

CALCUTTA HIGH COURT

Umadasi Dasi

Vs

Emperor

(Mukerji ,J.)

26.06.1924

JUDGMENT

Mukerji ,J

1. The appellant Uma Dasi and one Nabani Dhar Mandal were committed for trial to the Court of the Sessions Judge at Birbhum on a charge that; they committed murder by causing the death of Radha Raman Mandal. In the Sessions Court a charge was added against the appellant which was as follows : I.K.C. Nag, Sessions Judge of Birbhum hereby charge you Uma Dasi as follows:- That you, on or about the 30th day of August 1923, at Dechandra P.S. Shapur being present abetted the commission of the offence of murder of Radha Raman Mandal by Nabanidhar Mandal which was committed in consequence of your abetment and thereby committed an offence punishable under Sections 302/109 of the Indian Penal Code, etc." The first trial of the accused persons commenced on the 26th November,1923,and continued till the 5th December, 1923, when the jury were discharged and a fresh trial ordered as one of them was unable to attend owing to illness. The second trial commenced on the 7th January, and ended on the 17th January, 1924. Seven of the jurors found Umadasi guilty under Sections 302/109 and two of them found her not guilty. Four were of the opinion that Nabanidhar Mandal was guilty under Sections 302 and five were of opinion that he was not guilty. The jury unanimously recommended Umadasi for mercy on the ground of her youth. The Sessions Judge agreed with the verdict of the majority of the jurors and convicted her under Sections 302/109, Indian Penal Code. Accepting the recommendation of the jury he sentenced her to transportation for life. He recorded an order of acquittal of the charge under Section 302, Indian Penal Code. He did not accept the verdict of the majority of the jury acquitting Nabanidhar Mandal and referred his case to this Court under the provisions of Section 307, Criminal Procedure Code. This reference (No. 6 of 1924) was heard by another Divisional Bench of this Court on the 20th March. The reference was not accepted and the accused Nabanidhar Mandal was acquitted. The first point urged on behalf of the appellant is that Nabanidhar having been acquitted her conviction cannot stand. It is urged that the only charge on which she was convicted was that of having abetted the commission of the offence of murder by Nabanidhar. and that, as it has been judicially and finally decided that Nabanidhar did not commit the murder, it would be anomalous to hold that the appellant abetted the commission of an offence that had not been committed. It is further urged as a supplementary argument that there was misdirection by the learned Sessions Judge, since he omitted to tell the jury the points they would have to consider with reference to

the charge of abetment if they acquitted Nabanidhar on the charge of murder. In support of the contention reliance is placed on the decision in *Raja Khan v. King-Emperor*¹ In that case one Taraf Ali was charged with cheating by personating and the two appellants were charged with abetment of that offence. Taraf Ali was acquitted and the two appellants were convicted. It was held on appeal that the jury should have been told that the first thing that must be decided was whether the alleged offence had been committed by Taraf Ali, and unless Taraf Ali was guilty the appellants could not be found guilty of abetting that offence. The report of the case gives no facts except those stated in the appellate judgment, it does not in our opinion support the general proposition that in every case where an abettor and principal are tried together the abettor if charged with having abetted the principal in the commission of an offence must be acquitted if the principal is acquitted. In the majority of cases this would necessarily follow, but we hold that a case like the present might be an exception to the general rule. The general rule is stated in the head-note to the case above cited in the following terms: " An offence of abetment falls through if the principal offence is not substantiated." There is nothing to suggest that on that case there was any evidence to prove the commission of the offence by the principal as against the abettor which was not equally good evidence against the principal Taraf Ali. If the jury disbelieved that evidence it would necessarily follow that those-charged with abetment should also have been acquitted. The present case is distinguishable firstly, on the ground that there can be no doubt that the offence of murder was committed secondly, on the ground that there was the evidence of a retracted confession by Umadasi on the basis of which the jury might have found, as against her, that the murder was committed by Nabanidhar, though as against him it would be of practically no value and insufficient to support a conviction. The strongest support to this contention on behalf of the appellant is to be found in the English law, the leading case on this point being *B. v. Plummer*² Under English law the present appellant would be entitled to an acquittal on the ground of repugnancy or contradiction on the face of the record. But we are in agreement with the opinion expressed by Beachcroft, J. in his judgment in *Romesh Chandra Bannerjee v. The Emperor*³. He held at page 5-6 that, mere repugnancy in the verdict of a jury is not; by itself sufficient to ensure the quashing, of a conviction. In addition to the ' weighty reasons given by Beachcroft, J., we may add that the English decisions on the point appear to have been based on a regard for long established practice rather than on principle. In one of the earlier cases, *B. v. Manning*⁴ two of the learned Judges Mathew and Stephen, JJ., expressly stated that they affirmed this principle with great reluctance. Lord Coleridge. C.J., who originally tried the case, had directed the jury that, where two persons were indicted for conspiring together and were tried together, they might find one prisoner guilty and acquit the other. He also was one of the Bench that heard the rule for a new trial. In his judgment on that rule he explained that his opinion at the time of the trial was that, where there is a joint offence which has to be proved against each person separately, the evidence which is sufficient to convict one person of the offence may not by any means be sufficient to convict the other. He further stated that he might have adhered to this view if the matter had been res integra. In *R. v. Plummer*⁵ also two of the learned Judges Lord Alverstone, C.J., and Jelf, J., felt considerable difficulty on this point. In the absence of any provision in the Indian statute law we do not feel bound to follow this rule of English law that repugnancy on the record is a ground for quashing a conviction.

2. The learned vakil for the appellant ably argued several other points of law on his client's behalf. As we hold that this appeal must be allowed on one of these grounds, we do not think it necessary to discuss the other grounds of minor importance which we held not to have been established. The case for the prosecution is that Radharaman Mandal was murdered by

Nabanidhar Mandal the paramour of Uma Dasi who was the wife of the murdered man. On the night of the murder Uma Dasi and her husband were left alone in their house, the other inmate Radharaman's mother having gone to another village at Uma Dasi's request. The next morning Radharaman's corpse was discovered on the bank of a tank 30 cubits away. The wounds on the body, the blood stains found in the house and marks of dragging from the house to the tank afford very strong circumstantial evidence that the murder was committed in the house by some one who struck severe blows to the deceased thrice on the head with some hard substance. Uma Dasi's conduct was suspicious and she made contradictory statements when questioned about the manner in which her husband was killed. To the investigating Sub-Inspector, Uma Dasi made incriminating statements when she produced a number of bloodstained, articles. The following afternoon Uma Dasi was taken before the Sub-Divisional Magistrate where she made a statement of the nature of a confession implicating herself and Nabani. This incriminating statement she subsequently retracted. It is with reference to this statement that there has been serious misdirection. In this statement Uma Das maid that Nabani murdered her husband by striking him over the head with an axe while she held his legs. But she also said that she protested against the murder, and only assisted Nabani because he threatened to murder her also. The learned Sessions Judge in his charge to the jury has overlooked the provisions of Section 94 of the Indian Penal Code. Under this section a plea of compulsion by threats which reasonably cause the apprehension of instant death is a good defence by a person charged with any offence except murder and offences against the state punishable with death. This statement of Uma Dasi, if believed, though not a bar to her conviction on the charge of murder, could not support the charge of abetment of murder. The word murder in Section 94, Indian Penal Code, cannot be held to include abetment of murder punishable under Section 109, Indian Penal Code. The prosecution is therefore placed in a dilemma. If the statement of Uma Dasi is true, she is entitled to acquittal on the charge of abetment on the ground that she acted under the apprehension of instant death. If this statement is false, the evidence against her is insufficient to prove that Nabani committed the murder and she cannot be convicted on the charge as framed that she abetted the commission of murder by him. The learned Deputy Legal Remembrancer asked us to disbelieve this part of the confession and to hold that the circumstantial evidence was sufficient to support the verdict of the jury. This we cannot do, as it cannot be said that the jury would have convicted two appellants if they had been properly directed as to the application of Section 94, Indian Penal Code. If, as we must presume,, the jury obeyed the direction of law given to them by the learned Judge, it seems: evident that they did believe the confession. They were told that if they held on a consideration of the whole of the evidence that Uma Dasi was actuated by the common intention of murdering her husband when she held his legs, Uma Dasi and Nabani were both guilty under Section 302, Indian Penal Code. As they did not find her guilty under this section but of abetment as charged, it appears that they believed that she held her husband's legs while Nabani murdered him, but that she was not actuated by the common intention of murdering him, they could only have come to this conclusion, if they accepted her explanation and believed her confession as a whole. On this finding the appellant is entitled to an acquittal and it would not be just to order her retrial.

3. There are also other reasons why we do not think a retrial should be ordered. At a retrial the case for the prosecution would incessantly be that the statement of Uma Dasi was not a true account of what happened, but that her guilt was established by the circumstantial evidence. This circumstantial evidence is such that the Inference might be drawn that she was guilty of murder, but she cannot be again tried on that charge, after her acquittal, further the circumstantial evidence appears consistent with her having been an accessory after the fact and if the jury took

this view she could not be convicted of abetment.

4. For the above reasons we set aside the conviction and sentence of the appellant on the charge of having abetted the commission of murder by Nabanidhar Mandal and direct that she be released at once.

Cases Referred.

1(1921) 32 C.L.J. 478

2(1902) 2 K.B.D. 339

3(1913) 41 Cal. 350

4(1883) 21 Q.B.D. 241

5(1902) 2 K.B.D. 339