined to base a conviction on its strength. The chief difficulty in our way is that, according to our opinion, this confession is not corroborated by any other satisfactory evidence. Of course, a court is at liberty to base a conviction on the retracted confession of an accused person if it thinks that the confession has a ring of truth about it. We have perused the confession and are not much impressed by it. The accused says that he had contracted illicit connection with Musammât Mantuna. Further he stated that about one and half month before the date on which he made the confession, one day he was taking her to Muradpur when she insisted that she should be taken to his own house as she did not want to live with her husband. The accused stated that he told her that he could not take her to his house as he would be outcasted but she was persistent and, therefore, he gave a promise that he would take her fifteen days after. She met him again at Muradpur and again repeated her former request. He again asked her to wait. He says that eventually he took her away and for some days lived in the house of Din Ali a relation of his. Later on he saw her with Liaqat Husain in the same bed. He, therefore, brought her from there to his own house. One night he told her that he would take her to Nepal and she agreed to it. They went out and stayed in an arhar field. When she went to sleep he killed her. According to the medical evidence there were twenty-three incised wounds on her person. The confession does not explain any strong motive for the murder. The story that the accused got the woman to go to sleep in the arhar field does not appear to be true. The accused says that after taking their meal they left their house at night. It is hardly probable that after covering a distance of only about a kos, they should have thought of making a halt in an arhar field. There is

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a possibility that she might have been done to death by Imami, her husband, whose life she had made miserable. But, be that as it may, we feel satisfied that it is not a fit case in which we should base a conviction on the retracted confession of the accused. The prosecution evidence only throws a suspicion as regards the existence of illicit connection between the accused and Musammât Mantuna and nothing more. It may be pointed out that it is not without significance that the dead body of Musammât Mantuna was found in the field of Musammât Maikin, aunt of Angnu, and which field had been let by her to Auseri. It was Musammât Maikin who, according to the prosecution story, reported the discovery of the corpse to the village *mukhia*. We have also in evidence that at first Angnu and others were suspected in connection with this crime. As we have already remarked suspicion can exist against Imami, the husband of the deceased woman. The learned Judge has discussed this matter in his judgment but he says that "if there were any truth in the suggestion I have no doubt that Imami would have betrayed some indication of his guilt while he was in the witness-box. I did not observe anything unusual in his demeanour while he was in the witness-box." Nobody suggests that there is any positive evidence against the man. It is only a suspicion that as the woman had proved unfaithful he might have committed the crime. For the reasons given above we are of opinion that the prosecution evidence fails to make out any case against Imamuddin accused.

We, therefore, hold that the charge is not proved against him. We accordingly allow the appeal, set aside the conviction of the accused, and acquit him, and direct that he be set at liberty at once.

Appeal allowed.