



WOULD YOU CONVICT ON CIRCUMSTANTIAL EVIDENCE?

The SOMNAMBULIST

A TRUE STORY

WOULD you, if you were on a jury, send a man to the electric chair on purely circumstantial evidence?

Always lawyers have taken opposing views, one side arguing that circumstantial evidence is the best possible, the other that no man ever should be deprived of life on any testimony that is not absolutely direct.

James W. Osborne, formerly Assistant District Attorney, says:

"Circumstantial evidence, so called, is the best evidence that can be produced—when there is enough of it."

"No innocent man's life is in danger nowadays from circumstantial evidence. The only two men whom I ever saw convicted and who were afterward shown to be innocent owed their conviction not to circumstantial but to direct evidence, so called."

"A jury will not convict on circumstantial evidence unless guilt is a matter of mathematical certainty. A favor is just as suspicious of circumstantial evidence as any one else when it is being used by the prosecution."

"Circumstantial evidence has saved more lives than it ever lost. What innocent man would want to face trial without the right to use it? It is his weapon against bad direct evidence."

The following is an absolutely true account of the trial and conviction of a man accused of murder on circumstantial evidence. The account is taken from the annals of criminal jurisprudence.

BETWEEN the setting and the rising of a summer's sun the little agricultural village of Vleby, in Denmark, underwent a change—for overnight it developed a sensation. Nells Bruns, a farmhand employed by Søren Qvist the pastor, and a man whom everybody knew, whose forbears had been known by the forbears of every one within ten miles, had disappeared, leaving no trace. Throughout the day the clock of comment sounded beneath the warm colored roofs, and still the wonder grew. Gossip followed the matter through its successive phases of mystery, speculation, suspicion, suspense and discovery—for within two weeks the murder of Nells Bruns had been established.

In one of the most pretentious houses of the kindly rural community dwelt Ericson, the District Magistrate of Vleby, an able official, possessed of a keen, analytical mind, a native knowledge of his own countrymen, a strong sense of duty and considerable intuitive insight into the ways of trespassers that had won him distinction in such minor cases as small thefts and breaches of the peace. As the appointed agent of the Crown in matters affecting the public peace the investigation, as well as the magisterial disposition of crimes up to actual trial, lay within his province.

Thus, the mysterious disappearance of Nells Bruns soon fell under the attention of Ericson. He was the more interested in this unexplained gap in the membership of the parish by reason of his close friendship for Søren Qvist, the clergyman, who had been the last employer of the missing man.

Qvist Much Beloved.

Søren Qvist was generally beloved by his parishioners for his piety, learning, hospitality and upright living. He was a powerful man, of commanding presence, by a few thought too overbearing and prone to anger, but facile in holding the esteem of those who knew his qualities. He was still in the prime of manhood and successfully conducted a large farm, the products of which, added to his tithes, brought him to a prosperous way of life. His housekeeper was his daughter, a handsome girl of marriageable age, who efficiently ruled the parsonage and the lands of her father, long a widower. Qvist bore a particular reputation for honesty, and one of his characteristics often had been made the subject for humorous remark among his neighbors. It was said of him that in the heat of dispute he could see no justice upon his opponent's side, but that when his passion cooled he could see no justice upon his own.

Ericson hastened to the parsonage on gathering the first few fragments of the news. At the door he met Søren Qvist and was surprised to find him painfully agitated. The clergyman could tell him little of the matter, but, to the further surprise of the magistrate, straightway took a most serious view of the disappearance. Ericson instinctively made light of the case while he talked. The man had been merrymaking, belike, and would return as soon as he was able to hold his legs. But the pastor waved the suggestion aside and said he feared a darker outcome. He had himself instituted an inquiry, he declared, but Nells had vanished of an afternoon, and no person in the place had been in his company or had seen him go. "And who was last to see him?" asked Ericson, in a voice unconsciously sharp as his incisive brain began to grapple with the problem. Qvist did not answer, and the magistrate, looking at him quickly, saw that his face had gone white.

Setting the Trap.

Ericson left the parsonage with troubled mind. He dared not admit to himself the suggestion that had flashed across him at the words of Søren Qvist. Affection, the lifelong habit of thought regarding the clergyman, Qvist's sacred calling, a dozen obstacles held back the train of inference. But he was undeniably shocked that his friend should be thus unmanned by a circumstance that could surely not touch him closely. But might it not touch him? Was the steady, laward question of his other self—his crime detecting self.

Receptive to the suggestions of village talk, the Magistrate soon observed that the breath of rumor began to blow evilly about the name of Søren Qvist. He protested against certain hints dropped in his hearing to the effect that the pastor perhaps knew more of the mystery than he would like to tell. Ericson resisted this insinuation through high regard for a man whose lifelong intimate he had been and whom he believed to be incapable of harm. But with the rising of his latent detective sense and the persistent repetition of remarks bearing upon the clergyman he was forced to change his ground.



DURING THE EXCAVATION MORTEN TURNED SUDDENLY ON THE CLERGYMAN AND ACCUSED HIM FLATLY OF HAVING MURDERED HIS BROTHER.

by the earnest representations of Morten Bruns, a wealthy brother of the missing Nells. This Morten was a cattle farmer of Ingvorstrup, a village lying a few miles from Vleby, and was reputed a vain, unscrupulous man, who was used to having his own way in affairs. He had put his own construction upon the disappearance of his brother. At length Ericson, driven back from the prejudice of friendship to his usual calm and judicial stand in all things, saw that in fairness he must follow the indications of the case, though confident that examination of the pastor's acts would only serve to turn the inquiry away in a like direction.

Saw the Pastor Digging.

Larsen, a cottager, furnished the first course of the foundation of the case. He said that on the night of the day following that upon which Nells had disappeared he was wending his way homeward from Tolstrup at a late hour. Passing along a footpath that led by the south side of the pastor's garden he heard a sound as of some one digging. This aroused his curiosity, and, visions of hidden gold occurring, he took off his wooden shoes and climbed the high hedge, parting the hazel bushes on the other side to throw him a view of the premises. It was clear moonlight. In the open space he plainly saw the figure of Søren Qvist, engaged in pounding and smoothing down the soil with a spade. A rustling in the bushes caused the pastor to look around to the place where Larsen was concealed, and the observer took himself off hastily. Asked how he knew this figure for the clergyman, he said that he could not fail to recognize him by the long green dressing gown and white nightcap he wore.

Accompanied by the witness and Morten Bruns Ericson visited Søren Qvist and explained that as a matter of formality it was necessary to sift this deposition for possible truth. The Magistrate closely watched the face of his old friend in making the announcement, but could detect therein no trace of guilt. Qvist readily assented, helped the men to dig and ordered his servants to lend their aid while he discussed with Ericson the futile search he had instituted privately at his own expense for Nells Bruns.

During the excavation Morten turned suddenly on the clergyman and accused him flatly of having murdered his brother, intimating that the proof would be found in this very garden. Qvist flushed hotly, but restrained his temper with an effort, made no answer and continued to assist the Magistrate with every courtesy.

After a pit had been dug to some depth it became evident that nothing had been interred in that part of the garden. The Magistrate commented upon this fact with no little relief, while Qvist remarked to Morten Bruns:

"Slanderer, what have you gained for your pains?"

The Body Is Found.

But Morten was insistent, though crestfallen, and made Larsen point out another spot as perhaps the one where he had seen the pastor by moonlight. The soil was again thrown aside, and after some moments a shout from one of the workers brought the others about him. Morten, agitated with excitement, threw himself into the trench and dug out a hat which he immediately pronounced the one that had been worn by Nells. In a few seconds an arm was uncovered and the body was then completely disinterred.

The face could not be recognized, having been disfigured apparently by repeated blows. But all the articles of clothing were identified by friends of Nells, and if further proof had been needed the shirt bore his name. In the left ear of the dead man was also a leaden ring that Nells had worn in life.

Ericson had now no alternative but to arrest Qvist. The clergyman assented willingly, while asserting his innocence. He admitted that he had been digging in the garden, but he swore that he had not buried any body there.

strongly against him, but declared he awaited the outcome with confidence that he would be shown free of guilt. He was taken to the village jail.

The genius of the natural investigator, Ericson, had here its first opportunity for expansion. He entered the puzzling affair with a predisposition in favor of the accused, an honest desire to implicate him no further than indisputable fact made necessary, which effectively guarded against his hasty acceptance of damaging evidence. But having struck the scent he could not but follow whither it led him. Foul play had been done and it was for him to establish how and by whom. There was no hesitation. His keen intelligence sought out and laid bare the essential facts as he found them with the accuracy of the surgeon's scalpel.

To start with, he needed no neighbor to tell him that Søren Qvist, though a man of excellent parts and of admirable character, was haunted by an active and violent temper which he was at some pains to control even in trifles. Each parishioner could have related some incident that proved the irritability of their pastor when he was crossed or aroused by opposition. He was perpetually in a quarrel, and as frequently was regretting some hasty word or action. There were few to hold this against him, however, for his sincere sorrow following an outbreak was known and understood.

Bitter Quarrels Recalled.

Ericson easily established that Qvist had engaged in a series of altercations with Nells Bruns during the three months the farm hand had spent beneath his roof. Service was scarce and the laborer was worthy of his hire or they must have parted, so bitter had been their strife on several occasions. The Magistrate threshed out this phase until he found farmers who could swear to having seen Qvist cudgel his employee during one dispute.

Inquiry then led Ericson to the Widow Karsten and her daughter Else, who had let fall dark hints concerning their concealment of strange happenings of which they had knowledge. He wormed from them that they had been passing the clergyman's garden on the very afternoon of the disappearance, when Nells Bruns had called to them through the hedge, and had thrust out a handful of nuts, which they accepted. They asked him what he was doing, and he replied that he had been set to dig the garden, but the task was not to his liking and he was shirking it. The conversation was interrupted by the slamming of a door and Nells remarked that Søren Qvist was coming.

"Listen," he said to the women, "and you will hear a wondrous preaching."

They waited, curious to hear their pastor in one of his rages, and overheard a stormy duel of words between the clergyman and his farm hand, who defended himself with bitter retorts against the charge of neglecting his work. Finally, they reluctantly admitted, they heard Qvist utter these words, in a voice half choked with anger:

"I will beat thee, dog, until thou liest dead at my feet."

Then came a sound of blows, while Nells called the pastor a rogue, a hangman and various other ill terms. Qvist made no answer, but the women saw the blade of a spade rise and fall twice above the hedge, with a dull shock, as upon a body at its descent. After this there was silence, and they hurried on their way along the path, uneasy at what they had seen and heard. They were not able to swear as to whose hands held the spade, owing to the thickness and height of the hedge. They were unwilling aids to Ericson, and it was only by dint of cautious questioning and clever manipulation of their fears and beliefs that he obtained this important statement.

The Web Strengthened.

The pastor was removed to Grenaa, a larger town near by, and a judicial examination was held at which

Ericson presented some of his findings. The indefatigable Magistrate, much as he personally regretted the web it was his duty to weave, had placed his case in a much stronger position and had three additional witnesses on hand to bear out the earlier testimony. These were two other farm hands and the dairy maid employed by Qvist. The men swore that they were near a window in the house on the day of the disappearance and had heard the quarrel described by the Widow Karsten and her daughter. They affirmed that the pastor had cried out:

"I will slay thee, dog. Thou shalt lie dead at my feet."

They had not taken the trouble to look out of the window, they said, because they knew the master's ways. They deposed, furthermore, to having heard Qvist make a similar threat to Nells on two previous occasions. The dairy maid said that on the same night when Larsen was spying among the hazel bushes she had been awakened by the creak of a door and footsteps. Rising in alarm she had tiptoed to the threshold of her room and looked into the hall. A figure passed her. By the green dressing gown and white cap she recognized her employer, who continued on his way to the garden. She thought this midnight wandering a little strange, but returned to rest and heard the creaking of the door again an hour later.

When these facts were brought out there were few to doubt the guilt of the pastor, although the sympathy of many humble households went out to their boisterous shepherd. Confronted by the weight of statement, Qvist was deeply perturbed, and volunteered his explanation of a part of the black showing against him.

Dark Stories Admitted.

He admitted the quarrel with Nells and the threat against his farmhand's life, which he said he had made in the heat of anger without serious meaning. He declared that when he struck Nells the man dropped the spade. Casting about for a stick in his wrath he caught up the spade and, Nells continuing his abuse, hit his employee twice with it, but he could not say. The man fell. Alarmed at this, for his temper had quickly cooled, he stooped to raise him, when Nells jumped to his feet and made off, leaving the garden by a rear gate. He stated positively that he had not seen any trace of the farmhand from that minute until the disinterment of the body. As to his mysterious midnight visit to the garden, described by Larsen and verified by the dairymaid, the prisoner had this to say:

"It is either a foul lie or it is a hellish delusion." In the interval before the trial Ericson forged the strongest links in his perfect chain of circumstances. By infinite patience and caution, working carefully about the curtain of respect and affection with which the people of the parish were inclined to cover such incriminating facts as they had cognizance of, he planned down two more witnesses whose testimony, used in the court attack, crumbled the pastor's negative defence like a bulwark of cards.

These were two men who had been in the vicinity of the parsonage on the moonlight night which supposedly marked the burying of the body. After much pressing they solemnly averred they had seen the clergyman, clothed in the green dressing gown and the nightcap, dragging a heavy sack from a patch of woods toward the garden of his house. They had not seen his face, for that was covered by a flap of sack, but only too well, they said, they knew the clothes he wore.

Now came Ericson's triumph, the cap stone of his structure. His imagination was caught by this constant reference to the green dressing gown, familiar to every one in the parish, and he found here the point to which his whole circumstantial creation should tend.

Gown Had Been Cleaned.

He found the famous gown, examined it with meticulous care, noted certain marks and stains upon it, and then instituted quiet inquiry among those who knew the garment best. He proved that on the morning after the alleged burial it had been found covered with mould and soiled with earth. It had afterward been cleaned, but not thoroughly. He also established that it was lying on the floor of the pastor's room that morning instead of hanging from its accustomed peg against the wall. When the Magistrate had made all this secure for purposes of production in court he knew the satisfaction of work well

and thoroughly done. His chain of circumstantial evidence was complete.

The case came to trial in due time. Søren Qvist made a good impression upon his presentation at the bar, and his plea of "Not guilty" was delivered with firmness and the ring of sincerity. He followed the testimony with puzzled attention, but with no change in his demeanor up to the introduction of the witnesses who swore to having seen him dragging the sack, and the others that brought out the significance of the soiled gown. As the import of this section of Ericson's evidence came to him he uttered a terrible cry and collapsed. So pitiable was his condition that the trial was postponed and the prisoner was hurried back to his cell.

Having regained his senses he sent an urgent message for the man who had been his friend for so many years and who had now waded him close in the tolls of a succession of incriminating incidents from which there could be no escape but to the scaffold.

And there, in the prison cell, overpowered by the weight of the evidence, Søren Qvist made full confession.

"From my childhood," he began, "I have ever been passionate, quarrelsome and proud, impatient of contradiction and ready for a word and a blow. Yet have I seldom allowed the sun to set upon my wrath and I have borne no ill will to any one. That I can say because knowledge thus far is my own. For my deeds of violence, conceived in an unchecked spirit, behold me now properly punished. I feel that my present trouble has been visited upon me as a judgment."

"I will now confess the crime which no doubt I committed. I have already told how I struck Nells and how he ran away. Three or four times in my life it has happened to me to walk in my sleep. The last time—about nine years ago—I was to preach a funeral sermon the next day. In searching for a text for my discourse I was impressed by the appalling truth of an ancient Greek saying, 'Call no man happy until he is in his grave.' I was encouraged by my remarks upon this saying if I might find a Christian text of like import. I seemed to recall such a one, but it slipped beyond the edge of memory, and I had been unable to find it up to the time I retired for the night."

His Full Confession.

"On arising next morning I found on my table a paper bearing the extract for which I had vainly sought—'Let no man be deemed happy before his end cometh' (Syrach, xi, 34). Likewise I found a funeral sermon upon this theme, well writ in my unmistakable hand and of far finer thought and language than I thought myself capable of producing. Again, on an earlier occasion, I made my way to the church in my sleep and recovered thence a handkerchief which I had dropped unknown to myself. You will thus observe that I am surely a somnambulist, if only at rare intervals."

"You can guess the rest. While your strongest evidence was being introduced against me to-day I followed in amaze, seeing how true the whole thing must be. It convinced me completely of my guilt. It flashed across my perception that I had accomplished the latter end of that dark deed in my sleep. Nells must have fallen dead in the woods as a result of my blows after fleeing from me. I must have followed him there at night, finding his body by some strange, subconscious sight. Then must I have dragged his body to my yard and buried it while my voluntary brain was locked in slumber. Yes—the Lord have mercy!—so it was, so it must have been. And I, a father!"

Ericson, overwhelmed with sorrow for his unfortunate friend, reported this extraordinary confession to the court, as his duty lay. No doubt now remaining as to the pastor's guilt and, his somnambulist tale failing of effect, on the following morning Søren Qvist was condemned to death.

Reconciled to Death.

The sentiment of the village had been turkling with the pastor throughout, and when the confession was made known, indicating the lack of evil intent beyond a sudden blow struck in anger, a conspiracy was set on foot to foil the operation of the law. The jailer was bought over and a boat was made ready to sail with Qvist to Sweden. These preparations were brought to a stop, however, by the clergyman's refusal to permit the attempt. He was convinced that his crime and execution had been divinely ordered and he was resolved to bear the penalty with what fortitude he could summon. It is fairly certain that had any serious steps been taken as planned they would have been frustrated in any event. Ericson, the inexorable servant of justice, the student of his fellow men, the exponent of circumstantial evidence, was too keen to permit the law to fall of its object. Friend or enemy, the pastor had been condemned and must die.

On the scaffold Søren Qvist was permitted to address his parishioners for the last time. He delivered a sermon of great power and pathos in which he used his own fate to impress his hearers with the danger of a quick and hasty temper. He implored them to put passion and fury from them, pointing to the consequences to which he had himself been sublimated and saying that his crime was not only a stern visitation of divine justice upon himself but a striking lesson to others. He showed perfect possession up to the very moment of death.

Twenty-one years after the clergyman had been tried, convicted and executed for the murder of Nells Bruns an aged beggar was noticed one day along the highway which ran through the parish. It was remarked that he bore a strange resemblance to Morten Bruns, the wealthy cattle farmer, who had died within a year or so, and some who saw him ran in terror. The beggar was questioned, and all unconscious of the importance of his revelation, announced himself as Nells Bruns, whose body had supposedly been buried in the garden by Qvist.

When the facts were related to him he professed the utmost sorrow for the course of fateful events and placed the entire responsibility upon his brother, Morten. The cattle farmer, he said, had applied to the pastor for the hand in marriage of his handsome daughter. Being rejected with some spirit, he nursed his bitterness and vowed revenge. He had caused the penniless Nells to take service with Qvist and had urged him to quarrel, expecting some violent outcome.

The Deadly Plot.

On the day when the clergyman struck Nells with the spade he hurried to Morten with an account of his wrongs and his brother concealed him until night, promising that they would even matters fully with Qvist. At a late hour the two then unearthened from the cross roads, where all such were buried, the body of a young man who had recently committed suicide. Morten then caused Nells to change clothes with the body and as a final touch took the leaden ring from him and thrust it in the left ear of the dead.

They bore the body to the woods near the parsonage, and Nells was left to guard it while Morten stole away toward the house. It is not the custom in rural Denmark to fasten doors, and the revengeful man found it an easy matter to enter, make his way to the clergyman's room and don the well known green dressing robe, which he topped with a nightcap.

On his return Nells asked what these strange comings and goings might portend. The question apparently struck Morten with an understanding of some latent honesty in his brother that irritated him. He produced a fat purse, and, giving a hundred dollars to the penniless Nells, told him, threateningly, to take himself off.

"Travel any way thou wilt," he sternly ordered, "but get beyond the parish at dawn and keep on. Never set foot again on Danish soil as thou valuest thy life."

Nells was properly impressed and obeyed. When he was gone Morten achieved his revenge upon the pastor by burying the body, returning the gown to the house and setting the conscientious Ericson upon the trail. Hearing, after many years, of his brother's death, Nells ventured to return in the hope of profiting thereby. The detective Magistrate who had so ably collected his circumstantial evidence had been many years in his grave when the name of Søren Qvist was thus finally cleared of shame.