

APPELLATE CRIMINAL.

Before Mr. Justice Phear and Mr. Justice Ainslie.

THE QUEEN *v.* SOOBIAN.*

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Jan. 14.

Evidence—Confession of Guilt—Credibility of Confession—Documents not in Evidence before Sessions Judge.

The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses, deposing to a confession, themselves arrived, from the answers which the accused gave to questions put by them.

Where an accused makes two distinct statements,—the one amounting to a confession of guilt, the other repudiating guilt,—if the one statement is taken against the accused, the other also must be taken, for what it is worth, in his favor. The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other.

Documents which were in the record sent up by the Magistrate, but which were not put in evidence before the Sessions Judge, were looked at because they told in favor of the prisoner.

THE prisoner in this case was charged, under s. 302 of the Indian Penal Code, with culpable homicide amounting to murder, by causing the death of Gani, her husband, and was tried before the Judge of Dinagore with the aid of assessors.

The evidence against the prisoner was that of two witnesses, and her own statement before the Magistrate.

The first witness, Mahashun, said :—

“My brother Gani is dead. He died from poison given him by his wife, the prisoner present, on a Tuesday evening. I lived in the same house with my brother. I ate that night rice and vegetable prepared by the prisoner; my brother Gani ate after me. He said after eating that he was burning inside and his tongue dry. He was in perfect health before; he shortly after vomited, and died at midnight. He took his food about 9 p. m. I asked the prisoner after his death what she had done, and she said she had given him poison in his rice. She said that Majnoo had enticed her to poison her husband as she

* Criminal case No. 977 of 1872, referred to the High Court for confirmation of the capital sentence by the Sessions Judge of Dinagore.

had an intrigue with him. She pointed out the small piece of cloth present, and said she had received the poison in that cloth. The body was sent into the station in charge of the Police and my Brother Halal, Raiaboolah and Jeetoo and others. I sent the chowkedar to the thannah 18 miles off. The Police came on the Thursday, and the body was sent in on Friday. The prisoner confessed to the Police as she did to us. I knew nothing of any intrigue between the prisoner and Majnoo. He lives near prisoner's mother, in the Purneah district. My brother was a strong, healthy man. Halal and other villagers saw my brother in the dying state; he was rolling about in great pain. He said he believed his wife had poisoned him. She was then in the house and said nothing."

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Halal, the second witness said:—

"Gani was my brother. He is dead; he was poisoned by his wife Soobjan on Tuesday night. The prisoner present is the wife of Gani. I and my brother ate first. The food was cooked by the prisoner. My brother Gani ate after us. He shortly after said he had a bad taste, and his throat and stomach were burning. He fell down and rolled about and died in great pain at midnight, having eaten about 9 p. m. His wife confessed to us that she had given him poison which Majnoo had given her, as she had an intrigue with him and would marry him when her husband was dead. She said she had the poison in the piece of cloth now present. Majnoo lives across the river. The deceased was healthy and strong; he had not eaten anything before the rice. He believed his wife had poisoned him. The Police came on the Thursday. The chowkedar went to the thannah on Wednesday morning, 7 kos distant. The prisoner confessed to having poisoned her husband before the Police. His wife was present when Gani accused her, and she made no reply. The prisoner during Falgoun and Magh was at her mother's house, 3 *rusis* from Majnoo. The body was sent in in charge of the Police. Raiaboolah and 8 men took it in. Gani has no other wife."

The prisoner's statement before the Magistrate was then read to her. It was as follows:—

"Majnoo is my brother-in-law's brother. Since last Falgoun there has been an intrigue existing between us. One Monday, 10 or 15 days ago, he gave me some white powder poison, and said that he would keep me if I would give the poison to my husband with rice, which, if he takes it, will cause his death. This led me to give poison to my husband on Tuesday with rice; he took it, and said that his tongue was very bad. So saying he vomited and fell down, and died at midnight. I gave

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the rice at one *pahar* of night. Very little quantity of powder poison was given in a piece of rag (produced in the Court). The powder was wrapped in this rag, not tied.

The prisoner was asked if her "confession" was true. She answered as follows :—

"The confession is not true. My elder brother-in-law induced me to say what I did. My husband was ill with venereal disease, and Majnoo gave me medicine for him: this I gave him. I had no intrigue with Majnoo. I gave the medicine to cure and not to kill him. I have no more to say and no witnesses."

It appeared that no *post-mortem* examination had been made, but the stomach, which had been sent to Calcutta, had been examined and was found not to contain any poison. With the documents sent up with the record there was a report by the Civil Surgeon of Dinagapore, who had apparently, at the Magistrate's request, examined Majnoo and Soobjan, both prisoners at the time, stating that Majnoo was free from both venereal disease and gonorrhœa, but that the prisoner was suffering from gonorrhœa, that she had been under treatment from the time of her admission and that she was not yet quite cured. The doctor, however was not examined as a witness, now was his report produced before the Sessions Court, or mentioned by the Judge in his judgment.

The assessors were of opinion that the evidence was not sufficient for a conviction, the body having been examined and no poison having been found in the stomach. They both thought it possible that the prisoner had been induced to confess to the Magistrate by others, and they found her not guilty. The Judge considered that the evidence was supported by her voluntary confession, and convicted the prisoner and sentenced her to death.

On the case coming up to the High Court for confirmation of the sentence under s. 287 of the Criminal Procedure Code, no one appeared for the prisoner

The following judgments were delivered :—

PEAR, J.—In this case the prisoner has been convicted of murder by the Sessions Judge differing from the assessors, and the prisoner has been sentenced to death

The assessors are of opinion that the evidence is not suffi

cient to support a conviction and the Judge himself states that the case has been sent up in rather a meagre form. And truly the materials upon which the conviction has been come to are about the very scantiest that I have ever before seen in a capital case. Apart from statements which the prisoner herself on different occasions made, the whole of the evidence directly bearing upon the charge is as follows:—[His Lordship, after reading portions of the evidence of the two witnesses continued.] —This is the whole of the material evidence in the case, exclusive of the prisoner's confessions. But both these witnesses no doubt stated that the prisoner confessed to having poisoned her husband. The words are these:—Mahashun says, "I asked the prisoner after his death what she had done, and she said she had given him poison in his rice. She said that Majnoo had induced her to poison her husband as she had an intrigue with him." Halal said:—"His wife confessed to us that she had given him poison which Majnoo had given her, as she had an intrigue with him and would marry him when her husband was dead."

Now, it is to be observed that these statements are in general terms, and so are merely statements of a conclusion at which the witnesses themselves arrived from the answers given by the prisoner to their questions. Halal says, "she confessed," but it is all important in matters of this kind to know what were the words which the person who is said to have confessed actually used: nothing short of the actual words given in detail in the first person, so far as it is possible to obtain them, ought ever to be relied upon as a foundation for the opinion formed by the Court; because, it may turn out that the words taken together with the questions and the circumstances under which the questions were put, do not in truth amount to a confession of guilt such as the witness chose to represent it. Neither of these witnesses are asked to detail their questions or even to give the actual words of the prisoner; and I must say that I should like very much indeed to have on the record even the vernacular expressions which were used, and which the Judge has translated by saying, "she said she had given him poison in his rice." It is quite certain, I think, that all which passed between these brothers of the deceased and the wife cannot possibly be given in these

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depositions, assuming anything passed at all, because I feel confident that if the woman had deliberately poisoned her husband with the motive attributed to her she would not, immediately upon his death, without anything more than that which appears in these depositions, have voluntarily made a clean breast of it, saying openly that she poisoned him because she had an intrigue with another man, and that other man had promised to keep her. It seems to me quite beyond belief that these depositions do represent all that passed, if anything passed, in this respect. I have also reason for thinking that these depositions do not even represent all that the witnesses stated in Court, for I find that the Judge in his judgment while stating the facts as he understood them, says :— ‘ The two witnesses, Mahashun and Halal, were two of his brothers, and came home before him, on the night in question, and ate their food as usual that had been cooked by the prisoner. Their brother Gani, deceased, came in after them.’ In the depositions, as they stand on the record, there is nothing from which I can get these particulars—though they are certainly material to the case of the prosecution; and I suppose the Judge did not invent them. Again, somewhat later he says :—“ The occurrence happened at a great distance, 16 or 18 miles from the thannah; and the thannah itself 36 miles from the station. The consequence was that the body was too decomposed to admit of examination, and the stomach, that was secured and sent to Calcutta for examination, failed to give signs of any poison.” There is nothing in the depositions of the two witnesses—the only two witnesses who have given evidence in the case—from which I can gather the material portion of this statement of fact. Therefore again, I suppose that they must have said more in Court than the deposition on the record represents. I find also that the Judge says :—“ The husband accused his wife of having poisoned him, but she remained silent.” Now, the only thing that I find in these two depositions bearing upon this is, first, in the deposition of Mahashun this sentence :—“ He” (*i.e.*, the deceased) “ said he believed his wife had poisoned him; she was then in the house, but she said nothing;” and, secondly, in the deposition of Halal who says in one place :—The deceased believed his wife

had poisoned him." And then afterwards he says :—" His wife was present when Gani accused her, and she made no reply." But I find no statement that Gani did in fact accuse her, or what words he used if he did accuse her.

I am afraid, therefore, that not only was the case meagre in consequence of the fault of the prosecution, but further that the record which has come up to us does not even give the whole of that little which actually was before the Court of Session. However, we must judge the matter by the record as we have it, and it seems to me that that which I have read and referred to falls very far short of constituting a foundation upon which a Court could sufficiently come to the conclusion that the person accused before it has committed murder. There are, however, in addition to this material, two statements deliberately made by the prisoner and taken down in writing at the time ;—one is the statement which she made before the committing Magistrate, and is as follows :—(*reads*). The second statement is that which the prisoner made before the Sessions Court. She was there asked whether the confession before the Magistrate, and which was read in Court, was true. [His Lordship here read the prisoner's answer to the Judge.] It will be observed that, if the first of these statements amounts to a confession of guilt, the second at any rate repudiates it, and gives an entirely different version of the transaction. If the one statement is to be taken against the prisoner, the other ought also to be taken for as much as it is worth in her favor. And then comes the question whether either of these statements is to be believed, and if either of them, which of them in preference to the other, or whether any inference can be drawn from them relative to the prisoner's guilt on the present charge.

All lawyers, who have any experience in criminal practice, well know how dangerous it is to take any prisoner's confession of guilt against himself, even though it appear to have been made voluntarily ; and certainly if this be so in England, as it is, I think I may venture to say it is not less so in this country. At any rate, inasmuch as in this case the only foundation upon which the verdict of guilty can stand at all, is that which is furnished by the words of the prisoner herself, and as the prisoner

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has made two perfectly distinct statements with regard to the matter of the crime with which she is charged, it is especially incumbent upon the Court to weigh well the relative credibility of these two statements before it takes one in preference to the other, and on the footing of it passes that sentence of the law, which, if once carried out, admits of no possible re-call. I am by no means myself prepared to say that if I had been called upon to judge of the facts of this case in the first instance on the materials only which are on the record, I should not have taken the second statement of the prisoner as being probably more near the truth than the first one. I have already given reasons for thinking that the evidence of the two brothers, with regard to the original confession, as it stands on the record, does not disclose, at any rate, all the real facts. It appears to me that the statements of these men on this point ought to have been scrutinized with the greatest care, and the confession made before the Magistrate in accordance with them, received with great suspicion. But, however this may be, I find from documents, which were not produced before the Court of Session (and which I look at because they tell in favor of the accused), materials which go very far indeed, as it seems to me, to render it probable that the prisoner in administering to her husband some ingredient in the rice, may have done so without the intention of poisoning him. There is among the documents which have come up to us a letter from the Civil Surgeon of Dinagepore, in which he states that he had examined the persons of both the prisoner and of Majnoo, and that he found that the prisoner herself was suffering from venereal disease in a severe form, while Majnoo was entirely free from any trace of it. I cannot myself understand why in the interest of justice the evidence of the medical gentleman, who was able to depose to such facts as these, was not taken at the trial in the Sessions Court. It goes to my mind almost conclusively to show that there was no such thing as an intrigue going on between the prisoner and Majnoo; and if so, as there is no suggestion made as to the source from which the prisoner could have contracted her disease the inference is not very far to reach that it had been inflicted upon her by her husband. Then, I think, when we come so far

as this, we find very good reason for preferring the statement which the prisoner made in Court as to the reasons for her administering something to her husband in the rice, to the confession which she made before the Magistrate. The Judge says that : " Before this Court, the prisoner admits mixing some medicine with her husband's food, but qualifies her confession, so far as to say, she gave it him to cure his venereal disease. If she gave him the medicine for such a purpose, she would not have administered it in a secret way with her husband's food, and without his will and permission." It seems to me that it was rather hard upon the prisoner to say that she " qualified her confession so far," and so on ; when in truth this was no confession at all, but merely a statement, which voided the guilt if it was to be believed. And I do not feel with the same force, as the Sessions Judge seems to have done, the improbability of the wife, under the circumstances which she mentions, administering the medicine in secret, that is to say, secretly as regards her husband. There might, I think, be conceived very many reasons why she should be disposed to make him try a remedy which she believed in, and which she might know he would not himself voluntarily take. We do not at this moment know what was the ingredient, the article actually administered. I suppose that taking the evidence of the two brothers as to the phenomena exhibited by the sufferer after eating the food, any one might reasonably come to the conclusion that the man had died in consequence of something which had acted as an irritant poison to him. But I think it is very unfortunate that, were even the very first step which is to be taken in the case, is a step of this kind, the Court was not aided by the evidence of an expert, namely, of the medical man, who seemingly was accessible, and whose evidence might have been taken. There is not even any proof on the record that the reason why no poison was found was that which was given by the Judge. The whole of that part of the case is left in perfect obscurity as far as the record indicates, and the consequence no doubt is, as the Judge admits, that the Sessions Court had to determine this momentous issue of life and death upon about the most meagre materials that could be well conceived. It

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appears to me that in this state of things it was clearly a just course to pursue that the Court should give the unfortunate prisoner the benefit of the uncertainty, and acquit her.

The case now comes up to us under the provisions of the Criminal Procedure Code for confirmation of the capital sentence, and we therefore have the power of passing that sentence which we think ought to have been passed by the Sessions Court. It seems to me that the prisoner ought to have been acquitted, and I think, therefore, that the sentence and the conviction must be set aside, and the prisoner acquitted.

AINSLIE, J.—I concur in acquitting the prisoner. There is no doubt that shortly before the death of Gani, she administered to him some drug which had the effect of causing his death, but it does not appear that she administered the drug with any guilty intention or knowledge that administering the drug was imminently dangerous. If we are to believe the first confession before the Magistrate, not doubt there was guilty intention ; but the second statement which she made before the Judge, that she administered the drug to cure her husband, is probably the true one. In saying this, I rely on the report of the medical officer who, as has been pointed by my learned brother, should have been examined in this case. The circumstances that he describes are entirely consistent with the second statement made by the prisoner, and I do not think that the evidence of the brothers as to her confession immediately after the death of her husband is to be taken as of any weight. It is not probable that she would administer poison, and then the moment that her intention had been carried out, and her scheme for freeing herself from the husband and enabling herself to carry on the intrigue with Majnoo had become successful, that she would expose the whole matter to the brothers, unless some very cogent means of compulsion were applied to her. They say nothing about the means employed to induce her confession, and it is very probable that they have amplified any admission that was made. As the matter stands I am by no means prepared to accept the statement which was made before the committing officer in the first instance as sufficient to warrant a conviction for murder.

Conviction set aside.