

Promode Chandra Dey Vs. State

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Court : Guwahati

Decided On : Sep-22-1951

Judge : Lakshmi Narain, Addl. J.C.

Appellant : Promode Chandra Dey

Respondent : State

Judgement :

Lakshmi Narain, Addl. J.C.

1. This revision petition in the form of a second appeal has been filed by the petitioner Promode Chandra Dey, against the rejection of his appeal on 18.5.58 T.E. by their Lordships of the High Court of Judicature at Tripura. The appeal was filed against his conviction and sentence of R.I. for life under Section 302/34 Penal Code passed by the Sessions Judge of Agartala on 10.2.58 T.E.

2. An objection was raised by the Government Advocate that this petition was not entertainable by this Court on the ground that the Judicial Committee of the Privy Council to which the petition laid and filed then, has already been abolished. On 6.3.50 the Hon'ble Judicial Commissioner for Tripura passed the order on this petition as follows:

This has now been taken up by this Court with the corresponding jurisdiction.

and ordered it to be registered.

3. The petition was filed in the Judicial Committee on 16.8.58 T.E. That Committee was abolished on 25.1.1950 A. D. Section 43 of the Tripura (Courts) Order reads as follows:

43. Pending proceedings: (1) Any proceeding-pending in a Court immediately before the commencement of this Order shall, upon the commencement of this Order, be deemed to be transferred to the Court exercising the jurisdiction under this Order which corresponds as far as may be, to the jurisdiction of the Court in which the proceeding was pending, and the Court to which the proceeding is transferred shall proceed to try, hear and determine the matter as if it had been pending in that Court.

(2) Any appeal from a decree, sentence or order passed by a Court and not appealed against before the commencement of this Order shall lie to the Court exercising the jurisdiction under this Order which corresponds, as far as may be, to the jurisdiction of the Court to which such appeal would have lain if this Order had not been made.

(3) Any decree, sentence or order passed before the commencement of this order by any Court shall be deemed for the purpose of execution to have been passed by a Court constituted by this order which corresponds as far as may be to the Court which passed the decree, sentence or order, as the case may be.

Provided that nothing contained in sub-para. (1) of the sub-para. (2) shall be construed' as extending the period of limitation to which any suit, appeal or application may be subject.

4. Section 8 of the above Act (order?) runs thus:

Civil and Criminal jurisdiction of the Court of the Judicial Commissioner save as otherwise provided by this order or any other law for the time being in force, the Court of the Judicial Commissioner shall be the highest Civil and Criminal Court of appeal and revision for Tripura.

5. It follows therefore that this petition which was pending in the Judicial Committee, which, was then the highest authority (Court) in Civil and Criminal

matters, has been transferred to the Court of the Judicial Commissioner which has corresponding jurisdiction by virtue of Section 43 read with Section 8 of the Tripura (Courts) Order, 1930. The learned Counsel for the petitioner has also drawn the attention of the Court to Section 6(b)(c) of the General Clauses Act which was also helpful. It is thus entertainable by this Court.

6. The prosecution story is briefly as follows: Adjacent to the house of Abhimanyu Manya, co-accused in this case, there is a plot of land belonging to Rabindra (now deceased). It was cultivated by others on settlement basis. Abhimanyu's ' father also had occupied that land once before on the basis of Bandobast (settlement). Before the occurrence took place Rabindra had decided to cultivate himself from the month of Baisakh 1357 T.E. Abhimanyu Manya also wanted to take the 'Bandbast' of this land from Rabindra as non-re-sident tenant, but could not succeed in his effort. When Rabindra ploughed the land for a day, Mahendra made a proposal a day before the occurrence, and offered Rs. 400/- for 3 'kanis' of land. This was also refused, Mahendra threatened Rabindra with dire results by saying that he would teach him a good lesson. He instigated Abhimanyu whose house was adjacent to the land and who was also refused bandbast.

On the date of occurrence at about 8 a.m., or so, Rabindra accompanied by his younger brother Birendra and a relation Jogendra, went to till the land with plough etc. Immediately after Manya armed with a 'Jatha', Promode the present petitioner with a 'dao', and one Wazid with a 'lathi', reached the spot and forbade Rabindra to plough and commanded him to grant 'paikasta' (non-resident) settlement of the land to Manya. This was refused; altercation ensued resulting in Manya's striking the head of Rabindra with the handle of his 'jatha' and then scuffle followed between the two. Jogendra attempted to separate, in the meantime Promode struck him at the waist with the rod which had fallen from the hands of Manya. When Birendra proceeded to help his brother' Rabindra, Promode removed him forcibly.

From Manya's house which was nearby, Mahendra and Raman shouted 'Shalara Maria fata.' Raman also said, 'I shall pay whatever amount of money is required.' They asked Manya's mother Gunamani Sil to provide a 'Jatha' to Manya for the

purpose and threatened all others who had assembled, not to enter' the land. Manya's mother approached him (Manya) with a 'Jatha', who was then sitting tight on Rabindra. Manya took the 'Jatha' from his mother and struck Rabindra on the chest. Rabindra wanted to rise grasping the thrust 'Jatha', but could not. He fell down again. Promode and Wazid immediately reached him and pressed the 'Jatha' deeper, then took it out and fled away. The other accused also took to their heels. People who assembled nearby reached Rabindra who was dying after receiving the fatal thrust.

7. The prosecution in this case has produced about 9 eye-witnesses corroborating each other. Both the Courts (Trial and Appellate) have their full reliance on the testimony of the witnesses. It is not proved that they were in any way inimical to the accused or friendly with the deceased party. Out of these P.W. Surendra Ch. Dey is said to be a relative of Promode. The present petitioner Promode pleaded alibi, but did not produce any witness to prove it.

8. The deposition of the investigating officer in. this case has been discarded by both the trial and the appellate Courts. While discussing his evidence, the trial Court in his judgment has remarked as follows:

In spite of the complainant's clear charge against Mahendra and Raman in the 'ejahar' (Mahendra's directions or ordering Manya to kill Rabindra, and, his asking Manya's mother to supply Manya with the 'Jatha' were mentioned in the 1st information), the Sub-Inspector of Police having not arrested Mahendra after recording of 'ejahar', though he was present in the police station, it leads to the only conclusion that the Sub-Inspector of Police committed such a serious breach of duty, being gained over by offer of Mahendra's money. The most surprising fact is this that in spite of the complainant's aforesaid serious charge against Mahendra and Raman, the Sub-Inspector of Police stated in his deposition, 'excepting the complainant, nobody told me about Mahendra, and Raman having been present under the jack-fruit tree.' This statement of the Sub-Inspector of Police is being falsified by the examination of the sketch, made by him, marked Ex. 13. In the sketch, the jack-fruit tree of Manya's house has been marked 'kha' and the distance of that place has been shown from the place of occurrence. In the 1st

information, the complainant told about this jack-fruit tree.

9. The comments on his evidence made by their Lordships of the High Court in the appellate Judgment run thus:

Only P.W. 14 requires to be criticised. He is the Officer-in-Charge of the Kailasahar Police Station. The learned Sessions Judge has passed serious opinion about the evidence of this witness. It transpires from the evidence that immediately after the occurrence Mahendra went to the Police Station and had some secret consultation with him. It is also found that in spite of serious allegation against Mahendra and Raman, he showed much partiality to them. He did not at first, arrest Mahendra and even after the subsequent arrest of Mahendra this witness enlarged him on bail in an irresponsible manner. In the circumstances it cannot be expected that the investigation was conducted impartially and the evidence, properly recorded. Under the circumstances, the statements of the independent witnesses contradict the statement of the Thana Officer.

10. As discussed above in the 2 judgments the evidence of this investigating officer in the case could not be relied upon and it has been rightly-discarded.

11. It has been pointed that in the F.I.R., there is no mention of the pressing of the 'Jatha' into the chest of the deceased by Promode and that it was an afterthought. In the first place a F.I.R., need not be in detail. It is also not to be overlooked that Jogendra who made the report was himself injured and on that account was unable to remember or recite all the events in detail. The Sub-Inspector's attitude pointed out as above also comes to the forefront. Under the circumstances the absence of this detail in F.I.R., is not of help to the petitioner in the face of the overwhelming evidence of so many eye-witnesses whose impartiality is not challenged.

12. It is argued by the learned Counsel of the petitioner that Promode had no motive for the murder. In a murder case it is not obligatory on the prosecution to prove adequate motive for the crime. At the same time the absence of an apparent motive on the part of the accused in committing a murder is material when the question of sentence is concerned. In re 'SANKAPPA SHETTY' AIR 1941 Mad

326. The failure of the prosecution to establish motive is not sufficient to disbelieve eye-witnesses. In this case direct evidence of crime as deposed by the P.Ws. is quite strong and credible. Promode is a nephew of Mahendra and has been in quite cordial terms with Manya.

13. The learned Counsel of the petitioner has-also pointed out some minor discrepancies between some statements of P.Ws. Suffice it to say that such minor discrepancies in matters of details do not count at all. It is but natural that they arise. Some comments are made on the use of the word 'common object', at some places in the judgment. of the trial Court in place of 'common intention.' Such technicalities used not to be very much cared for in those days and specially during the time when the I.P.C. and Cr.P.C., were not in vogue-in this State. Any way that does not affect the merits of the case.

'Common intention' is a question of fact. Both the Courts (trial and appellate) have reached the conclusion that the crime has been committed in furtherance of the 'common intention' of all the accused, and that Section 34, I.P.C, applied to the case. Proof of intention is matter of inference from circumstances. Direct evidence to prove the intention of any individual is very difficult, if not impossible. It has to be inferred, from their action and conduct or other relevant circumstances of the case. The appellate Court has concurred with the trial Court on the finding of fact. Nothing of any importance has been urged before this Court why that finding should not be upheld. It is upheld accordingly. It is proved that Promode pressed the spear further into the chest of Rabindra which accelerated his death. He has rightly been convicted for committing an offence under Section 302, I.P.C.

14. Lastly the counsel for the petitioner has raised a point that a sentence of R.I., for life passed against his client is illegal and is not in conformity with the provision of Section 302, I.P.C., and that no such sentence as R.I., for life is provided. It appears that the sentence under question was passed by the learned Sessions Judge at the time when another Penal Code of the State called 'Chalat Danda Bidhi' was prevailing. Indian Penal Code was then not in vogue. According to Section 8 of that Code, a sentence of R.I., for life is provided in case the culprit is ascertained, out of many, in the case of murder.

15. The translation of the above section is thus rendered by the counsel of the petitioner.

Section 8: If by such a wound one is killed, and if the culprits number many, then if the culprit whose blow had caused the death be not ascertained, then the accused will be sentenced to R.I., for years not exceeding 14, and if the culprit be ascertained then he will be sentenced to R.I., for life.

16. Although Section 302/34, I.P.C., is quoted in the charge and order, still the sentence of R.I., for life cannot be ruled out in view of Section 8 of the 'Chalat Danda Bidhi' of the State then prevailing. So it cannot be said that there is any illegality in the sentence. But in view of the altered circumstances brought about by the advent of the new Constitution and application of the Indian Penal Code and Cr.P.C., to the State, it is but proper that the sentence should now be, in conformity with the provision of Section 302, I.P.C., under which the petitioner was charged and stands convicted. The sentence is, therefore, altered from R.I., for life to transportation for life.

17. The petition is otherwise rejected.

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