

APPELLATE CRIMINAL.

Before Mr. Justice Addison and Mr. Justice Coldstream.

BULAQI—Appellant.

versus

THE CROWN—Respondent.

Criminal Appeal No. 830 of 1927.

1928

March 22.

Indian Evidence Act, I of 1872, sections 24, 27—Confession before a prosecution witness—Sub-Inspector's man—as a result of inducement—Admissibility of—Recovery of dead body—Information given by accused, by means of inducement—Admissibility of—Principle underlying.

Where a prosecution witness, who was the Sub-Inspector's man, held out an inducement as from the Sub-Inspector to the accused that the Sub-Inspector would treat them leniently if they confessed and the accused confessed accordingly.

Held, that this was an inducement proceeding from a person in authority within the meaning of section 24 of the Evidence Act, and the confession was therefore inadmissible.

Where later one of the accused was told that the Sub-Inspector would attempt to do something for him if he showed the place where the dead body was and he accordingly did so, the dead body being found buried there, and it was contended on his behalf that this circumstance of the recovery of the body was excluded from evidence by section 24 of the Evidence Act because of the inducement:

Held, that the discovery of the dead body at the instance of the accused was admissible against him, because the broad ground for not admitting confessions under inducement or to a police officer is the danger of admitting false confessions, but the necessity for the exclusion disappears in a case provided for by section 27, when the truth of the confession is guaranteed by the discovery of facts in consequence of the information given.

Woodroffe and Amir Ali's Evidence Act, 8th edition, pages 279, 280, referred to.

Appeal from the order of M. M. L. Currie, Esquire, Sessions Judge, Multan, dated the 21st July 1927, convicting the appellant.

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SLEEM and OBEDULLA, for Appellant.

ABDUL RASHID, Assistant Legal Remembrancer,
for Respondent.

JUDGMENT.

ADDISON J.

ADDISON J.—Bulaqi and Sultan have been sentenced to transportation for life under section 302 of the Indian Penal Code for the murder of Ramzan on the night of 21st/22nd April, 1927, and have appealed.

Sultan is the brother of Ghulam, and it is said, that it was rumoured in the village that the deceased had an intrigue with Ghulam's wife, *Mussammat* Malkani. Ghulam was absent from the village that night according to the evidence of the *lambardar* Sajawal. *Mussammat* Malkani is the sister of Bulaqi. The deceased went out in the evening and had not returned when his wife awoke at midnight. Search was made for him. The *lambardar* was told next day. He called in Gahna, tracker, on the afternoon of the 22nd. This tracker did not know Ramzan's tracks before, but he picked them up near the tobacco field in Ramzan's square. He was able to follow the tracks, with some directions from certain villagers who had seen Ramzan the evening before, to the *ahata* of the brothers, Sultan and Ghulam, to which they led after making a detour. Later when certain shoes were recovered from the canal at the instance of Bulaqi, the tracker was able to say that the tracks must have been those of the owner of the shoes which have been identified by the deceased's wife to be his. Ramzan's tracks leaving the *ahata* could not be discovered but where his tracks had entered the tracker found the tracks of the two appellants, which he knew before, leaving. He thought

that they must have been carrying something heavy and they stopped twice on the way to the square of Bulaqi and Massu to which they were traced. In fact the tracker has definitely said that they led up to the place where the body was later found buried. The tracker and the *lambardar* further stated that they heard another relative, Rahman, telling Ghulam's wife to sweep away the tracks in the *ahata* when they reached there.

Next morning, *i.e.*, on the 23rd April, 1927, Sajawal, *lambardar*, went to the police station and reported the above story including the rumour as to the alleged intimacy, which the witness, however, had not heard about till the disappearance of the deceased. The Sub-Inspector was not at the police station and the information reached him on the 24th when he went to the village. Apparently he discovered nothing on the 24th and 25th. One Baqra told the Sub-Inspector at about 10 P.M. on the 25th that the appellants had confessed. This witness belongs to another village and has had a somewhat chequered career. He is the sort of person likely to be made use of by the police for their own purposes. He said that he was called by both parties but this cannot be believed. It is clear that he was called by the Sub-Inspector and this has been found also by the learned Sessions Judge. His evidence is that immediately after he joined the *panchayat* of villagers, which was sitting to help the police in the investigation of the crime, the two appellants told him that they were the culprits and that he should ask the Sub-Inspector to deal lightly with them. No one else was present when this confession was made to Baqra. Baqra went to the Sub-Inspector who said that if they pointed out the corpse he would see what he could do

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for the appellants later. Sultan then took the witness and another person to the spot where the body was buried and later Bulaqi did the same. The whole party went to the spot, which had been pointed out some time in the early morning of the 26th, and the corpse was dug up from where it was buried near the entrance of the *baini* in the square of Bulaqi and Massu. Baqra admitted that he knew at the time that Bulaqi, Sultan and Rahman were suspected by the police and had been sent for by them. They were not under formal arrest then, but they were, it is clear, *shamil taftish*, i. e., to all intents and purposes, under detention. The witness further admitted that the Sub-Inspector was only 40 or 50 *karams* away when the appellants made their confession to him. It is, therefore, difficult to escape from the conclusion that this witness was in reality an agent of the police and professing to act as such. Besides, a *lambardar*, Lal Khan, throws grave doubts on the independence of Baqra. He stated that Baqra arrived at 10 A.M. on the 25th to join the *panchayat* which was helping the police. This *lambardar* left and on his return at 5 P.M. did not see Baqra there. He next saw Baqra when the corpse was being dug up. This witness further stated that the Sub-Inspector told Baqra to join the *panchayat* and recover the corpse.

When the body was dug up it had reached an advanced stage of decomposition and the evidence of the doctor is that death could have been due to natural causes. Death in his opinion might have been due to strangulation as the tongue was protruding—a result which follows from decomposition as well. Death might also have been due to snake bite. This evidence, therefore, is not conclusive as

to the cause of death. The body was naked except for a shirt. The other clothes have not been discovered, but Bulaqi told the police that he had thrown the shoes of the deceased into the canal and they were found near the place indicated by him in the canal. This part of the evidence has already been touched upon by me.

I have mentioned before that the tracker, who appears to be a good witness, stated that the tracks of the appellants led up to the spot where the body was ultimately found buried. It is curious that no attempt was made to dig there. If this had been done in time the cause of death might have been discovered at the *post-mortem* examination with certainty. It is quite possible, however, that this was not thought of at the time, and in any case the police arrived late. There seems to me to be no reason to doubt that Sultan did show the place where the body was found buried and that he had been told before that the Sub-Inspector would attempt to do something for him if he did so. If there had been no such inducement it is clear that this circumstance would have been relevant under section 27 of the Evidence Act, but it is urged that it is excluded by section 24 because of the inducement. This subject is discussed at length at pages 279 and 280 of Amir Ali and Woodroffe's Evidence Act, 8th edition, where numerous authorities are given to the effect that section 27 qualifies section 24 as well as sections 25 and 26. The broad ground for not admitting confessions made under inducement or to a police officer is the danger of admitting false confessions, but the necessity for the exclusion disappears in a case provided for by section 27 when the truth of the confession is guaranteed by the discovery of facts in consequence of the information

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given. I would, therefore, hold that the discovery of the buried body at the instance of Sultan is admissible against him. It is clear, however, that the pointing out of the same spot by Bulaqi is inadmissible in evidence as the place was already known before he did so and was not discovered as a result of his pointing it out.

I would accept the tracker's evidence and that of the *lambardar* as to the tracks being traced at once a circumstance mentioned by the *lambardar* in the first information report which he made to the police. Bulaqi did show where the shoes were in the canal and Sultan showed the place where the corpse was buried, both these discoveries being relevant and admissible in evidence. The tracks of both appellants went to the square where the body was buried. It has been proved that Ramzan's tracks went to Ghulam and Sultan's *ahata* while no tracks of his leaving it were discovered. It has been established that the rumour about the intimacy with *Mussammât* Malkani, Ghulam's wife, was, at any rate, in common circulation immediately after he disappeared. The fact that he was buried only in his shirt is also not without significance.

I would, however, reject the confession alleged to have been made to Baqra by the appellants as being irrelevant under section 24 of the Evidence Act. It appears to me from the circumstances that it was caused by Baqra holding out an inducement as from the Sub-Inspector, whose man he undoubtedly was. It is true that the direct evidence as to the inducement being offered by the Sub-Inspector is subsequent to the confession and prior to the discovery of the corpse, but the circumstances all point to the fact that the inducement was offered prior to the confes-

sion. I would hold that Baqra was sent in order to make the appellants confess by an inducement that the Sub-Inspector would treat them leniently if they confessed. That is an inducement proceeding from a person in authority and the confession is, therefore, irrelevant.

Without the confession the evidence is not sufficient to establish that the two appellants murdered the deceased. Without the confession, however, the evidence appears to me to be ample to establish an offence under section 201 of the Indian Penal Code. The medical evidence, though not conclusive as to the cause of death, is to the effect that it might have been by strangulation. Had the deceased not been murdered he would not have been buried secretly in the field of Bulaqi and Massu. It is the only possible inference that he was murdered by somebody in the *ahata* but it cannot be said that he was murdered by the two appellants as other relatives reside there. I would hold that the two appellants are guilty under section 201, Indian Penal Code, *i.e.*, of causing the disappearance of evidence of the offence of murder of the deceased.

I would, therefore, accept the appeals and set aside the convictions of the appellants under section 302, Indian Penal Code, but I would convict them under section 201 of the Indian Penal Code, and sentence them under that section to five years' rigorous imprisonment. This in my opinion, is sufficient in the circumstances of this case.

COLDSTREAM J.—I agree.

A. N. C.

COLDSTREAM

Appeal accepted in part.

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