

Convicted but Innocent

A Story of Circumstantial Evidence

Our district court was in session, and in the evening, during the recess, a small party of us were assembled in the private room of the presiding judge, a man fully up to three-score-and-ten, with but one guiding light while upon the bench, he told us a story, as follows:

“Years ago, I was Prosecuting Attorney for my judicial district. I was young then, a little more than thirty—but had worked hard to instruct and improve my profession. When I became District Attorney I meant to do my duty, and as I felt myself, in a measure, pitted against the whole bar, I gathered my strength, and prepared to marshal all the forces at my command.

“At length came what I had long desired—a capital trial. It was a case of murder, seemingly of the most atrocious character. The Attorney-General came down to attend, but when he found how well I understood the case, and how thoroughly I had prepared myself, he did not propose to bother himself. He would leave me to conduct the prosecution, holding himself in readiness to render assistance, or offer suggestions, in case of need.

“The case came on, and I presented the Government’s complaint, and the grounds thereof. The prisoner at the bar was Charles Ashcroft, a young man of five-and-twenty—intelligent and handsome—and about the last man in the world one would have selected as a murderer. Yet he stood thus charged, and the evidence was overwhelming against him.

“The facts as elicited in evidence were these: Ashcroft had been a teacher in the academy of the town where he resided, and where the killing had been done. He had waited upon a young lady, named Susan Lattimer, and had evidently loved her very dearly; but it seemed that Susan was not inclined to be constant. A wealthy suitor presented himself for her hand, and she cast off the poor pedagogue and accepted the new comer.

“One Saturday afternoon Susan Lattimer went on foot to visit an uncle who lived two miles distant, and to shorten the way she took the cart-path through the wood that stretched down between the sections of the town. Shortly after she was seen to enter this wood Charles Ashcroft was seen to follow with a double-barreled gun upon his shoulder. Susan Lattimer went to her uncle’s, but finding only a servant of the family at home, she started back at once by the way she had come.

“In the wood, on her return, she was met by Ashcroft, who stopped her, and upbraided her for her desertion of him. Two girls—one fourteen years of age, and the other a year younger—who had gone to the wood for the purpose of gathering beech-nuts, passed the twain while they were conversing, and heard Ashcroft “swearing terribly,” as they expressed it, at Miss Lattimer. They heard him declare that he “would as life die as not; and they heard her say, “Don’t kill me!” At this point the altercation frightened them, and they ran away.

“Charles Ashcroft returned to his boarding-place, pale and agitated, with both barrels of his fowling-piece empty, but with no game. Later, the body of Susan Lattimer was found in the

wood, not far from where the altercation had taken place. She had been shot dead, the whole of one side of her face and head having been shockingly torn by a heavy charge of pigeon shot, evidently discharged with deliberate aim, at a very short distance. Some of the shot were extracted, and exhibited to a storekeeper in the village, who unhesitatingly declared that it was exactly such shot as he had sold on that same Saturday to Ashcroft.

“In response to this Ashcroft could only deny, in the most solemn manner, that he had not thought or offered harm of any kind to the deceased. He admitted the truth of the statement made by the two girls; and he admitted that he had purchased the shot as the storekeeper had said. His story was, that on that Saturday afternoon he had gone into the wood to shoot pigeons. He did not know that Miss Lattimer had gone that way. He met her unexpectedly, and foolishly allowed himself to give vent to his feelings of indignation. For words spoken on the occasion he hardly felt himself responsible. In fact, he could not remember what he did say. After talking until they had both become exhausted by the intensity of feeling, and Miss Lattimer had fallen to crying bitterly, he bade her farewell, and told her he had troubled her for the last time. She sat down upon a log by the side of the path and crying, had asked him to leave her. He obeyed her, and saw her not again until he saw her dead. In explanation of the empty barrels of his gun, and no game, he said that he had met Miss Lattimer before he had seen any pigeons, and that after leaving he had no heart for sport. He had discharged his piece in the edge of the wood into the empty air, as he never allowed himself to deposit a loaded gun in a dwelling house.

“There is no need that I should give you the details of the trial. Suffice it for me to say that I felt my reputation at stake as Prosecuting Attorney. The State was my client, and she demanded that I should succeed. Able lawyers were arrayed against me, with money and social power to back them, and I must overcome them in the combat if I could. I marshaled my forces and disposed of them in the best possible manner. I threw my whole soul into the work, and used every means possibly presented. I took the connection of the prisoner with the homicide as granted. Then I drew a picture of the murder, which made the jury shudder and quake as they sat; and I demanded that outraged justice should be vindicated; that the community should be protected; that our homes, and our highways, and byways, should be safe to the innocent ones whom we loved. I held the prisoner up in colors so frightful and hideous that he fainted outright in his box; and then this circumstance I caught up and turned against him. I fairly carried the jury by storm; and our sympathetic and good-hearted Chief Justice had allowed all his sympathies to be expended upon the distressed and heart-broken parents and brothers and sisters of the deceased. The counsel for the prisoner were outflanked and overpowered, and they struggled hopelessly. In the end a verdict in the first degree was rendered, and the prisoner was sentenced to be executed.

“I was jubilant and proud at the close of the trial, and both bench and bar complimented me. I went to my home expecting my wife to congratulate me warmly. She had been present through most of the trial, and had witnessed my triumph. But she said not a word.—When I asked her if she did not join with me in gratitude for my success, she shook her head.

“‘I am proud of my husband’s legal fame,’ she said, ‘but I cannot feel grateful in the present instance. I think Edward, *you have condemned an innocent man!*’

The words struck me like a bolt of lightning,—not only the words, but the more than human feeling with which they had been spoken. I recovered myself, and laughed at the gentle woman for her misplaced sympathy. I asked her to look at the evidence.

“Look at what evidence?” she demanded.

“There are unseen evidences as strong as those which are palpable to sight and hearing. The heart feels them, and the calm judgment endorses them. As I live, I do not believe Charles Ashcroft ever knowingly or willingly did harm to that dead girl. He knows no more how she met her death than I do.”

“The flurry of conquest was over, and in my own sanctuary I sat down and reflected. I took up now the case for the defendant, and went over the whole business from beginning to end. Shutting out the evidence directly implicating the prisoner, there was no human being who could have believed him guilty. What, then, was this evidence?—Did it directly connect him with the killing? No. Only circumstantially was he connected therewith. Was it possible that some one else could have done the deed? Aye, a thousand times. Was it more probable that some one else did it than that Ashcroft did it?—Here was the rub. I had seen guilt in many forms, and I had seen innocence accused. I had seen the guilty wretch attempt to hide his guilt, and had heard him deny it in toto. And here came in the evidence which my wife had experienced, and which I could feel, but which could never be presented to a jury of ordinary men with moving power.—In the bearing of the prisoner there had been not one shadow of that brazen impudence which is sure to crop out somewhere and somehow, in the demeanor of guilt long struggling to affect innocence. Nor had he displayed the despair of the hopelessly entrapped criminal. On the contrary, he had presented, as I could calmly review the scene, a crushed and broken heart—a manhood staggering under a frightful incubus, and a shivering, shuddering sensitiveness under the suspicions resting upon him. Now that I had won the victory, I could afford to judge without prejudice, and I found myself, ere long, in trouble. I had condemned the man; I had consigned him to the gallows.

“How—how could she have come to her [death if he left xxx] other way is possible?”

“I had mused aloud at this point, and my wife had heard me.

“There are many ways,” she said, with a directness which showed that her thoughts had been in company with my own. “Ashcroft left her sitting upon a log crying. When she got up to start again for home she blundered along almost blindly, thinking of nothing but the betrayed lover she had sent from her. There have been plenty of pigeons in those woods, and others besides Charles Ashcroft were in all probability hunting there on that Saturday afternoon. Did you ever hear of persons being shot by sheer accident in such places? What more easy than for Susan Lattimer to have suddenly come into range of a gun already aimed, with the finger of its owner pressing the trigger?”

“But,” I cried, startled at the thought, ‘had such an accident occurred the man would have come forward and owned it.’

“It was not a man; it was a boy,” said my wife; ‘and the catastrophe frightened him out of his wits—a boy who knows not the grades of homicide—who fears that the gallows would follow a revelation of the deed.’

“I cannot tell you, gentlemen, how that thing worked upon my mind. I came to believe that my wife had truly solved the problem; and the more I reflected the more firmly became that solution fixed in my faith. The time for Ashcroft’s execution was drawing near. How could I save him? There was but one way. A new trial without some new evidence, was out of the question. I must see him free. I could not see him hanged. I visited him in his cell, and came away morally sure that he was innocent. I asked my wife if she had the will and the courage to help that man to break his bonds. She flashed in the glory of her woman’s power like an impatient soldier. I told her I would set her on the track, but I must not know how the work was done, nor where the prisoner had gone. She comprehended and agreed. I lent my official influence to gain her access to the jail, and she did the rest. She came home one night radiant like a giant who had a glimpse of heaven. On the following morning I was informed that the condemned man had escaped. I asked my wife no questions, and she offered no information.

“Search was instituted, but not a trace of the fugitive could be found.—The time set for the execution passed, and not many days thereafter an honest farmer, living near to the uncle whom Susan Lattimer went to visit on that Saturday afternoon, came to me in great tribulation. His son, a boy of fourteen, had confessed the shooting of Miss Littimore. I went over with the father, and saw the boy. I found him sick nigh unto death—his life worried away by fearful secret which he had held gnawing in his bosom. I promised him that no harm should come to him, and he brightened up. It was exactly as my wife had suggested. The lad had seen a pigeon upon a tree, and had crept into a clump of bushes on the opposite side of the cart path, in order that he might raise his gun without frightening the bird. He had cocked his piece, and taken aim, and his finger was pressing the trigger, when Miss Lattimer, with her head bent down, came directly before the muzzle. She had come like a dark shadow between him and the bird, and not until his piece had been discharged did he know what had thus suddenly obstructed his sight. When he had leaped out from his cover, and had seen the fearful work he had done, he was for a moment paralyzed with a terror that was awful. Soon the phantom of murder appeared to his appalled sense, and he ran way and hid. And from that time he had suffered, until his secret was so near killing him that he had to let it out.

“I returned home, and asked my wife if she knew where Charles Ashcroft was. She said she knew. I told her what I had discovered, and bade her bring him back. On the very next day Ashcroft appeared, and delivered himself up at the jail.

“The final result you can easily comprehend. At the new trial the boy was able to attend, and Charles Ashcroft was set at liberty with but little ceremony, his character fully cleared from even the appearance of guilt, and his friends multiplied in number.

“And so the life of an innocent, high-minded man was saved. He would have been surely hanged had he remained in prison to the appointed day. People said it was an interposition of Providence. They little dreamed how much of that precious Providence lay in the subtle instincts

and in the heart of my wife; nor did they suspect my own official treason. But I never blamed myself—never. And the teachings of that [xxx incident became my xxx] in the later years.

Denton [MD] Journal, September 20, 1873