

**APPELLATE CRIMINAL.***Before Imam and Chapman JJ.*

PULIN TANTI

v.

EMPEROR.\*

1913

April 28.

*Confession—Record of confession—Questioning the accused regarding its voluntariness at the end of the statement—Criminal Procedure Code (Act V of 1898), s. 164—Confession partly false, evidentiary value of.*

Where an enquiry as to the voluntary character of the confession is made by the Magistrate not at the commencement, but at the end, of the statement by the accused, the defect is merely one of form.

If a confession is found to be false in part, viz., as to the justifying motives for an offence, it does not follow that the rest of it, relating to the commission of the offence, must be rejected. Where the entire statement of a prisoner has been given in evidence any part of it may be contradicted by the prosecution, and if sufficient grounds exist, the Court may accept the incriminatory, and reject the exculpatory, portions.

*Rex v. Higgins* (1), *Rex v. Clewes* (2) *Rex v. Steptoe* (3) referred to.

THE appellant was tried by the Sessions Judge of Bhagalpore, with the aid of assessors, on a charge under s. 302 of the Penal Code. The latter found that the deceased had been murdered, but not by the appellant. The Judge, however, disagreed with their opinion, and convicted and sentenced the appellant to transportation for life.

It appeared that the deceased, Jhapani, was the widow of the brother of the appellant, who brought her from her father's house to his own, where she had lived with him and his mother for about two years

\* Criminal Appeal No. 182 of 1913, against the order of E. G. Drake-Brockman, Sessions Judge of Bhagalpur, dated Jan. 16, 1913.

(1) (1829) 3 C. & P. 603.

(2) (1830) 4 C. & P. 221.

(3) (1830) 4 C. & P. 397.

1913  
 PULIN TANTI  
 v.  
 EMPEROR.

An intimacy had sprung up between the deceased and the appellant, resulting in her pregnancy. Thereafter frequent quarrels arose between them, and she referred these disputes to the village panchayat, at a meeting of which he admitted the paternity of the child and promised to maintain her. His mother was offended at the presence of the deceased in the house as it prevented the appellant's marriage with another woman. On the 5th November 1912, there was a quarrel, and the appellant struck her. Next morning her headless trunk was discovered on the railway lines running along the prisoner's house. Information was conveyed to the Permanent Way Inspector of Tildanga, D'Cruz, who went to the spot at 8 A.M. and spoke to the accused. The Railway Sub-inspector of Saheb-gunge arrived at the scene on the same evening, arrested the prisoner and kept him at Tildanga. On the 8th November, the appellant was produced before the Subdivisional Officer, who recorded his confession in which he admitted having throttled the deceased, cut her neck and placed the headless corpse on the railway track so as to suggest suicide. The Magistrate recorded the questions as to the voluntary character of the statement at its close. The appellant adhered to the statement on examination at the enquiry preliminary to commitment, but retracted it at the sessions trial, and alleged that it had been extorted by police torture.

The Sessions Judge convicted the prisoner, as stated above, on the 13th January 1913, whereupon he appealed to the High Court.

*Mr. Akbari* and *Moulvi Khorshed Hossain*, for the appellant.

*The Deputy Legal Remembrancer (Mr. Orr)*, for the Crown.

*Cur. adv. vult.*

IMAM AND CHAPMAN JJ. The appellant, Pulin Tanti, has been convicted by the Sessions Judge of Bhagalpore under section 302 of the Indian Penal Code, and sentenced to transportation for life for killing his brother's widow whom he had been keeping as his mistress. The assessors were of the opinion that the deceased had been murdered, but they found no proof that the accused had caused her death.

1913  
PULIN TANTI  
v.  
EMPEROR.

The facts of the case appear to be these:—

After the deceased became a widow she went to live with her father, but after some time she was brought back by the appellant to his house to live with him and his mother. An intimacy between the two resulted in her pregnancy, followed by bickerings and quarrels between the deceased on one side and the appellant and his mother on the other. An appeal by the woman to the village community led to a panchayat, at which the appellant acknowledged the paternity of the unborn child and agreed to maintain her. This, instead of removing the unpleasantness, accentuated it, since the mother realized that the woman's presence was the cause of her son not marrying a wife in a regular way. On 5th November last, there had been a quarrel between the deceased and the appellant when it is said he struck her, and the next morning was found the headless corpse of the woman lying between the rails on the railway line which passes the village Saheb Nagar, the home of the accused. On information being received at Tildanga, a railway station, of the fact of a corpse lying on the line, the Permanent Way Inspector, D'Cruz, came to the spot at about 8 A.M. on the 5th November. In the evening of the same day the Railway Sub-inspector of Police of Sahebganj went to the spot, and after doing the needful brought the accused to Tildanga, where he was kept for the night. The Sub-inspector again, went to

1913  
PULIN TANTI  
v.  
EMPEROR.

the spot the next morning with the accused. The Permanent Way Inspector, D'Cruz, also went to the spot that morning. On the 8th November the accused was sent by the police to the Subdivisional Magistrate for his confession to be recorded. There he made a long statement in which, after relating justificatory grounds, he admitted having throttled the woman, severed her head from the body and then placed the headless trunk on the railway line, to give the whole incident an appearance of suicide. At the enquiry, preparatory to commitment, the accused, when questioned, adhered to the statement made in his confession. At the trial in the Sessions Court the accused retracted the confession and alleged in his written statement that the confession had been induced by torture.

In this Court, emphasis on behalf of the appellant is laid on, (i) the confession not being recorded properly, (ii) its involuntary character, and (iii) the confession having been retracted the Judge ought not to have relied on it.

We see no substance in the first objection, as the only defect pointed out is that the Magistrate, instead of asking the accused about the voluntary nature of the confession at the commencement of the confessional statement, asked him at the end. That appears to us to be merely a defect of form that does not alter the character of the confession.

There is nothing on the record to support the second objection.

In respect of the third objection, we have to see if the material statements in the confession are supported by independent and corroborative evidence.

The defence is that the woman was run over by a train. This theory is obviously unsustainable, and the witnesses, including the doctor and the railway

men, are agreed that the woman was not run over by a railway train. We have carefully considered the evidence regarding this theory of the defence and have come to the conclusion that the woman was murdered. The assessors also have agreed with the learned Judge in his view that the woman came by her death as the result of a murder.

1913  
 PULIN TANTI  
 v.  
 EMPEROR.

The theory of the woman being run over by a train having been disproved, and murder being established, the previous history of the relations between the deceased woman and the appellant has a very relevant bearing on the charge against him. His refusal to maintain her, her appealing to the villagers against his conduct, the holding of a panchayat, her having become pregnant, his mother's displeasure at the woman's presence in the house, the frequent quarrels and bickerings between the man and woman ending in his having struck her on the 5th November, a day before the body is discovered on the railway line, supply conjointly a sufficient motive for the murder.

The statement of the accused in the confession that he had borrowed a *hansua* from his neighbour, Mahadeo, for the purpose of cutting the woman's throat, is borne out by the testimony of Mahadeo, which affords an independent corroboration of a most material statement in the confession of the accused.

The Permanent Way Inspector, D Cruz, has deposed that on the morning of the 6th November, when he spoke to the accused, the latter told him that the woman had been unfaithful to him. It has to be borne in mind that up to that time the police had not arrived on the scene, and no one can suggest that some of the justificatory statements made subsequently in the confession were made by the accused to

1913

PULIN TANTI  
v.  
EMPEROR.

D'Cruz under pressure. The learned counsel for the appellant has pointed out several statements in the confession that must be false, and, therefrom, he argues that the entire confession, including the admission of guilt, must also be false. We may point out that only such statements as embody the justification for the murder have been shown to be false, and it stands to reason that an accused person may well attempt to justify his act by setting out false reasons if the motive for his confession is not repentance of his sin. We are asked to hold that, parts of the confession having been found to be false, the entire confession should be rejected. This is too broad a proposition, to which we can not accede. After the entire statement of a prisoner has been given in evidence, any part of it may be contradicted by the prosecution if they choose to do so, and then the whole testimony is left open for consideration precisely as in other cases where one part of the evidence contradicts another. Even without such contradiction it is not supposed that all the parts of a confession are entitled to equal credit. If sufficient grounds exist the part that charges the prisoner may be believed, while that which is in his favour may be rejected: see *Rex v. Higgins* (1), *Rex v. Steptoe* (2), *Rex v. Clewes* (3).

We find that the case for the prosecution is strongly supported by circumstances and there is independent corroboration of some of the most material statements of the confession from the evidence of the prosecution. We believe that the confession was voluntarily made. The conviction of the appellant is upheld and the appeal is dismissed.

E. H. M.

*Appeal dismissed*

(1) (1829) 3 C. &amp; P. 603.

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