

made his statement before the Magistrate; and we must, therefore, take it to be perfectly voluntary. We do not think that the circumstance of its having been made on solemn affirmation renders it invalid. On this point Taylor, in Sec. 820, p. 795 (5th ed.), says: "And, indeed, the rule excluding sworn confessions seems strictly confined, at Common Law, to the case of a statement made by the party upon oath *while a prisoner under examination* respecting the criminal charge. It is true that one or two decisions by Mr. Baron Gurney might be cited which seem to extend the rule somewhat further, and to render inadmissible confessions made on oath to magistrates or coroners by parties who, after being examined *as witnesses*, have themselves been committed for trial; but the authority of these decisions has been much shaken by subsequent cases, and they cannot now be safely relied upon as law."

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The statement made by the prisoner being thus admissible, we are of opinion that that alone is a sufficient foundation on which to base a conviction of murder. In this case there is ample corroborative evidence to establish the prisoner's guilt. We shall, therefore, uphold the conviction, but, declining to confirm the sentence of death, pass upon him a sentence of transportation for life.

Note.—The two following cases are inserted here in explanation of the circumstances under which the murder in the above case was committed. The facts appear in the judgments of the Court.

REG. v. MUHAMMAD VALLI.

22nd September 1871. GIBBS, J. :—The prisoner is charged with the murder of his sister, and this forms one of the three cases which have arisen out of the party feuds in the village of Karmár, in the Broach District, the general history of which will be found in the court's judgment in the case of Muhammad and Husan A'manji (see next case).

The principal witness in this case is the Pársi cloth-seller Rastamji, whose evidence appears to have been given in a straightforward, truthful manner, which impressed both the Session Judge and the assessors with the feeling that he was a witness to be believed. According to this man's statement, he was standing talking with the prisoner's father on business, when his attention was drawn to the prisoner by hearing a woman exclaim "Why do you kill me for other people?" and, on looking towards

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the spot whence the voice came, saw the prisoner strike the girl on the head with an axe, which caused her death.

It appears that two wounds were inflicted, but that the Pársi witness only saw one actually struck. After striking the blow the prisoner dropped the axe on the spot, struck his own head violently against a neighbouring door, so as to cause the blood to flow, rushed off, mounted a pony and rode away. The Pársi and the girl's father then went up to the spot, and the father cried over the corpse.

The Pársi's evidence is corroborated by that of two men who were close by, engaged in pounding *chunám*. Their attention was called by hearing some one exclaim "Why kill me?" or some like expression, and hurrying into the street were in time to see the second blow struck.

These three witnesses were cross-examined, but their evidence was not shaken, and, as above stated, it was believed by both the Session Judge and the assessors, and we see no reason for arriving at any other conclusion.

The defence set up by the prisoner before the committing Magistrate, but in proof of which no evidence was offered, was that a quarrel had occurred, regarding the building of a wall opposite his house, with Husan A'manji and Bápu A'manji, and that they came with others, armed with picks and axes and killed his sister. Before the Session Court he for the first time added that the case against him had been got up by Kávashá, the inspector of police, who at the time the prisoner made this statement was under suspension on some charges of bribery; but the manner in which the statement was made, and the absence of any evidence offered to support it, renders it unworthy of further notice.

We, therefore, are unable to arrive at any other conclusion than that the prisoner was his sister's murderer: and, such being our opinion, we cannot do otherwise than confirm the capital sentence, which should be carried out into execution at the scene of the murder.

REG. V. MUHAMMAD A'MANJI and HUSAN A'MANJI.

26th Sept. 1871. GIBBS, J.—*In this case, the prisoners have been convicted of attempt to commit murder, and have been sentenced—No. 1 to transportation for life, and No. 2 to transportation for ten years.*

The evidence certainly is quite insufficient to maintain the conviction against prisoner No. 2, Husan. There is nothing against him as regards the assault on his mother; he remained outside the front of the house, and whatever was done to the old woman in the yard at the back was done by prisoner No. 1, Muhammad, and it is this which requires particular attention.

The evidence shows that a murder had been committed in the village of Karmár on the morning of the 5th of May (*Reg. v. Muhammad Valli*), and from cases which have lately come before the court it appears that there are two factions in this village, and that murders have been committed on each side—not, as would be naturally expected, by members of one faction on a member of the other, but by members of one faction on