

CALCUTTA HIGH COURT

Emperor

Vs

Chintamani Shahu

(Guha, J.)

17.03.1930

JUDGMENT

Guha, J.

1. This is a reference under Section 307, Criminal P.C., by the Additional Sessions Judge of Hooghly in a case where the accused was acquitted by the unanimous verdict of the jury upon charges under Section 302 and Section 392 read with Section 397, I.P.C., in connexion with the death of Gyanodamoyee Dassi.

2. According to the evidence for the prosecution one Kali Charan Ghose had a house at Moheshpur where he resided along with his mother Gyanodamoyee, the deceased, and the accused Chintamani who was their servant. The house consisted of two rooms and verandah; in one room Kali used, to sleep, in the other his mother. There was also a corrugated iron cowshed, in part of which the accused used to sleep and a thatched cowshed and cookshed. On 24th April 1929, Kali with a neighbour Dulal Ghose went to the house of one Sarat Ghose in another village for a marriage ceremony and stayed the night, leaving his mother and the accused athome. On the following day Kali went to his father-in-law's house whither his wife had gone for her confinement, and stayed there for that night. On the morning of 26th he returned home and after making enquiries and finding the verandah doors locked, he sent a lad Amulya to obtain entrance to the verandah from the stairs leading to the roof. The dead body of Gyanodamoyee was then found in the verandah with most terrible injuries on her head and body, and blood stained katari near by.

3. The drain from the verandah had been blocked up by clothes from inside, and there were some cow dung cakes outside. The accused was not forthcoming, and certain properties were found to be missing. The chaukidar Rasu Keora was sent for and despatched to the thana 10 miles away with the first information which was recorded at 7 p.m., and would have been recorded earlier but for the fact that the Sub-Inspector in charge was not available at the time. The first information included statement that the deceased had a gold necklace on her neck, and a silver chain on her waist, which the thief had taken away, and it was also stated that the perpetrator was the Ooriya servant. On 27th about 3 a.m. the Sub-Inspector went to the scene of occurrence and among other things obtained a list of the missing articles, which besides cash and certain dhoties were described as "Bichha har (necklace) of sovereign gold weighing 2 1/2 tolas" value Rs. 50,

and "Bichha waist chain of silver weighing 5 totals Rs. 2/8." On 28th April, a telegram was sent by the Polba police to the police at Cuttack in the following terms:

Daroga Manga Cuttack arrest murderer for gain Chintamoni Sahu son of Nitai, Moyra village Tulsipur search his house stolen properties gold ghasa har silver gote churipar cloths cash Rs. 250 letter follows.

4. On that there is an endorsement of S.I. Town 10-15 p.m.:

I don't know who "Daroga Manga" is. This refers to a murder case. Take action tonight according to this telegram. Confirmation of telegram will probably be received tomorrow.

5. The result of this was that on 1st May 1929, the head-constable of the Mohanga Thana (P.W. 14) went to the house of the accused and arrested him. He was accompanied by Bowri Bandhu Naik and Ananta Shau, both of whom have given evidence. One of the accused's boxes was opened by a key from the accused's possession and in it was bound a gold chain, said to be Ex. 1, since identified as the bichha har of the deceased. On this occasion, however, the head-constable says that he did not seize it, partly because the accused said it was brass and he had bought it in Calcutta for keeping his keys, and partly because the telegram referred not to a bichha har but to a ghasa har. It was not until 2nd June 1929 that a further search was made by this witness of accused's house in the presence of Bhagaban Sarman a Lakhinda Das and the chain was then taken not from the box but from the neck of the accused's wife. It was forwarded to the police at Chinsurah and on 3rd July the investigating officer said that he came to know the her had come, and he had a test identification. Meantime on 13th May the investigating officer had come to know of accused's arrival at Hoogly and on 17th May his statement had been recorded by the Magistrate. The accused's original statement says that two men whom he names gave him Rs. 5 and coerced him into leaving for his native village : but in his statements in Court he simply pleads his innocence.

6. Admittedly the case against the accused must depend on the circumstantial evidence, and the question for consideration is whether the facts proved are incompatible with his innocence and not capable of explanation upon any other reasonable hypothesis than that of his guilt.

7. It has been proved by the witnesses Dulal Ghose, Charubala Dasi, Hari Dasi, and Jugal Ghose that deceased was alive up to about 11 p.m. on the evening before the discovery of the murder, and that the accused was living there up till then. There is also his statement which shows he was there. There is evidence that he was missing on the morning of 26th, and that he arrived at Cuttack two or three days afterwards. Then came the search on 1st May above referred to.

8. Then as regards the katari, it is identified by Kali Charan as the one belonging to the house, and the evidence is that it was kept in the corrugated iron shed along with other implements in the custody of the accused. It is also referred to by the investigating officer, and he says he saw implements of agriculture in the tinroofed cowshed.

9. Mention must also be made of the two cloths found in the machan, which are identified by Kali Charan as belonging to the accused, one of which as well as the katari was stained with human blood, according to the report of the Chemical Examiner.

10. Two witnesses, Dulal Ghose and Hari Dassi depose to the fact that on the evening before the occurrence the accused had made enquiries from Dulal as to when Kali Charan would return

home.

11. Charubala Dassi has stated that the milk from the cows was kept in a sika in the verindah, and that she milked Kali Charan's cow the previous evening : while from the evidence of Monmotha Nath Ghose it appears that after the discovery of the murder the sika was in the cookshed. Too much must not be made of this because it was there also on the previous day, and it seems it would be left there if the verandah was not accessible.

12. Then as to the important questions of the necklace. It was mentioned in the first information as a gold chain, and the chowkidar who gave the first information says he was informed it was a bichha har. It also appears as such in the list furnished on 27th April of the missing article, and the investigating officer says he was told about it when he went to the spot. The head constable who searched the accused's house had explained why he did not seize it in the first instance, and his story and explanation are substantially supported by the witnesses Bowri Bandhu and Ananto Shau who were present on that occasion. The witness Hari Dassi and Charubala Dassi say that the deceased always wore a chain for sometime previously and that they saw her with it on upon the night of 25th; and they identify it. Kali also identifies it as the chain belonging to his mother. Then there is the evidence of the goldsmith who produces his book to show that the bichha har was ordered for the deceased by her uncle in Aswin 1332, as well as other articles on other occasions. He identifies the one in question, and his workman who actually made it does the same, though he admits there is no private mark on it : but he says he can recognize it from the style and the workmanship. Dulal Ghose also stated the deceased used to wear a gold chain on her neck. It has, been argued for the defence that the identity of the har found with accused has not been established with that of the deceased.

13. It is pointed out that in the first instance it was considered to be brass, and it is not explained how the second search originated; while no attempt was made to conceal it between the first and the second searches. The delay in its arrival at Hooghly on 24th June is also pointed at as showing the possibility of substitution, and the weight in this malkhana register is somewhat different, from that given by the goldsmith. Then P.W. 6 admits that she was shown the har by the Daroga before the test identification. The wife of the accused when examined says that when accused came he brought cloth and a chain, and after the search she says she kept the chain round her neck by request of her husband's brother; she adds that the jamadar asked her where the chain was; that he left previously and she then gave him the chain from her neck. She identified the chain in the Magistrate's Court, and though she does not identify it in her statement before the sessions, she does not repudiate it. Accused's brother also testifies that the har on the first occasion was like the har in question. (Ex. 1) and that on the second occasion the accused's wife gave this har (Ex. 1) to the jamadar. Taking all these facts together we think that there can be no doubt upon the evidence that the necklace worn by the deceased was the one found in possession of the accused on 1st May and seized by the police on 2nd June and produced in Court as Ex. 1.

14. Next it is contended for the accused, that if the chain found with him was the bichha har of the deceased, the presumption arising from his possession not otherwise explained, does not go beyond a presumption against him as receiver of stolen property. Two cases were cited, namely, *Sogaimuthu v. Emperor* where it was said that when the unexplained possession of stolen property is the only circumstance appearing in evidence against an accused charged with murder

and theft, the accused cannot be convicted unless the Court is satisfied that possession of the property could not have been transferred from the deceased to the accused except by the former being murdered. But it was also recognized in that case that if there is other evidence to connect the accused with the death a jury might find upon circumstantial evidence that he was the murderer. The other case of *Gauns v. Emperor*¹ is merely an instance where circumstantial evidence, including the unexplained possession of jewellery belonging to deceased was held not sufficient to warrant a conclusion that the accused had committed the murder. The learned Judge in his charge has rightly referred to the principle cited in *Emperor v. Neamatulla*² that the possession of stolen goods recently after the loss of them may be indicative not merely of the offence of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft; this particular fact of presumption commonly forms also a material element of evidence in case of murder, which special application of it has often been emphatically recognized. The presumption would be particularly applicable where, as in the present case, there is satisfactory proof that the necklace was habitually worn by the deceased and that she was actually seen to be wearing it on the evening before the murder.

15. Upon a consideration of the whole of the evidence above referred to and after giving due weight thereto and to the opinion of the learned Judge we accept the reference, set aside the verdict of the jury and find the accused guilty of the offences charged. In the circumstances of the present case we think we may recognize the verdict of the jury to the extent of refraining from the sentence of the extreme penalty, and accordingly we sentence the accused to transportation for life under Section 302, I.P.C. No separate sentence is necessary upon the other charges.

Cases Referred.

1A.I.R. 1926 Lah. 691

2[1913] 17 C.W.N. 1077