

## APPELLATE CRIMINAL.

Before Adami and Bucknill, J. J.

RAMAI HO

v.

KING-EMPEROR\*

1924.

April, 30.

*Criminal Procedure Code, 1898 (Act V of 1898), sections 164 and 533—Criminal Procedure Amendment Act, 1923 (Act XXV of 1923)—Confession—failure of the Magistrate to warn and to ask the accused if he had made the statement voluntarily—defect, whether cured by the Magistrate's deposition.*

The record of a confession taken down by a Magistrate did not show that the accused had been warned by the Magistrate that he was not bound to make a confession and did not in clear terms show that the accused had been asked whether the statement was made voluntarily. The Magistrate was examined, however, and he deposed that he had cautioned the accused and explained to him that he was not bound to make a statement but that if he did so it might be used in evidence against him.

*Held*, that the confession was admissible.

*Farid v. The Crown*(1), dissented from.

*Maksud Ali v. King-Emperor*(2), followed.

*Queen-Empress v. Viran*(3), referred to.

The facts of this case according to the prosecution story were: Dising Ho the husband of the deceased, in 1915 took an advance of 6 *khandis* of *dhan* from the appellant Ramai and in consideration of this loan Dising Ho made over to Ramai a plot of land, no. 192,

\* Criminal Reference no. 9 of 1924, under section 374 of the Code of Criminal Procedure, by T. S. Macpherson, Esq., C.I.E., I.C.S., Sessions Judge of Manbhum-Sambalpur, with Criminal Appeal no. 71 of 1924, from an order, dated the 4th April, 1924.

(1), (1921) I. L. R. 2 Lah. 325. (2) (1921) 2 Pat. L. T. 773.

(3) (1886) I. L. R. 9 Mad. 224.

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for a period of six years on *bhagatbandhu*. Dising Ho died and after his death his nephews Damu and Rali came to live at his house with Muthuri Kui, and succeeded to his property. They then asked Ramai to give back the plot since six years had elapsed. They had noticed that Ramai had amalgamated the plot with his own land to the north. Ramai, however, refused to give up possession and then in January, 1923, Damu applied for the demarcation of the plot recorded in his name in the record-of-rights. Ramai objected saying that Dising Ho had sold this land to him in consideration of the advance of the *dhan*; but the Kolhan officer held that even if a sale had been intended such a sale was invalid without the consent of the Deputy Commissioner. Ramai was told that he must give up possession of the plot. Dising made a second application as Ramai had not obeyed the order and then on the 29th January, 1923, Ramai instituted a civil suit making Damu the principal defendant and adding Muthuri Kui as his co-defendant. He claimed the land under a purchase or in the alternative demanded a return of the paddy advanced. It is said by the prosecution that during the course of the proceedings Ramai threatened to kill Damu if he did not give him the paddy. The suit was dismissed but no decision was come to with regard to the claim for return of the consideration.

On November the 28th Dāmu filed a complaint to the effect that Rāmai had entered plot 192 and had reaped the crop preventing resistance by show of a bow and arrow. Investigation into that complaint was still pending when on the 2nd of December the present occurrence took place.

Between 7 and 8 on the morning of December the 2nd, a Sunday, Muthuri Kui was going from her house to get water from the river to the west. As she passed the house of Ramai Ho about halfway to the river Ramai came up to her and after some conversation struck her with a *tanqi* which he was carrying. Muthuri let the *gharra*, which she was carrying on her

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head, fall to the ground and also a *bela* fell. The noise of the fall of these utensils called the attention of Palo Kui and Gardi to the spot and they saw the appellant still attacking Muthuri and abusing her. Ramai hit her as she lay on the ground and killed her. Gardi and Palo both ran away in fear while Ramai made his way with the *tangi* and a bow and arrow to his *kalihan* on the east. Palo on her way met Hari Ho and told him what had happened. Hari saw the body and went to the *Munda* of Talaburu, the village, and informed him of what had happened. The *Munda*, prosecution witness no. 1, came to the spot and found Muthuri lying dead with severe wounds and a broken *gharra* and the brass *bela*, as well as the straw ring carried on the head under the *gharra*, lying beside the body. He collected the villagers and then attention was called to Ramai who was in his *kalihan* calling on the villagers to come and treat him as he had treated Muthuri if they wanted to. It seems that Ramai was allowed to move as he liked for some time and eventually went to the house of Kanu where he asked for some liquor to drink. The *Munda* and the villagers went up to this house and arrested Ramai who, at that time, was unarmed. Ramai made a statement to the *Munda* in consequence of which the *Munda* and others accompanied Ramai to the *kalihan* where Ramai went into a grass hut and brought out a blood-stained *tangi* which he handed to his brother Gore who in turn handed it to the *Munda*. Meanwhile the *Munda* had sent off Dising Ho to give information to Bholanath, the *Manki* of the village, who usually lives at Bingtapan. However the *Manki* happened to be absent that day holding an arbitration at another village, Mahuda, some distance away. Dising went to him at Mahuda and at about 4 o'clock gave him information of the murder of Muthuri and the *Manki* then sent a note to the sub-inspector of the Kolhan at Chaibassa giving information of the murder. The note was a very brief one and stated that at 4 o'clock he had received information that a murder had been committed at Talaburu village and that the accused

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was armed with bows and arrows and a spear and the *Munda* of the village was unable to arrest him. This note did not say who had been killed or give the name of the assailant. In his evidence the *Manki* said that it was through his own foolishness that he forgot to give the names. However this note reached the sub-inspector at Chaibassa and was made a first information in the case at about 9 A.M. on the 3rd of December.

Meanwhile the *Munda* had lifted the body of Muthuri from the place where it lay near Ramai's house and had placed it on Ramai's verandah. Then a *sagar* was sent for and the body was placed on it and Muchia Ho the *Dakua* was directed to take the body to Chaibassa.

There was some discrepancy as to when the body actually started, but it appeared that it was placed on the cart late in the afternoon but did not set out for Chaibassa till the early hours of the morning. The *Munda* with Ramai under arrest started out separately for Bingtapan to see the *Manki*. The *Manki*, however, was absent from there so he proceeded towards Chaibassa meeting the cart with the body on the way and arriving at Chaibassa at the same time. Ramai was made over to the Writer Head Constable with directions to take him to the Deputy Magistrate for a record of his statement. The Writer Head Constable it appeared, delayed sending him, and it was not until the morning of the 4th December that Ramai was examined by the Deputy Magistrate. Before this officer he made the following statement :

" I killed Muthuri Kui with a *tangi* on the 2nd of December, Sunday, in the morning. She took paddy from me but after she denied having received, so out of sheer provocation I struck at her and she died."

There were a number of persons who gave evidence as to the occurrence. According to Gardi and Palo and the *Munda*, besides Gardi and Palo, Madki Ho the son of Ramai, Subai Kui the wife of Madki and Nandi Kui the widow of a relation of Ramai also saw

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Ramai kill Muthuri. But of these eye-witnesses Subni Nandi and Madki in the Session Court, as well as before the committing Magistrate, denied having been present when Muthuri was killed or any knowledge of the occurrence. They were relatives of Ramai. Luduri Kui, a small girl of twelve years' of age, had preceded her mother Muthuri in going towards the river for water. On her way back she saw Muthuri lying on the ground and dead and Ramai at the *kalihan*. Hari Ho states that Palo told him what had happened and he went and saw Muthuri lying dead. In the Session Court he stated that when he was on the way to get tobacco he had seen the man striking a woman near Ramai's house but thought that it was Ramai beating his own wife and so did not pay much attention to it. Damu Ho also said he saw the dead body of Muthuri lying behind Ramai's house.

The Sessions Judge convicted the accused under section 302, Penal Code, and sentenced him to death.

*B. K. Prasad*, for the appellant.

*Sultan Ahmed* (Government Advocate), for the Crown.

ADAMI, J. (after stating the facts, as set out above, proceeded as follows):—

The learned Sessions Judge has written a very full and well-considered judgment and has dealt with all the points which have been put before us in this appeal. He has shown that the direct evidence to the occurrence is that of Gardi and Palo and he has shown that the demeanour of these two witnesses was such as to assure him that they were speaking the truth and were manifestly relating what they had seen without any embellishment. Neither of these witnesses are related to Muthuri or are shown to have an enmity against Ramai. The learned Sessions Judge says:

"Their testimony alone is sufficient to prove that the accused was the assailant who with his *tangi* cut Muthuri Kui and killed her instantaneously."

The chief evidence then as to the occurrence is the statement of these two witnesses, the production of the blood-stained *tangi* by the appellant himself, and the confession which the appellant made.

With regard to this confession Mr. *Prasad* has urged before us that it is inadmissible in that the Deputy Magistrate who recorded it did not sign the certificate which is prescribed by the Code as now amended; he signed the certificate which was in use under the old Code. He urges too that the appellant was not asked if he made the statement voluntarily. With regard to this the question put to the appellant by the Deputy Magistrate was :

“ Are you prepared to make a statement of your own free will? ”

and surely that is equivalent to asking him whether he made the statement voluntarily. The record of the confession too does not show that the appellant was warned that he was not bound to make a confession and that if he did it might be used in evidence against him. However, owing to this omission, the Deputy Magistrate himself was called as a witness and in his evidence he has said in clear terms that he cautioned the accused explaining to him that he was not bound to make any statement and that if he did so it might be used in evidence against him.

Mr. *Prasad* has relied on two cases, that of *Queen-Empress v. Viran* <sup>(1)</sup> and *Farid v. The Crown* <sup>(2)</sup>, in arguing that owing to defects the provisions of section 533 of the Code of Criminal Procedure cannot cure the defect and make the confession admissible. In the former case the confession was found to have violated all the provisions of section 164; in the latter case there was a failure to ask whether the confession was made voluntarily and I am not inclined to agree with the finding in the latter case. In the case of *Maksud Ali v. King-Emperor* <sup>(3)</sup>, *Jwala Prasad* and *Sultan Ahmed, J.J.*, decided that the evidence of the

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recording Magistrate that he had observed all the provisions of section 164 was sufficient. In my mind there is no doubt that the present confession as recorded is admissible in this case especially since the Deputy Magistrate has been examined and has shown that he observed the provisions of the law.

With regard to the finding of the *tangi*, there has been some discrepancy among the witnesses, but the only discrepancy is really that between the evidence of Rali Pandu and the evidence given by prosecution witnesses nos. 1, 4 and 17. The learned Sessions Judge has recorded a remark with regard to Rali Pandu that he was an extremely dull person and seems to have forgotten many details and could not be relied on where he differs from witnesses of greater intelligence. According to Rali Ramai stayed in Kanu's house while the *Munda* and others brought the *tangi* from the *kalihan*. Even so his evidence proves that the *tangi* was found in the *kalihan* of Ramai whither Ramai had fled after assaulting Muthuri. The *Munda* (P. W. 1) says that Ramai took him and the other villagers to the straw hut and picked up the blood-stained *tangi* from a heap of *khar* grass and made over the *tangi* to his brother Gore and Gore handed it to the *Munda*. I do not think that the mere difference between Rali's evidence and the evidence of the three other witnesses should throw any doubt as to the fact of the production of the *tangi* by Ramai. There is in this case absolutely no reason to think that the *Munda* was in any way biassed against Ramai. He has given a clear story which has been supported by the other witnesses except Rali Pandu. I am not of opinion that the discrepancy between some of the witnesses as to when the cart carrying Muthuri's body to Chaibassa started, is material, but the discrepancy seems to be easily accounted for.

The learned Sessions Judge has pointed out that the Ho witnesses had very little idea of time and it is also quite likely that the *Dakua* who was entrusted with the duty of taking the body of Muthuri to

Chaibassa delayed till the early morning before starting out owing to the dislike of travelling through the night.

With regard to the other witnesses who saw the body of Muthuri on the ground after death and Ramai's flight to the *kalihan* and his subsequent movements, there is nothing I think which gives rise to any doubt that they are speaking the truth. Damu of course was related to Muthuri but he gives a clear account of the quarrel between Ramai and himself and his evidence is really confined to giving an account of the quarrel. His account too is supported by the documents he has produced to show the litigation which went on between him and Ramai.

We have to remember that the confession of Ramai was retracted and he went so far as to state that he never made any statement at all to the Deputy Magistrate. This confession, therefore, cannot be given any weight unless it is well corroborated by reliable evidence and I think that in the evidence of Palo and Damu as well as in the evidence of the witnesses as to what subsequently occurred, we have strong corroboration of the confession.

Mr. *Prasad* has urged before us that it is unlikely that Gardi Ho could have seen the occurrence since he said in his examination-in-chief that he was in his *angan* suffering from fever; but in answer to the Assessor he stated that he was a few paces outside his house within a fencing which surrounds the front of his house and that he saw from there. The sub-inspector of police has shown that it was quite possible for him to have seen from the place where he says he saw the occurrence.

Having read the evidence very carefully and having taken into consideration the confession and the fact that Ramai himself produced the *tangi* no doubt is left in my mind that it was Ramai who killed Muthuri and the motive for the attack is fully proved.

Mr. *Prasad* suggests that as Damu was the principal defendant in the civil suit it would be more

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likely that Ramai's anger would be turned against him and that he would have made an attack on Damu by night if possible. But it has to be remembered that Muthuri was the widow of Dising Ho and was also a co-defendant in the civil suit though in that suit no damages were asked for against her. It is quite likely that having lost the civil suit and having come to know that Damu had filed a criminal complaint against him Ramai's anger was aroused when he saw Mussammat Muthuri coming. Though we do not know how the conversation began, we are told by the witnesses that in the course of the fight Ramai shouted out :

" You say ' I have not eaten it,' so I am killing you, you she devil."

It is likely that Muthuri was taunting him about his failure to get the paddy back or that she was asking why she should give back the paddy as she had no enjoyment from it. Anyhow it seems quite likely that Ramai's anger was aroused and he took up the *tangi* and killed Muthuri.

There are no extenuating circumstances that I can see in this case and consequently I think that the conviction must be upheld and the sentence of death confirmed.

BUCKNILL, J.—I agree.

*Sentence confirmed.*

## APPELLATE CIVIL.

*Before Das and Ross, J. J.*

MAHARAJA KESHO PRASAD SINGH BAHADUR

v.

MADHO PRASAD SINGH\*

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*Limitation Act, 1908 (Act V of 1908), Schedule 1, Articles 140, 141, 144, section 9—maintenance grant by Hindu, construction of—resumption of, when cause of action accrues—*

\* Appeal from Original Decrees nos. 225 and 226 of 1921, from a decision of B. Phanindra Lal Sen, Subordinate Judge of Shahabad, dated the 16th May, 1921.