

Ram Din Vs. Emperor

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Court : Allahabad

Decided On : Jul-23-1947

Reported in : AIR1948All101

Appellant : Ram Din

Respondent : Emperor

Judgement :

Sankar Saran, J.

1. The appellant, Ram Dinalias Ram Adhin Brahman was convicted under Section 302, Penal Code, and Section 449, Penal Code. Under Section 302, Penal Code, he was sentenced to death and under Section 449, Penal Code, he was sentenced to four years' rigorous imprisonment. He has made an appeal to this Court. There is the usual reference by the learned Sessions Judge for the confirmation of the sentence of death passed upon the appellant.

2. In the village of Bhunna, in the district of Farrukhabad, there lived an old woman Mt. Sumitra Devi aged 56, widow of Ganga Narain who was a Sub-Assistant Surgeon and is said to have left considerable property. It appears, that Mt. Sumitra had been a widow for a number of years and was living all by herself at her house and was attending to her domestic duties unaided.

3. On the morning of 16th April 1946, it was discovered that the house in which Ganga Narain's widow lived remained unopened and her buffalo was bellowing inside the house. Some of the villagers went to the house to see why she had not, as usual, tethered her buffalo outside her house in the morning. They were Shankar Sahai Brahman, Sarju Prasad and Kailash Nath Brahman. They went to the house and when they opened the door they found Mt. Sumitra lying murdered on a cot in her tindwari and near her was lying a gandasa as also a lock and a bunch of keys, these two articles were lying on her cot.

4. The appellant Ram Adhin is also a resident of village Bhunna where his mother and a brother live with him. One of his brothers is employed at Cawnpore. It is said that he was with his brother at Cawnpore for some time, but returned ten or fifteen days before the incident. On his return to his village he used to work occasionally for Mt. Sumitra.

5. The case for the prosecution is available only from a so-called extra-judicial confession of the appellant himself because, as has been pointed out above, the villagers came to know of the death of Mt. Sumitra on the morning of 16th April 1946, when she did not open her door at the usual hour. The first information report of the incident was made by Chhote Lal Chaukidar who was unable to name any one as the murderer or as one on whom suspicion had fallen for the offence. This report was made on 16th April 1946, at 9-45 A.M., the police station being at a distance of four miles. The Sub-inspector of police arrived at noon and took up the investigation in his hands. He held the inquest and recorded the statements of some of the witnesses. He searched for the accused but he was not to be found. He searched his house in the presence of his mother but nothing was recovered. The mother was unable to say where Ram Adhin had gone. The Sub-Inspector discovered that Ram Adhin had relations in two villages, Bidhan and Rasulpur. He set a constable and three men to Rasulpur and the mukbia Bachchan Lal, ziledar Hemraj and Narain Prasad to Bidhan.

6. It is the case for the prosecution that Bachchan Lal, Hemraj and Narain succeeded in arresting the appellant and in getting a confession from him as to his guilt. They informed the Sub-Inspector about this confession and the Sub-

Inspector after satisfying himself about the fact that this confession had been made to these men and at the pointing out of the appellant recovered a dhoti from the well of one Ishar Sahai. The dhoti was tied round a tile.

7. The confession on which reliance is placed by the prosecution has been repeated in Court by Bachchan Lal in the following terms:

He said, 'I shall tell everything. Save me.' I said, 'I shall try, speak the truth.' He said, 'I thought she was wealthy. For 4-6 days I had been going inside her house and observing. At noon on the day of murder I went to her house. Ganga Prasad Ahir, Shankar Sahay's mother Mt. Reoti and niece Mt. Parkasha came there. When they went away, the Doctorni (Mt. Sumitra) went into her room. Then I got an opportunity and concealed myself behind 2-3 broken boxes in the western baratha. In the night Doctorni went to bed. Then I came out and went to her. A pestle was lying there. I thought of killing her with it. Then I thought she would not die but would scream. So I kept the pestle on the charpoy. I saw a gandasa there and picked it up and struck her 3-4 times with it. Once she jumped and then she died. There is a niche on the tindare. There was a lamp in it. I had a match box and I lighted the lamp. I then went into the room and looked for property. I could find only Rs. 2 in silver coins. Then I came out of the western door and went into Ishar Sahay's gonad.... Then I climbed their stair-case and went up the atari. Ishar Sahay and Sita Ram asked me, where were you upto now? I said, 'Tomorrow when the police comes you will know.' I slept with Sita Ram for the night. In the morning I came back to Ishar Sahay's gonda and asked him to get me Sita Ram's dhoti. I am hungry and I would bathe first. Ishar Sahay brought a dhoti from Sita Ram. I gave him the two rupees. I changed my dhoti. I wrapped mine round a tile and threw it into Ishar Sahay's well. I gave 4 annas to Bhagwan Sahai and asked him to buy sweets. He came back and said, no sweets are available. I then gave the money to Jwala to buy molasses. He brought, I ate and drank water and then I went away to Bidhan. And there I wandered here and there.

8. This story for the prosecution related by Bachchan Lal has been almost verbatim repeated by the Zildar Hemraj. He said in his statement that when the appellant was arrested by these persons he confessed to having committed the

murder when the party that arrested him told him 'speak the truth, we shall get you released.' The evidence of Narain also is practically the same although it does not appear from his statement that any promise to have the appellant released was made by these men.

9. This is practically the whole evidence in this case and the question that we have to consider is whether firstly this confession is admissible and secondly whether even if the confession is admissible, the surrounding circumstances are such that the guilt may be brought home to the appellant. In our judgment this confession is inadmissible. Section 24, Evidence Act read as follows:

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

10. We are satisfied that the Mukhia Bachchan Lal and the Zildar Hemraj are telling the truth when they say that the appellant made the confession upon an assurance that if he spoke the truth they would get him released. There cannot be the least doubt that these two persons were 'persons in authority' as contemplated by the Evidence Act. It is hardly necessary to refer to any authorities, but it seems to be the accepted view of our Court as also of some other High Courts. In *Emperor v. Mt. Har Piari* : AIR1926 All737 it was held by a Bench of this Court that the Mukhia is undoubtedly a man in authority, and would appeal to a villager as a person who was able to, or likely to be able, to promise him a pardon or some other inducement.

In *Taule v. Emperor* ('29) 16 A.I.R. 1929 Oudh 272, a Bench of that Court held that a Zildar serving under a great estate (such as that of Kapurthala) is a person in authority and if such a person holds out inducement to the accused, the

admissions made to him would not be admissible.' In this case Hemraj is the Ziledar of the Raja Saheb of Tirwa who owns the entire village of Bhunna. The same view found favour with a Bench of the Lahore High Court where the accused made a confession to the servant of his landlord, vide Mahomed v. Emperor ('36) 23 A.I.R. 1936 Lah. 264. The landlord was a big zamindar and his servant or ziledar had considerable authority in the village. Apart from the fact that two of these men were the Mukhia and the Ziledar, they were clothed with the further authority from the police because it was the investigating officer who deputed them to arrest the appellant, and, as such, they were undoubtedly men who could be described as men in authority. Accordingly we hold that this confession is inadmissible. Even supposing it were not inadmissible because it was not made to persons in authority, are satisfied that this confession was not voluntarily made and is not a true statement of facts. His Lordship then discussed the evidence on this point and concluded.

11. In the result, we are not satisfied that the prosecution has succeeded in establishing the case against the appellant. He is, therefore, entitled to an acquittal. Accordingly we allow his appeal and setting aside his convictions under Sections 302 and 449, Penal Code', direct that he be set at liberty unless required, for any other offence.

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