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Mathur Dhana Vs. State

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Court : Mumbai

Decided On : Nov-23-1955

Reported in : AIR1956Bom393; 1956CriLJ715

Judge : Shah and ;Vyas, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 201 and 302; Evidence Act, 1872 - Sections 27

Appeal No. : Criminal Appeal No. 1104 of 1955

Appellant : Mathur Dhana

Respondent : State

Advocate for Def. : A.A. Mandgi, Asst. Govt. Pleader

Advocate for Pet/Ap. : P.S. Gupte, Adv.

Judgement :

Vyas, J.

1. The appellant Mathur Dhana who was originally accused 2 in Sessions Case No. 23 of 1955 has been convicted by the learned Sessions Judge-Panch Mahals at Godhra, of an offence under Section 201, Penal Code and has been sentenced to suffer five years' R.I.

2. The charge against the appellant was that on or about 27-3-1955 at Kanod, a village in Lunawada Taluka in the District of Panch Mahals, he and certain other persons with whom we are not concerned in this appeal had, in furtherance of their common intention to commit a murder of Dhula Naran, committed the murder of the said Dhula Naran and had thereby committed an offence under Section 302 read with Section 34, Penal Code.

An alternative charge was also framed against the appellant and that charge was that on the same date and in the same village the appellant and others, with whom we are not concerned in this appeal, knowing of having reason to believe that an offence of the murder of Dhula Naran which was punishable with death had been committed, had in furtherance of their common intention caused the evidence of the said offence of murder to disappear by causing the disappearance of the body of the deceased Dhula Naran and that the common intention of the appellant and others in doing so was to screen the offender or offenders from legal punishment.

This alternative charge stated that the appellant and others had thereby committed an offence under Section 201 read with Section 34, Penal Code.

3. The learned Sessions Judge, Panch Mahals at Godhra, who heard and decided the case, convicted the appellant (Original accused 2) under the alternative charge under Section 201, Penal Code.

4. Now, the facts of the case as contended by the prosecution may be shortly stated. As I have just, stated above, the incident which is the subject-matter of the present prosecution is alleged to have taken place on 27-2-1955.

The deceased person in this case was one Simula Naran, He was an agriculturist residing in the village Kanod in Taluka Lunawada. His wife and children had died some years ago. He was staying with his sister. The appellant and original accused 1 and 3 are brothers forming a a joint Hindu family. They are agriculturists. They cultivate their lands. They reside in the same village Kanod. Their house is in front of the house of the deceased.

There is a little background to this case which may now be stated, because the contention of the prosecution is that that background was a motive for the commission of the present crime. One Jaga Kathu who also belonged to the same village of Kanod had some lands in that village. He had made a will whereby he had bequeathed all his lands to his cousins Natha Ambaidas and Shankar Ambaidas. He died some eight years before the date of this incident.

The legatees under his will, viz. the two brothers Natha Ambaidas and Shankar Ambaidas, found it. inconvenient to cultivate the lands which had been bequeathed to them by Jaga Kathu, So they gave those lands to Dhula Naran for cultivation. Dhula was cultivating these lands for about two years before' the date of this offence, Jaga Kathu, the person who, by his will had bequeathed his lands to Natha Ambaidas and Shankar Ambaidas had left surviving behind him his widow Bai Jivi.

This woman Bai Jivi passed a deed of gift In respect of the lands abovementioned in favour of the original accused 3 who as I have stated is a brother of the present appellant. The gift of the lands was made by Bai Jivi in favour of accused 3 and another person of the name of Lala Natha.

This action on the part of Bai Jivi started the dispute between the deceased Dhula Naran on the one hand and the present appellant and hi& brothers started disturbing the possession of the deceased Dhula Naran. They forcibly entered upon the lands which were cultivated by Dhula Naran. They used to remove the crops which were reared by Dhula Naran upon these lands. They used to uproot the crops.

The result of all this was that Dhula Naran had filed a criminal complaint against the appellant and his brothers. On their pait, accused 3 and Lala Natha had filed a, suit against Dhula Naran. The' suit ended in favour of Dhula Naran. In other words, the suit was dismissed and the possession of the deceased was confirmed.

5. In the last season of the last year Dhula Naran had reared a crop of gram on the land which he was cultivating, that is to say the lands which were given to him for cultivation by Natha Ambaidas and Shankar Ambaidas. The gram crop became

ready for harvesting. The servants of Dhula Naran used to sleep in the field for keeping watch. About three days before the date of this offence, Dhula Naran went to Lunawada. -He returned to Kanod.

On 27-2-1055, at about 9 O'clock at Night the deceased took his food and started from his house to go to the gram field. He carried with him a 'Godadi' (Matress) and a bed sheet. He was going by the Chanasher Road. When Dhula Naran started from his house to go to his field, the appellant and his brothers were in the verandah of their house. They noticed Dhula leaving the house for going to his field.

On seeing the deceased leaving his house, the appellant took a stick, his brother accused 3 took a dharia and all the four accused, accused 4 being a resident of the village Khutelao, met the deceased on the road and assaulted him, beat him and killed him on the spot. The appellant, says the prosecution, gave a stick blow on the head of the deceased. The deceased fell on the ground.

After life was extinct from him, the appellant and his co-accused, says the prosecution, tied the hands and legs of the deceased and carried the dead body to the appellant's field known by the name of Ambliwala. In that field there was a kotardi, that is a deep pit, into that kotardi, the appellant and his brothers threw the dead body of the deceased Dhula Naran.

The prosecution contends that all this was done on the night of 27-2-1955. Early next morning, which would be the morning of 28-2-1955, the appellant went with a ken to his field Ambliwala. It may be noted that a ken is an agricultural implement which is driven by bullocks for removing earth from one place to another. While going to his field Ambliwala, the appellant directed his servants to bring more kens to the field Ambliwala.

The result of this direction which was given by the appellant was that his brother accused 3 and the servants of the appellant and of accused 3 took kens to the appellant's field Ambliwala. All these kens were worked for the purpose of filling up the kotardi situated in the Ambliwala field of the appellant with earth. After the kotardi was filled up with earth, it was levelled and an embankment was erected

on the kotardi.

6. Reverting to the night of 27-2-1955, it maybe noted that Mogha Sata, the servant of the deceased Dhula Naran, had slept in the gram fieldof the deceased on the night of 27th February. Hehad naturally expected that the deceased wouldalso go to his field to sleep, but the deceased didnot go to his field to sleep that night.

I have already pointed out above that he hadstarted to go to his field, but was murdered on the way. Mogha Sata returned home in the morning and as the deceased had not gone to his field the previous night, he (Mogha Sata) asked the sister of the deceased as to where the deceased was. The sister of the deceased told Mogha that the deceased had gone to his field the previous night.

Thereupon Mogha told her that the deceased had not gone to the field at all during the previous night. This started enquiries for the whereabouts of the deceased, but the deceased could not be traced. Ambaram Haridas, a relative of the deceased, was also informed that the deceased was missing. So he too started to make enquiries about the deceased.

Ambaram's father told Ambaram that he had noticed that accused 1 was behaving funnily that morning. Ambaram went to the Ambliwala field and noticed that accused 3 and his servants were filling lip the kotardi in the Ambliwala field with earth. This aroused Ambaram's suspicion. He. suspected foul play. He consulted the villagers end contacted the Police Patil. He told the Police Patil about his suspicion.

The Police Patil advised Ambaram and the other villagers to go to the police station of Khanpur. Accordingly. Ambaram and others went to the police station of Khanpur. This was about 4 O'clock in the morning. It was the morning of 1-3-1955. The search which was made upto 1-34955 for tracing the whereabouts of the deceased had fielded no fruit.

At the police station of Khanpur, the Head Constable was in charge. Ambaram told him that he and others, who had accompanied him, were suspecting foul play in

regard to the disappearance of Dhula Naran and the suspicion was that Dhula must have been killed. He also said that the suspicion was against the appellant and his brothers. The Head Constable took down the statement of Ambaram, but he did not register the offence, presumably because he was not sure as to the circumstances under which the whereabouts of the deceased were untraceable.

The Head Constable directed Ambaram and others to return to the village and conduct a further search for the deceased. So Ambaram and others went back and made further enquiries which also yielded no result. So they went back to the police station of Khanpur. At that time, the Police Sub-Inspector was in charge of the police station. When they told the Sub-Inspector about their suspicion, the Sub-Inspector asked them to produce the dead body first.

This left Ambaram and the others with no other alternative but to make an application to the District Superintendent of Police, Hira Bhairam and Parshottam Natha and others contacted one Manishankar Vidyaram who is a social worker in the village.. They informed him about what had happened. Thereupon; Manishankar also contacted the District Superintendent of Police. This happened on 5-3-1955.

The District Superintenpdent of Police called the Police Inspector, Local Intelligence Branch, Godhra, and directed him to make enquiries in the matter.' Thereafter, the Police Inspector and Manishankar went to the village Kanod and arrived there in the evening of 6-3-1955. On 7-3-1955, in the morning, the Police Inspector searched through the hills, kotars and wells, but the search proved futile. Then he called the villagers. He also called the present appellant.

In presence of the panchas, the appellant told the Police Inspector that he had buried the dead body of the deceased and would point out the said dead body. So saying, the appellant took the Police Inspector and the panchas to his own field Ambliwala and there he started to dig. After he dug upto a certain point, he said he could not do any further. The body had been buried very deep. He said the help of other villagers would be necessary.

So kens were brought and the help of villagers was requisitioned and further digging of the kotardi in the Ambliwala field of the appellant was done. The appellant was also digging all the while. After the pit was dug to a depth of 4 1/2', the dead body became visible. It was then that the Police Inspector recorded a formal complaint and sent it to the Police Station, Khanpur, for registering the offence. At 4 O'clock in the afternoon, which would be the afternoon of 7-3-1955, the Taluka Magistrate arrived at the spot.

It was in his presence that the dead body was taken out from the kotardi. It, was identified to be the dead body of the deceased Dhula Naran. Thereafter, the inquest panchnama was drawn up. The body was sent to the medical officer at Lunawada for post-mortem examination. The usual investigation was done. Accused 1 and 3 were arrested on 7-3-1955. Accused 2 had already been arrested earlier on that very day when he stated in presence of the panchas that he had buried the dead body of the deceased and would point it out. These shortly stated are the facts of the case for the prosecution.

7. The defence of the appellant is a defence of total denial of guilt. He pleaded not guilty to both the alternative charges. His contention is that he never made any statement before the panchas that he had buried a dead body nor did he make any statement that he would point out the dead body. According to him, the evidence against him is false.

8. Now, the learned Advocate Mr. Gupte appearing for the appellant has raised three points before us. The first point which he raised was that the prosecution had failed to prove that Dhula, Naran had been murdered and that unless this ingredient, viz. the fact of Dhula Naran's murder was established, charge under Section 201, Penal Code against the appellant could not be sustained.

The second point which Mr. Gupte sought to make was that the charge in this case was a charge under Section 201 read with Section 34, Penal Code. In other words, it was a charge that the appellant and certain others, in furtherance of their common intention to cause the disappearance of the evidence of murder, had caused that disappearance by throwing the dead body of the deceased in a pit.

Mr. Gupte said that since the co-accused of the appellant had been acquitted, the appellant also must be acquitted of the charge under Section 201 read with Section 34, Penal Code. The third point which Mr. Gupte sought to make was that the statement which the appellant is alleged to have made before the panchas, viz. the statement that he had buried the dead body and would point it out was not admissible in evidence. These are the only three points which Mr. Gupte made before us. He did not have anything further to say in support of his appeal.

9. Now, in regard to the first point of Mr. Gupte, viz. that there is no evidence in the case to show that an offence of murder was committed in respect of Dhula Naran, Mr. Gupte's submission must fail at once. The evidence clearly establishes that on 27-2-1955 Dhula Naran had left his house at about 9 O'clock at night to go to his field. The evidence clearly establishes further that thereafter Dhula Naran was never seen alive.

The evidence further shows that when the kotardi in the Ambliwala field, which had been filled up, was dug on 7-3-1955, the dead body of-Dhula Naran was discovered from that kotardi. The dead body was buried deep in the kotardi. The digging had got to be done upto a depth of 4 1/2 feet. More kens than one and several shovels had to be taken to the Ambliwala field. Three or four kens were requisitioned and all the kens were working for removing the earth from the kotardi.

The work lasted for about four hours before they could get at the dead body. During all these four hours, several people were working. This would show that a deliberate attempt was made in order to bury the dead body upto such a depth that even the foul smell emitting from the dead body might not get beyond the surface of the field and might not arouse the suspicion of anybody.

The medical evidence would clearly show that the dead body had remained buried for several days which again would show that the deceased must have been done to death several days before the day on which his body was discovered; If we turn to the post-mortem notes, it would appear that the decomposition had advanced considerably. The right and left lungs of the deceased had been decomposed. Pericardium had been decomposed. Peritoneum had been decomposed.

Casophagus had been decomposed. Pancreas and supranals had been decomposed. The bladder and the organs of generation had been decomposed.

This advanced state of decomposition would support the story of the prosecution that the dead body must have lain for several days in the kotardi before it was discovered on 7-3-1955, as a result of a statement made by the appellant. In these circumstances, we have no doubt whatever that Dhula Naran had been murdered on 27-2-1953 on which night he (though expected to go to his gram field) had not been able to go to his field as he was murdered on the way.

Thus, there is no substance in Mr. Gupte's contention that the important ingredient of an offence under Section 201 was missing in this case since there was no evidence of this offence of murder itself in respect of the death of Dhula Naran.

10. The next point which Mr. Gupte sought to make was that, since, the charge against the appellant and his co-accused, was a charge that in furtherance of their common intention to commit an offence under Section 201, Penal Code, they had committed the said offence and since the co-accused of the appellant had been acquitted, the conviction of the appellant for an offence under Section 201 read with Section 34, Penal Code could not be sustained. We are unable to see any substance in this contention.

Mr. Gupte has not been able to cite any authority on the point, and the latest decision of the Supreme Court is to the contrary. If the appellant and others are charged with having committed an offence in furtherance of their common intention to commit the said offence, then even if the co-accused of the appellant are acquitted, the appellant can be convicted of the offence by the operation of Section 34, if it is proved that the crime was committed in furtherance of the common intention of himself and others.

Thus, there is no substance in this point also which Mr. Gupte sought to make before us.

11. The last point of Mr. Gupte is that the statement alleged to have been made by the appellant in the presence of the panchas that he hadburied the dead body and

would point it out is notadmissible. There is no substance in this pointeither, in view of the Pull Bench decision of thisCourt in -- 'Rama Shidappa v. State' : AIR1952 Bom299 .

It was held in that case that when a statement made by an accused person while in custody of a police officer was tendered in evidence under Section 27, Evidence Act, 1872, on the ground that an article winch was concealed and the accused's knowledge of its whereabouts were discovered in consequence of the statement, the words included in the statement with regard to the authorship of the concealment as for example 'I have concealed', 'I have hidden', or 'I have kept' were admissible in evidence under Section 27 of the Act.

Thus, there is no substance in this last contention of Mr. Gupte also. There is no doubt that as a matter of fact the appellant did make a statement in presence of the panchas that he had, buried the dead body and that he would point it out. In this connection, we have the evidence of the Panch Muljibhai, Exh. 14. Muljibhai has stated that the accused No. 2, that is the appellant, told them that he would point out the dead body which he and his brothers had buried.

Of course, so far as the appellant involved his brothers also, the statement would be inadmissible. But, so far as he involved himself, the statement would be clearly admissible in view of the above-mentioned Pull Bench decision of this Court. Muljibhai has then gone on to say in his evidence that, after making the abovementioned statement, the appellant went ahead of the panchas and led the panchas to his field Ambliwala.

In that field, the appellant dug upto a point and then he said that it would not be possible for him to dig any further as the body had been buried deep. Thereafter, according to this panch witness Muljibhai, the assistance of other people was requisitioned. Three or four kens were also brought from the village. The appellant had Joined in the digging all the while. A panchnama in this connection was drawn up and it is Exh. 15 on the record of this case.

The panchanama also stated that the appellant had made a statement before the panchas that the dead body of Dhula Naran had been buried by him in a pit in his

Ambliwala field and that he would point it out. There is the evidence of two other witnesses Ambaram and Manishankar, the effect of which is similar to the effect of the evidence of the panch witness Muljibhai. There is the evidence of the Police Inspector also.

All these witnesses are at one in saying that the appellant had made a statement in the presence of the panchas tha.t he had buried the dead body of the deceased and would point it out. That being so, it is futile to contend, as the appellant has contended, that the prosecution had failed to prove that he had ever made a statement that he had buried the dead body of the deceased and would point it out.

12. The learned Advocate Mr. Gupte had noother submissions to make before us. In the submissions which he did make and which I have already dealt with, we are unable to see any sub-stance, That being so, the appeal must fail andis dismissed.

13. Appeal dismissed.

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