

(1873) 04 CAL CK 0010
In the Calcutta High Court
Case No : Criminal Appeal No. 277 of 1873

The Queen

APPELLANT

Vs

Belat Ali and Others

RESPONDENT

Date of Decision : 24-04-1873

Acts Referred:

Citation : (1873) 04 CAL CK 0010

Judgement

Phear, J.—We think that the verdict of the jury must be set aside on the ground that the Judge wrongly directed them with regard to the reception of the so-called confession of two at least of the prisoners who were jointly tried with the appellants, namely, Kassim Mundul and Budden Mundul. I have, on a former occasion, in the case of *The Queen v. Mohesh Biswas Ante.* p. 455 already explained the view which I take as to the proper application of s. 30 of the new Evidence Act. That view is shortly this namely, that before a confession of a person jointly tried with the prisoners can be taken into consideration against him, 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. It seems to me that it is this implication of himself by the confessing person which is intended by the Legislature to take the place as it were of the sanction of an oath, or rather which is supposed to serve as some guarantee for the truth of the accusation against the other. In the case before us neither Kassim Mundul nor Budden Mundul say anything which amounts to a confession of their own individual guilt upon the charge whereon they were tried jointly with the petitioners, appellants. Both these men distinctly keep themselves out of all complicity in the actual facts which are charged against all the prisoners jointly, and upon which the appellants have been convicted with the others, so that it appears to my judgment that the statements" which these men make against the appellants are simply, so far as the charge upon which they have been convicted is concerned, statements made without either the sanction of an oath, or of that substitute for that sanction to which I have already referred, namely,

the implication of themselves on the charge upon which they have been tried with the appellants,--in short, without the application of any test of truth whatever. There may be some doubt whether these remarks are applicable to the confession of Moniruddin. Moniruddin, no doubt, does state facts against himself which amount to a confession of guilt upon the charge on which he and the other prisoners have been convicted: at the same time the statements which he makes in this confession against the appellants, if they amount to anything material, seem to me to be statements which make them accessories before the fact if it all, and not actual actors in the transaction which constitutes the foundation of the charge. But however this may be, it is sufficient for me to say that, in my opinion, in so far as the Sessions Judge has directed that the statements of Kassim Mundul and Buddun Mundul against the prisoners can in this trial be treated as evidence against the appellants, this is a wrong direction on a point most material to the fate of the trial, and therefore I think the verdict must be set aside. I further think that we ought not in this case to direct a fresh trial because upon the best consideration which I have been able to give to the evidence upon the record, the only evidence which there appears to affect the appellants, in addition to the statements of these so--called confessing prisoners, is the testimony of one Jakur, and I feel that, if I had to try the case as a Juror upon this man's testimony, taken with even the statement of Muniruddin, supposing this statement to be admissible, I could not convict the appellant of the charges upon which they have been convicted in the Court below. It therefore, appears to me that we ought not to send back this case for a new trial, simply because I am of opinion that the evidence on the record would not be sufficient upon such new trial to convict the prisoners. I would, therefore, set aside the verdict, and direct that the prisoners be discharged.

(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

Phear, J.--In this case four prisoners, Mohesh Biswas, Prilhad Doss, Goggun Sikdar, and Dwarki Joardar, have been convicted of murdering one Tinoourie 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 for life. Fitting 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 materially varied their testimony in the Sessions Court, as compared with the statements which they made at first when it may be supposed that they made them unbiased. The result then is that, taking the evidence on the record all together, other than the deposition of Soorut Ally and the statement of Ram Indro, which I shall notice in detail presently, it may be almost said that the case of the prosecution is scarcely even started, and certainly that evidence does not in any degree tend to implicate any one of the prisoners in the commission of the offence with which they were charged. But Soorut Ally's evidence, as far as it can be depended upon, entirely alters the complexion of the case. I will read it at length. (The learned Judge read the evidence and continued):--I have said that this deposition entirely changes the complexion of the case. Manifestly, if it can be relied upon, it clearly establishes the charge of murder against the first four prisoners at least. But then this is the evidence of an accomplice. If the story which he gives is true, he went and fetched the man, was present when his master twisted the cloth round the man's neck, stood by while the man was dragged into the hut, accompanied the prisoners when they carried off the body, and put it down in the indigo field; there stood looking on while every man, excepting himself and Ram Indro, as he says, took the dao by turns, hacked the skull, and cut the body into pieces, and then went away with them, when the remains of the body were put into the sack, and were pitched into the river. Clearly the part he admits that he took in the whole of this transaction, is such a participation in the principal acts of the murderers as constitutes him an accomplice, and it is well understood now that the evidence of an accomplice cannot be safely acted upon as against persons accused by him excepting when it is corroborated in regard to the particulars which implicate them. This principle has been enunciated many times by this Court, and inasmuch as a reported case *Queen v. Baikanthanath Banerjee* 3 B.L.R., F.B, 2 has been referred to, in which the judgment of the Division Bench, dealing with this very matter, was delivered by myself, I will read from the note in *Queen v. Baikanthanath Banerjee* 3 B.L.R., F.B, 2 what was then said, because it still represents my views. (The learned Judge read that judgment and continued):--The case I have now read is not precisely, so to speak, on all fours with the present one, but the remarks there made do almost to their full extent apply to the question which is now before us. The corroboration which is needed

to make Soorut Ally's testimony against the prisoner's trust worthy, should be corroboration derived from evidence which is independent of accomplices, which is not vitiated by the accomplice character of the witness not affected, namely, by the disposition on the part of one whose guilt is disclosed to purchase impunity or advantage by falsely accusing others; and further should be such as to support that portion of the accomplice's testimony which makes out that the prisoner was present at the time when the crime was committed, and participated in the acts of Commission. The Judge has found corroboration in more than one particular. But it appears to me that that corroboration does not bear the character which I have endeavored to describe as that which it is necessary it should bear in order to render the accomplice's evidence trustworthy against the prisoner. (The learned Judge read the evidence which the Judge of the lower Court relied on as being corroborative of the deposition made by Soorut Ally, and proceeded). The Judge says:-- "And finally there is the confession of Ram Indro Doss which, under s. 30 of the new Evidence Act, may be taken into consideration against all the prisoners." With regard to this I shall proceed now to say a few words. But first I will remark that up to this point Soorut Ally's evidence has certainly not received that amount of corroboration which would justify a Court of Criminal Justice in coming to the conclusion that the persons who are affected by it were guilty of the offence with which he accused them, Ram Indro, the fifth prisoner, when before the Magistrate, made a long statement of the which he knew of the case. Of course, it may be every word of it taken and acted upon as against himself, but it is only admissible against the others whether for the purpose of corroboration of an accomplice's testimony, or otherwise so far as it is made available by s. 30 of the new Evidence Act, which says:-- "When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person, as well as against the person who makes such confession." It appears to me that this section must be interpreted to mean that the statement of fact made by the prisoner which amounts to a confession of guilt on his part may be taken into consideration, so far and so far only as that particular statement of fact itself extends against the other prisoners who are being tried as well as himself for the offence which is thus confessed. I think the illustrations which are given to this section bear out this view. If this be so, we must be careful not to apply statements made by Ram Indro Dass before the Magistrate against other prisoners than himself further than those same statements amount in themselves to a confession of guilt on his part. The remainder of the prisoners besides Ram Indro, I think without exception, both before the Magistrate and in the Sessions Court, denied having had any knowledge or any participation in the murder, and Ram Indro himself in the Sessions Court stated that whatever he had said before the Magistrate was untrue I will proceed to the statement he made before the Magistrate (the learned Judge read the statement and continued):--It is obvious on the first perusal of this statement that the prisoner keep carefully clear of confessing any

participation to the murder. The most that the statement has whole amounts to is an admission on the part of Ram Indro of aiding and abetting by his; presence all the other persons mentioned by him who were engaged in cutting and making away with the dead body of the man who had already been murdered. The statement so, far as it is a confession only, is I think limited to this, namely, the statement of facts which amount to a criminal participation in making away with the body, and consequently this is all which can be taken into consideration under s. 30 against the other prisoners. But this statement so limited undoubtedly does bring Mohesh Biswas, Prilhad Doss, Goggun Sikdar, and Dwarki Joardar to the indigo-field and represents them as engaged there in cutting up and making away with the dead body. It, therefore, corroborates the statement of Soorut Ally in these particulars. The question is, does this amount to a sufficient corroboration such as will justify us in accepting as true, and acting upon, Soorut Ally's testimony. On the whole, I think not; shortly for this reason that if, instead of being the statement of a fellow prisoner, it had been the evidence given on oath of Ram Indro Dass examined as a witness in the case, it would not have been anything other than the evidence of an accomplice, and as such. I think it does not (I may say generally, cannot) constitute satisfactory corroboration of the other accomplice's testimony, certainly in this particular instance, I think it is in itself extremely un-satisfactory.....

The result then of the best consideration which I have been able to give to the record in this case is that the evidence is altogether insufficient to support the convictions which have been come to of the first four prisoners, Mohesh Biswas, Prilhad Doss, Goggun Sikdar, and Dwarki Joardar. As to Ram Indro the case is different. His own statement before the Magistrate, if it can be believed, is most distinctly a confession of having knowingly and designedly taken part in the making away with and concealment of a dead body which he knew was the body of a murdered man I have already stated the grounds upon which I think it cannot be trusted as evidence against the other prisoners, but I am not prepared to say that it ought not to be trusted so far as it amounts to an admission of guilt in himself The four first prisoners must be therefore acquitted, and the sentence passed upon them set aside. The appeal of Ram Indro is dismissed.

* Criminal Appeal, No. 956 of 1872, from and order of the Sessions Judge of Jessore, dated the 26th September 1872.