

Manohar Singh Vs. Emperor

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Court : Allahabad

Decided On : May-22-1945

Reported in : AIR1946All15

Appellant : Manohar Singh

Respondent : Emperor

Judgement :

Bennett, J.

1. The appellant Manohar, an Ahir, aged from 30 to 35 years, was sentenced to death by the learned Sessions Judge of Etah under Section 302, Penal Code, for the murder of a widow named Mt. Ram Devi, aged about 42, between 1st and 7th May 1944. The Sessions Judge has referred the case for confirmation of the sentence.

2. The appellant and this woman lived in a village called Dhupa in the Aliganj police circle of the Etah district. She had been the wife of one Sardar, uncle of Manohar. Sardar had died about 18 years ago and since then she had apparently been living alone, or with her son Nathu, until he left for Ahmedabad a few years before her murder. The body of Mfc. Ram Devi (who was also called Pujia) was found in a well of Nagla Mohan, a village one or two miles-distant from Dhupa, in the afternoon of 7th May. Its discovery was reported to the Aliganj police the same evening by villagers of Nagia Mohan. The body was taken out by the Station

Officer the next morning. He sent for people from surrounding villages and it was identified as the body of Mt.(Ram Devi. It was in a highly decomposed condition but there is no reason to think that it could not be identified. There has been no suggestion of any doubt as to its identity. The Civil Surgeon of Etah performed the post-mortem examination in the afternoon of 9th May. He could find no marks of injury on the body and owing to advanced decomposition he could give no opinion about the cause of death. He found the tongue protruding and pressed between the teeth and the Sessions Judge has referred to this as one of the signs of strangulation. It happened that Mt. Ram Devi had sent reports to the District Magistrate and Superintendent of Police on 10th and 12th April respectively (Exs. P5 and vi) in which, she alleged that Manohar and his relatives had threatened to kill her. There had been a police inquiry by a head constable named Mohammad Yasin, who gave evidence as a prosecution witness. His report of 22nd April (Ex. P6) fully supported her allegations. Ho said that these persons were 'deadly against her', that her life was in danger and that it was quite possible that they might take her life on some occasion. Ho advised action under Section 107, Criminal P.C. This report was put up before the Court concerned and notice was issued on 4th May to the appellant, his brother Dhan Singh and his father Angnu requiring them to attend and show cause why they should not be required to give security for their good behaviour. By that time, however, in all probability the woman was dead.

3. The investigation was taken over from the original station officer of Aliganj by another Sub-Inspector on 9th May. He arrested the appellant on 10th May and made a report for his statement to be recorded. The appellant was despatched to Etah on nth, arriving there on the 12th (communications in the Etah district being poor and there being no railway at the town of Etah). The report was placed before Mr. Mobin, a First Class Magistrate, on the 12th. He was informed that the appellant had been sent to jail. The Magistrate went to the jail on the morning of the 13th and told him to think the matter over, saying that he would come again later in the day and take down such statement as he wanted to make. The Magistrate returned to the jail later in the day and after satisfying himself by questioning the appellant that he was making a voluntary statement he recorded what is in effect a full confession of the crime (Ex. P-12).

4. In this confession Manohar implicated three other men as well as himself, but they were not proceeded against, presumably because no corroborative evidence could be found against them. The police submitted on 30th May a charge sheet against Manohar only. Subsequently evidence was forthcoming against three other men, these not being the three men implicated by Manohar, and the police submitted a supplementary charge sheet against them on 13th June. These three men were tried by the Sessions Judge with the appellant. He acquitted them, disbelieving the evidence referred to. This evidence implicated the appellant also. We may say that we see no reason to doubt the Sessions Judge's estimate of this evidence. As against Manohar the Sessions Judge was left with his confession and the circumstances referred to. The confession had been retracted by the appellant in the Court of the Committing Magistrate. Both in that Court and in the Court of the Sessions Judge the appellant admitted making the confession, but said that it was false. He had made it because the Sub-Inspector told him that unless he made a statement as directed by him he would get him and his brother hanged and that if he deposed according to his wishes he would get him released. The confession made by Manohar to the Magistrate on 13th May reads thus (omitting the preliminary questions and answers):

I killed Mt. Ram Devi on the 1st of this month some 12-13 days ago. She was my bari amma (father's elder brother's wife). She was the widow of my uncle. She was a woman of loose character. She had illicit connection with Dina Brahman. He used to visit her. I explained matters to her at length, but she did not listen to me. I went away from here to Ahmedabad on account of shame. From there I came back on the 28th of the last month. I lived in Ahmedabad for some 10-12 years. On my return also I found Mt. Ram Devi in the same condition. Dina Brahman used to visit her, he used to sleep and stay there. I asked Diwakar Nath Pandit to suggest to Dina to take away Mt. Ram Devi to his house because her bad reputation was responsible for the marriages of my daughters not being settled and for the members of my brotherhood not taking food at my place. Dina did not listen to anybody. I also explained matters to Ram Devi. She said that she would continue to live the same kind of life. I said to some 2 or 4 friends of mine that I wanted to kill Mt. Ram Devi. I had consulted Ram, Charni, Munshi and Narain Kaohhi on this point. They said that it was good on my part to do it and that it would put an end to

the scandal. In the evening before sunset I caught hold of Mt. Ram Devi in the field of Diwari near the village. Narain and myself dragged her into the jungle. Ram Charni and Munshi also, who were hiding themselves nearby, went with us. We took Mt. Ram Devi along the nullah. Narain asked me to stay there saying that he was going to call some other man and that we should then act according to his advice. He brought Sukhi Kachhi of Imandpur. He had brought with him a hemp rope also. Narain tied the rope round the neck of the woman. All of us felled her down and pressed her. Narain put a piece of wood into the coils of the rope and turned it round whereby Mt. Ram Devi died. Sukhi Kachhi asked me to throw her into a well after tying two bricks by her neck and then to go home. I did accordingly and having thrown the corpse into the well I came away home.

5. The Sessions Judge held that a retracted confession must be corroborated by other evidence before it can be accepted, but he said that there was corroboration on several points. He found on the evidence that Mt. Ram Devi's liaison with Din Dayal alias Dina Nath had been established beyond doubt. Dhan Singh, Manohar's brother had two daughters of marriageable age and Mt. Ram Devi's unchastity must have been an impediment in the way of arranging their marriages. The Sessions Judge also thought that the fact that the body was found with a lahnga tied round the neck with two bricks inside, as described by the appellant, constituted further corroboration. We cannot regard this latter fact as strengthening the confession, because if, as alleged by the appellant, the confession was put into his mouth by the police, they would naturally have included it. It is, however, unlikely that they would have suggested the motive which he gives, when there existed a much more obvious motive, to which we shall presently refer. We do not, we may say, reject the motive given by the appellant; we think it may well have constituted a motive, but we do not think that it was the only motive. The appellant would naturally give the motive which he thought redounded most to his credit. If we read the confession aright, it was made by a man who was rather proud or pretended to be proud of what he had done. He had acted, he suggests in his confession, in the interests of the family, to vindicate the family honour and to remove a hindrance to the marriage of his brother's daughters. He had consulted his three associates and they had told him it was a good thing for him to do and that, it would put an end to the scandal. The fact that he implicated with himself

three other men against whom the police had no case at all also indicates that the statement was not put into his mouth by the police. We agree with the Sessions Judge as regards the woman's liaison with Din Dayal. He is a bachelor aged 35. Admittedly he had befriended and assisted the woman. Being a Brahman he naturally denied the intrigue.

6. But it is true that there is no corroboration as regards the actual facts of the murder. We are dependent for those facts entirely upon what the appellant has told us. It has been argued that as the other three men implicated were not prosecuted it follows that that part of the confession has been found to be untrue and that it has been held by this Court, where the only evidence against an accused is that of his own confession, that the confession must be accepted as a whole. We do not agree that it has been found that the story so far as it relates to the other three men was false. It was useless for the police to proceed against them in the absence of other evidence. It has only been found that there is not sufficient evidence to prosecute them. And when the learned Counsel says that a confession must be accepted as a whole, we do not think that he is right. So far as we are aware, all that has been held is that a confession must be accepted in its entirety so far as it affects the person making it. That is to say, anything which he puts forward in his confession by way of mitigation must be accepted, however improbable it may appear. The case referred to on the point is *Balmukund v. Emperor* : AIR1931 All1 . The Full Bench in that case had to consider a confession, we understand, which, implicated only the person making it and what they held was that the Court could not accept only the inculpatory element and reject the exculpatory element. We asked the learned counsel if he wished to rely upon the reason given by the appellant in the present case for the murder as an extenuating circumstance, and he replied in the negative. It is clear that while the appellant himself may have regarded the reason given by him as a good reason for the murder it could not be so regarded by a Court of law.

7. So far as the confession implicates the appellant we are prepared wholly to accept it. We are not concerned with it in so far as it affects others, except that if we had reason to think that it was false as regards them we might possibly regard that fact as throwing doubt upon the rest of it. In determining whether the

confession is true or false we consider that we are also entitled to take into consideration all the circumstances which may throw light upon the woman's death. The proposition which we' have been asked to accept is that while it is not illegal to convict a man upon his own confession and while in law the confession of one person may be taken into consideration against a co-accused a Court should not convict in either case upon such confession in the absence of corroboration in material particulars. This would give a confession as against the person making it precisely the same value as, and no more than, is attached to a confession as against other persons who are being tried jointly with the person making it. It is now generally agreed that other persons should not be convicted upon his confession unless there is corroborative evidence as against them; but there has been some conflict of opinion as to whether corroborative evidence should invariably be required, even as against the person confessing. It is implied in the Full Bench case referred to that a person may be convicted solely upon his own confession. To much the same effect is the ruling in another Full Bench case *Raggha v. Emperor* : AIR1925 All627 , where the only corroboration was the discovery of clothes in the place where the confessing accused said they had been thrown. The body of the man alleged to have been murdered was never found in that case. Learned Counsel has cited *Emperor v. Shambhu* : AIR1932 All228 , a Division Bench decision. The confession in that case was rejected because there were defects in the procedure of recording it and also because there were features in it which threw doubt upon its genuineness. Learned Counsel has, however, stressed the general observation towards the end of the judgment that

the evidentiary value of a retracted confession is very little and it is a rule of practice, as also a rule of prudence, that it is not safe to act on a retracted confession unless it is corroborated in material particulars.

8. Of older cases learned Counsel for the appellant cited *Queen-Empress v. Mahabir* ('96) 18 All. 78 to support his contention, while for the Crown we were referred to *Queen-Empress v. Maiku Lal* ('98) 20 All. 133. We were also referred to certain observations in *Basu's Law of Evidence in British India*, in particular to the commentary on Section 24, Evidence Act. It is there said (page 437, Edn. 3):

The net result of the authorities on the value of confession seems to be this : (i) That it is not illegal to base a conviction upon the uncorroborated confession of an accused person, provided the Court is satisfied that the confession was voluntary and is true in fact; (ii) that from the point of view of legality, pure and simple, the fact that a confession has been retracted is immaterial; (iii) that the use to be made by the Court of a confession, whether retracted or not, is a matter rather of law the business of the Court being to make up its mind in accordance with the dictates of commonsense whether it is safe to believe the confession or not; (iv) that experience and commonsense show that in the absence of corroboration in material particulars, it is not safe to convict on a confession, unless from the peculiar circumstances in which it was made, and judging from the reasons, alleged or apparent, of the retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine.

In the commentary on Section 30 of the Act we find the following passage, based on certain decisions:

A retracted confession is sufficient evidence for convicting the person who made it if the Court believes it to be true. As regards the person making it such a confession may even without any corroborative evidence form the basis of conviction.

As regards the reason for retraction in the present case, we have shown that the reason given by the appellant himself, that he made it under police pressure, is almost certainly false because some of the details are not such as would have been put into his mouth by the police. We may perhaps surmise that what may have originally been thought by the appellant to furnish some justification for the crime did not, upon further consideration, appear in so favourable a light. In addition to other circumstances mentioned by the head constable Mohammad Yasin in his report we find it stated that Mt. Ram Devi was said to be of immoral character 'and for this reason she has no sympathisers in the village, nor is there anyone to help her.' There is no reason, therefore, to doubt that the motive alleged by the appellant himself weighed with him to some extent. We may also find here the explanation for no other evidence, that is, as to the actual murder, being

forthcoming.

9. In our opinion, in a case of this kind, where there is no room for any doubt as to the genuineness of the confession arising from the procedure followed or from its contents, the antecedent circumstances may be: of material assistance in determining whether the confession should be believed. They may afford substantial support for the belief that it is true, or on the other hand they may be of such a nature as to suggest a doubt. When a few weeks before her murder a woman writes to the authorities that her life is in danger from a certain person, giving reasons for this apprehension, and when upon a police inquiry her fears are reported to be well founded, and when shortly after her murder that person is arrested and makes a clear and unequivocal confession, almost boasting of his crime, it is not, we think, unreasonable to conclude that that confession is probably true.

10. We have indicated that other motives besides that mentioned by the appellant may have exercised some weight with him. Sardar, the brother of Angnu and uncle of the appellant Manohar, died some 18 years before his widow, Mt. Ram Devi, was murdered. Their son, Nathu, was only about eight months old at the time of his death. Sardar had some separate property and some other property was held jointly by him and his brother Angnu. All this property was in the possession of Angnu and members of his family during Nathu's infancy, and, as not infrequently happens in such circumstances, those who had been in possession for a long time probably surrendered possession with some reluctance. It is said that when Nathu grew up he obtained possession. Our information as to this and other details about Nathu is obtained from Din Dayal, a witness whose evidence should perhaps be received with caution, but there appears to be no reason to doubt it. It is clear that Nathu's name was mutated. Nathu went to Ahmedabad (apparently with Manohar) and then let out some of his land and put Din Dayal in possession of another portion on account of a loan for Rs. 80 which he had taken from Din Dayal. Manohar returned from Ahmedabad in Chait or Baisakh (March-April) without Nathu and it was suspected for some reason that is not apparent, that Nathu was no longer alive. It would seem from a mutation application (EX. P-7) which Mt. Ram Devi made on 19th January 1944, that she had arrived at that conclusion

even before Manohar's return. In that application she said that Nathu had gone away two years before and that it had been ascertained that he was dead. Din Dayal assisted her in making that application. He was not asked the reason for the belief that Nathu was dead. The mutation application was opposed by Angnu who said (Ex. P-14) that Nathu was not dead and that his death could not be presumed because seven years had not elapsed. It was also said by Angnu in his objection, which is dated 28th March, that

the woman has no right to the land in dispute because she is immoral and has married other men at certain places and is an outcaste.

11. The 29th April was fixed for hearing the mutation case. Meanwhile, Mt. Ram Devi sent to the District Magistrate and Superintendent of Police on 10th and 12th April, respectively the reports Exs. P-5 and P-4. In each she alleged that Manohar had killed her son Nathu, though it does not appear that this was based on more than suspicion, created possibly by his attitude to her. In each report she also alleged that Manohar, his father and his brother had broken into her house and taken away certain articles, of which she gave a list in her report to the District Magistrate. She further alleged in both reports that they had threatened to kill her. According to the latter report they told her to vacate the house,

otherwise we shall kill you also like your son and as there is no trace to be found of your son so in the same way we shall also make you traceless.

12. The head constable on inquiry found these reports justified in all material particulars, except that he was naturally unable to say whether there was any basis for the suspicion that Manohar had killed Mt. Ram Devi's son. He found that Manohar and his father and brother had taken possession of her household goods and turned her out of her house, and he added as already mentioned, though it is not shown upon what he based the statement, that they were now devising means to take her life. Learned Counsel for the appellant attempted to persuade us that there were intrinsic indications that the confession was false. He said that the first sentence of the appellant's story 'I killed Mt. Ram Devi' was inconsistent with the subsequent narrative that another man tied a rope round her neck and twisted it. Reading the confession as a whole we do not think that there is any inconsistency.

We have no doubt that all that the appellant meant when he said that he had killed the woman was that he was responsible for her murder, he had arranged it and had taken part in it; 'all of us,' he said, 'felled her down and pressed her.' We were referred to the statement in the confession that the appellant had returned from Ahmedabad on the 28th of the last month. This, it was said, was shown to be untrue by the evidence. We agree that if the appellant meant that he had returned on 28th April this must be false, because the documentary evidence to which we have referred clearly shows that he must have been in the village earlier in the month. But we are not satisfied that he meant 28th April. We think that he may have meant 28th March, this being a probable date according to Din Dayal's evidence. We can see no point in the appellant making a false statement in this particular.

13. Finally, learned Counsel said that the appellant in his confession spoke of the marriages of his own daughters, while the evidence showed that the daughters concerned were those of his brother Dhan Singh. We find, however, on referring to the Urdu record that he was speaking of the daughters of the family, clearly meaning those of his brother. We are clearly of opinion that there is no reason to doubt the genuineness of the confession. We might add that it was not made by an unsophisticated villager but by a man who had according to his own statement lived in Ahmedabad for some 10 or 12 years. We have given every consideration to the arguments placed before us by the appellant's learned counsel, but believing the confession to be true and holding that in the circumstances we not only can but should give effect to that belief, we dismiss the appeal and, accepting the reference, affirm the appellant's conviction and direct that the sentence of death be carried out according to law.