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Mt. Maharani Vs. Emperor

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Court : Allahabad

Decided On : Feb-27-1947

Reported in : AIR1948All7

Appellant : Mt. Maharani

Respondent : Emperor

Judgement :

Raghubar Dayal, J.

1. Mt. Maharani alias Madhavi Wati appeals against her conviction and sentence of transportation for life under Section 302, Penal Code.

2. The prosecution case is that she murdered Sukhdeo, aged six or seven years, on the evening of 22-9-1945, at her house, probably on account of the greed to possess the ornaments-the boy was wearing. The boy was in a way related to her. Her husband's father was brother of the boy's great-grand-father.

3. Lallu, a boy eight years of age, deposes that he, Sukhdeo deceased and Ram Sarup were playing in the athai (open space in front of the house) that evening. The accused who was sitting on the stairs came and took Sukhdeo inside her house. Sukhdeo was at the time wearing churas and ear-rings. Ram Sarup and Lallu were not wearing any ornaments. Later, there was beat of drum in the village and some people asked Mm where Sukhdeo had gone. He is unable to tell the

names of these persons.

4. Enquiry was made from Lallu on the basis of the information given by Prabhu Dayal when proclamation about the missing of Sukhdeo was made by beat of drum in the village that evening. Prabhu Dayal, P.W. 4, deposes that on hearing this proclamation he told Debi Din and Sughar Singh Mukhias that he had seen these three boys, namely Lallu, Ram, Sarup and Sukhdeo playing in the athai and Mt. Maharani sitting on the stairs.

5. Prabhu Dayal, Sughar Singh, Debi Din and others accompained by Pran Singh, father of the deceased and Bhagwandas chaukidar went to the house of Mt. Maharani accused. The chaukidar remained inside the in closure, others including Churaman nephew of the chowkidar went inside the house. Inquiry about Sukhdeo was made from the accused. She at first denied seeing him. She was pre ailed upon to open the lock of the room. The villagers looked up the room and found the dead Body of Sukhdeo half buried in that room. The feet of the corpse were upwards. The conduct of the feet were found missing. The conduct of the accused inside the room was such as to betray her guilty conduct. She took up such a position at first which concealed the buried body from the sight of the people. It was when she was made to move aside after the people had looked up the entire room that-the corpse was found. After the discovery of the corpse she was again questioned as to what, she did. The accused said that she murdered the boy for the sake of churas. The room was-then locked, the chowkidar was sent to report. Debi Din, Sughan Singh and Prabhu Dayal kept watch on the room and the accused.

6. Bhagwandas Chawkidar lodged the report at 2 A.M. on the 28td of September. The police, station is nine miles from the village.

7. The Sub-Inspector arrived next morning. The accused handed over the gandasa and the churas to him. She also delivered the shirt of the deceased.

8. The accused made a confession before Mr. Misra, Magistrate, on 26-9-1945, in the jail.

9. In the Court of the Committing Magistrate she retracted, the confession denying even, the fact of her making it. She, in fact, denied, every allegation of the prosecution and reserved her statement for the Sessions Court. In the Sessions Court she admitted the statement recorded in the Committing Magistrate's Court,, but stated that-that was not a correct statement. She alleged that the confession she made before the Magistrate was at the instance of the Sub-Inspector. She made the following statement about the facts:

The woman who lives in my enclosure told me that I should go to the Bania's shop. I went to the shop of Bania. Before my return that woman murdered Sukhdeo and buried him in my kotha. When I returned I saw that the feet of the boy were above the ground and; the rest of the body was buried underground. I asked that woman why she murdered him She told me that I should not name her and should state that I did that work and then I would be saved. For this-reason I told everybody that I murdered Sukhdeo. I do not want to state anything else.

10. It would thus appear that the evidence-against the appellant consists of the statements of Lallu and Prabhu Dayal and the accused's extra judicial confession to the village people-after the discovery of the corpse and the accused's conduct at the time and the accused's, confession before a Magistrate. The learned Sessions' Judge has not relied upon the confession recorded by the Magistrate for good reasons. The record of the confession does not show that the Magistrate observed the necessary precautions laid down for the recording of confessions, and that he also did not endorse the certificate required under Section 164, Clause 3, Criminal P.C. Recording of confessions in such a slipshod manner is a waste of time by the Magistrate recording the confessions and also subsequently of the Courts in which such a confession is proved, and occasionally prejudices an accused very much.

11. We see no good reason to disbelieve the statements of Prabhu. Dayal and Lallu about Sukhdeo's playing in front of the house of the accused and the further statement of Lallu that the accused took Sukhdeo inside her house. It must be on the basis of information received that villagers went to the house of the accused and that information must have been on the basis of the statements of these two

witnesses.

12. We see no reason to disbelieve the statements of Prabhu Dayal, Sughar Singh and Debi Din about the discovery of the corpse inside the locked room of Mt. Maharani and of her confession there. Statements on both these points find support from what Mt. Maharani herself stated at the last stage of the trial, namely in the Sessions Court. Her statement proves two facts: one is that the body was buried in her room, and the second is that she stated to everybody that she had murdered Sukhdeo. She of course stated in the Sessions Court that the murder was actually committed by some other woman who lived in her enclosure. She has not given any reason and nothing is on the record to show why she is keeping the name of such a woman secret and why such a woman committed this offence.

13. The learned Counsel for the appellant has strenuously argued that the confession made to the villagers is inadmissible in evidence in view of Sections 24, 25 and 26, Evidence Act. We do not agree. There is nothing to indicate that Sughar Singh Mukhia exercised any pressure or inducement over Mt. Maharani in order to make her confess to the crime. The mere fact that he went to the house on information received to find out about Sukhdeo and insisted on looking up the house does not amount to his coercing or bringing pressure over her to confess.

14. The presence of the Chowkidar at the time when Mt. Maharani confessed to the village people is denied by the witnesses. The learned Sessions Judge did not believe this statement and felt that the Chowkidar would have been present at the time. We are of the opinion that it dries not necessarily follow that the Choivkidar would have entered the room where the corpse was found if his nephew had entered the room. The explanation given by the Chowkidar for not entering the room may not be true. It is that he did not enter the room belonging to a Thakur, he being a Khangar. His nephew entered the room, this means that it was not impossible for a Khangar to enter the house of a Thakur. The site plan bears out the statement of the Chowkidar about the lay out of the house and its courtyard. It appears from the site plan, that the corpse was found inside a room in front, of which is a verandah and that in front of the verandah is a longer courtyard and then in front, of such a courtyard is a much larger courtyard. The Chowkidar

deposes that he stood in this smaller courtyard. There is nothing surprising; if he did not actually enter the room when there were so many people to enter and when, those people included persons more keenly interested in the affair than a mere Choivkidar. Even if the Choivkidar was present at the time when Mt. Maharani made the confession the confession would not be inadmissible under Section 25, Evidence Act. The confession is not made J to the Chowkidar. Nobody has deposed that the Chowkidar enquired from Mt. Maharani, and that then she confessed.

15. The case reported in Emperor v. Shankar ('34) 21 A.I.R. 1934 Oudh. 222 supports the view we have taken. It is-observed by Nanavutty, J. at page 226:

lthough I am not prepared to go so far as to hold that a confession made to a private individual in the resence of a Chaukidar is in every case admissible in. evidence, yet where it is not shown that the Chaukidar has in any way influenced the accused, who is not ire custody to make a confession and where a Chaukidar has 'taken no part in bringing about the confession of the accused, then I think that such a confession made to a villager in the presence of a Chaukidar would not come within the mischief sought to be averted by Section 25. Evidence Act, and would, in my opinion, be admissible in evidence.

16. Reference was made to the case reported in Bal v. Emperor ('14) 1 A.I.R. 1914 Oudh. 414 where Lindsay, J. had made the following observation:

In my opinion the confession does not come within the Section (Section 25, Evidence Act), for on the evidence-as it stands it seems to me quite clear that this statement in the nature of a confession was not made to the Chaukidars at all but to Sita Ram. The fact that the Chaukidars were present and heard the statement made does not, I think, bring it within the prohibition contained in Section 25, Evidence Act.

17. The learned Counsel for the appellanthas referred to a number of rulings which lay down that the word 'custody' in Section 26 or 27, Evidence Act, does not mean formal custody, but includes such state of affairs in which the' accused can be said to have come into the; hands of a police officer or can be said to have been under

some sort of Surveillance or restriction. We agree with this view. These cases are Gurdial Singh v. Emperor ('32) 19 A.I.R. 1932 Lah. 609; Allahditta v. Emperoro ('37) 24 A.I.R. 1937 Lah. 620; Hakam Khuda Yar v. Emperor ('40) 27 A.I.R. 1940 Lah. 129 1940 Lah. 129; Emperor v. Pancham ('33) 20 A.I.R. 1933 Oudh. 192; Maung lay v. Emperor 11 A.I.R. 1924 Rang. 193 and Emperor v. Mt. Jagia ('38) 25 A.I.R. 1938 Pat. 308

18. Section 26, Evidence Act does not, however, apply to the extra judicial confession in this case. Mt. Maharani cannot be said to have been in the custody of the Chowkidar at the time when she made the statement, there is nothing to indicate that the Chowkidar was exercising any sort of control or restriction over her movements. He was just one of the party who went to the house to make inquiries about the missing boy. His mere presence in the party does not mean that everyone from whom an enquiry is made would be deemed to be in his custody. As noted above the evidence is that the Chowhidar was not even present in the room when this confession was made. The restriction began after she had made the confession and the mukhia had locked up the room again and kept watch over the room and herself.

19. We are therefore of opinion that the statements of Prabhu Dayal and Lullu together with the extra judicial confession of Mt. Maharani supported by her own statement in the Sessions Court are sufficient to establish beyond any reasonable doubt that Mt. Maharani committed the murder of Sukhdeo. We therefore find that she has been rightly convicted under Section 802, Penal Code, and sentenced to transportation for life. We accordingly dismiss the appeal.

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