

Equivalent Citation: AIR 1924 Lah 581, 84Ind. Cas.552

IN THE HIGH COURT OF LAHORE

Cr. Appeal No. 1268 of 1923

Decided On: 17.03.1924

Appellants: **Ranga and Ors.**
Vs.
Respondent: **The Crown**

Hon'ble

Scott-Smith and Fforde, JJ.

Judges/Coram:

Counsels:

For Appellant/Petitioner/Plaintiff: Muhammad Iqbal

For Respondents/Defendant: Public Prosecutor

JUDGMENT

Scott-Smith, J.

1. This is an appeal by Ranga and four others from the order of the Sessions Judge of Rawalpindi convicting them of the murder of one Mahabat of village Hasal. Two of the appellants, Manga and Dadu, have been sentenced to death and the other three, Ranga, Hashamand Sawar, to transportation for life. The appeal is a joint one filed by counsel, and the cases of those sentenced to death are also before us for confirmation of the sentences under S. 374, Criminal Procedure Code.

2. The murder was committed at about midnight on the night between the 26th-27th of August 1923. The moon was full on the 26th August and was shining brightly at the time of the occurrence. The facts have been given very fully and clearly in the judgment of the learned Sessions Judge and need not be repeated at length. Fazal Kadir, head constable of Jatli Police Station (P. W. 7). heard a noise coming from the direction of Jatli village at about A. M. on the 27th August. He took two constables with him and went to Jatli and found that many people had collected who told him that they heard a cry of mar gay a corning from the south-east of the village. He went with the villagers in that direction

and found Mahabat lying on the ground very severely injured. The man's throat had been cut and he could not speak, but he is said to have replied to the questions put to him by means of signs, He was taken to the hospital at Daultala, which is near the place where he was found, where he was treated by Dr. Shiv Ram, Sub-Assistant Surgeon, whose statement is on pages 8-10 of the printed record. He also questioned the wounded man and received answers by signs. The same process was repeated by Bhai Narain Singh, Honorary Magistrate (P. W. 13) at about 9 A. M. on the 27th August. He recorded the statement, Exh. P. B. at page 15 of the record, which has been put in evidence as a dying declaration under S. 32 of Indian Evidence Act. In the same way the statements of the wounded man made to the Sub-Assistant Surgeon and to the head constable have been put in under the same section.

3. Dr. Sir Muhammad Iqbal, appellants' counsel, while admitting that the authorities are in support of the Proposition that these statements are admissible, has asked us to hold that they are inadmissible. We have referred to the following authorities.-Buta v. Empress [1886] 2 P. R. 1886 Cr., wherein it was held that a dying declaration made by signs, given in response to questions put is

admissible in evidence. Queen-Empress v. Abdullah [1885] 7 All. 385 : (1885) A.W.N. 78 (F. B.), wherein it was held by a Full Bench of five Judges (Mahmood, J. dissenting, that the questions put to the deceased and the signs made by her taken together might properly be regarded as "verbal statement" made by a person as to the cause of her death within the meaning of S. 32 of the Indian Evidence Act, and were therefore admissible in evidence under that section.

4. Emperor v. Sadhu Charan Das 1922 Cal. 409-49 Cal. 600 : MANU/PR/0152/1922 : 26 C. W. N. 414, wherein a Division Bench of the Calcutta High Court, following Queen-Empress v. Abdullah [1885] 7 All. 385 : (1885) A.W.N. 78 (F. B.), held that, a reply made by a person unable to speak, in answer to a question put to him, taken together with the question, amounts to a "verbal" statement within the meaning of S. 33 of the Evidence Act. [His Lordship after holding that the statements are admissible dealt with the evidence and in conclusion dismissed the appeal]