

APPELLATE CRIMINAL.

Before Mr. Justice, Kemp and Mr. Justice Phear.

THE QUEEN v. BELAT ALI AND OTHERS.*

1873
April. 24.

Evidence Act (I of 1872), s. 30—Confession of a Prisoner when admissible against Co-Prisoner—Trial by Jury.

To render the confession of one prisoner jointly tried with another admissible in evidence against the latter, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried.

In this case the appellants, together with Kassim Mundul, Budden Mundul, Moniruddin Mundul, and Ahad Sheikh, were charged before the Deputy Magistrate of Bongong, under s. 325 of the Indian Penal Code, with having caused grievous hurt to one Mandari Mundul, and were sentenced to imprisonment for one year. From this sentence several of the prisoners appealed to the Judge of the district, who was of opinion that, if any offence had been committed, it was one triable by a Court of Session only, and accordingly ordered the prisoners to be committed for trial before the Sessions Court on the charge of the culpable homicide of Mandari Mundul, punishable under s. 304 of the Indian Penal Code. On the trial before the Deputy Magistrate, Kassim Mundul, made a statement to the effect that Mandari Mundul was in the habit of telling stories to Brindabun Baboo the zemindar, and that he (Kassim) and the other villagers held a committee, and resolved to thrash Mandari; that afterwards Belat Ali took him to a musjeed, and there they both swore to give the thrashing; that a few days afterwards they ordered the villagers to thrash Mandari; that after doing so, the villagers came and told them, and that they had ordered them to take Mandari to his own village; that he was at a distance and saw what the others did, but that he was not near the beating; and

* Criminal Appeal, No. 277 of 1873, from an order of the Session Judge of Nuddea, dated the 12th February 1873.

1873
 QUEEN
 v.
 BELAT ALI.

that he did not know when Mandari died. Budden Mundul also deposed before the Magistrate that Belat Ali, Setabdi Mundul, Kassim, Chowdhur, Nassim, and others held a committee; and that they ordered the others to beat Mandari, and that during the beating, they remonstrated; that they saw the beating; that Setabdi, Belat Ali, and Kubeer Biswas ordered Mandari to be removed to his own village, and that Mandari was beaten because he used to tell tales to Brindabun Baboo. Moniruddin also stated to the Magistrate that he did not kill Mandari, but that he and others were ordered to give Mandari a beating; that Belat Ali, Budden, Kassim, Kubeer, and Setabdi told them that they were to give Mandari such a beating as not to kill him, and that they would pay any expenses which would be incurred; that he saw Mandari being beaten, and that he himself had given him three or four slaps.

On the trial of this case in the Sessions Court, the Judge admitted these statements in evidence, and with respect to such evidence, he charged the jury as follows:—"These are the statements of the prisoners Kassim, Budden, and Moniruddin taken by the Deputy Magistrate, and which give us the reasons for the beating inflicted. These statements are evidence against the persons making them, and if true, they show the part that the three confessing prisoners had in planning the assault in which Moniruddin took an active part, Budden being present, and Kassim close by. These prisoners now say that they made these statements at the instance of the darogah, but you will remark that when punished by the Deputy Magistrate, these prisoners did not appeal, nor urge that their confessions had been extorted, a very good ground of appeal had it been the case. No reason is apparent why, if not true, these statements should have been made; nor as to how the story as to the conspiracy against Mandari, in which we are told the whole village joined, could have arisen if absolutely without foundation. Under s 30 of the Indian Evidence Act, the confession of one person affecting himself and others concerning an offence for the committing of which the confessing person and the others are being jointly tried 'may be taken into consideration,' *i. e.*, the confessions may be used as evidence against the persons not making them.

You will therefore take the statements of Kassim, Budden, and Moniruddin into your careful consideration, and you will weigh the evidence they afford as you would any other evidence." In addition to these statements there was also the evidence of one Jakur Ali, who was a servant of Brindabun Baboo. The jury found the prisoners guilty, and the Sessions Judge sentenced them to three years' rigorous imprisonment. From the sentence Belat Ali, Sonatun Porooie, Setabdi Mundul, Kubeer Biswas, Soneer Sheikb, and Chowdhur Sheikh appealed to the High Court.

Mr. Ghose (with him Baboo Biprodass Mookerjee) for the appellants.—A confession to be evidence against a co-prisoner must implicate both the prisoner confessing as well as the co-prisoner—*The Queen v. Mohesh Biswas* (1), Here neither

(1) *Before Mr. Justice Phear and Mr. Justice Ainslie.*

THE QUEEN v. MOHESH BISWAS
AND OTHERS.*

The 23rd January 1873.

*Evidence Act (I of 1872), ss. 30 & 133—
Confession of one Prisoner when admissible against another—Accomplice—Corroborative Evidence.*

Mr. Ghose (with him Mr. Rochfort) for the appellants.

The judgment of the Court was delivered by

PEAR, J.—In this case four prisoners, Mohesh Biswas, Prilhad Doss, Goggun Sikdar, and Dwariki Joardar, have been convicted of murdering one Tincourie Karigur, and of making away with his dead body; and a fifth person, Ram Indro Doss, has been found guilty of abetting the four first named persons in the commission of the offence of murder. All five have been sentenced to transportation

* Criminal Appeal, No. 956 of 1872, Jessore, dated the 26th September 1872.

for life. Putting on one side for a moment the testimony of Soorut Ally, and the statement made by Ram Indro Doss one of the convicted persons, the evidence in the case is very slight, and may be shortly stated as follows (The learned Judge proceeded to read and comment on the evidence, and having read the following passage:—"I searched Mohesh's house and found the *dao* with marks of blood on it," continued):—"This is the whole of the evidence with the exception I first made, and it is at once remarkable that, until we come to the last passage which I have just now recited, there is not a single word or fact which implicates any one of the five prisoners in the commission of any offence or act whatever, and I will go further and say that this evidence leaves it certainly doubtful whether even any trace of the missing man has yet been discovered. (The learned Judge, after reading the principal portions of the evidence except that of Soorut Ally and Ram Indro, continued):—"Clearly I think, for some reason or other, the principal witnesses to the preliminary facts in this case have very

1873
QUEEN
v.
BELAT ALI.