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Bachchan Lal Vs. the State

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Court : Allahabad

Decided On : Oct-19-1956

Reported in : AIR1957All184; 1957CriLJ344

Judge : Raghubar Dayal and ;James, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 164 and 342; Evidence Act, 1872 - Sections 24; Indian Penal Code (IPC), 1860 - Sections 34, 94, 107, 146, 147, 201, 300 and 302

Appeal No. : Criminal Appeal No. 1139 of 1956, Referred No. 88 of 1956

Appellant : Bachchan Lal

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : S.K. Varma and ;Jai Gopal Chatterji, Advs.

Disposition : Appeal allowed

Judgement :

Raghubar Dayal, J.

1. Bachchan alias Doctor appeals against his conviction under Sections 147 and 302, read with Section 149, I. P. C. He was sentenced to death for the latter

offence and the learned Sessions Judge has referred the case for the confirmation of the death sentence.

2. The appellant, who was an agent for selling medicines, began to reside at the house of Nainsukh in village Bakhrauli, P. S. Tathia, district Farrukhabad, from some time in the second week of June 1955. On the night between the 19th and 20th of June he, Nainsukh and Nainsukh's sons, Shiam Behari & Prem Baboo, slept on different cots outside the house & in front of it, Nainsukh and the accused were found missing from their cots by Shrimati Raghbansi, wife of Nainsukh, when she woke up and went out after midnight to look after the cattle.

She did not suspect anything as her husband used to go away for days without informing her & as the accused too used to go away for days. When Nainsukh did not return in the morning search was made for him on the 20th and 21st of June. He was not found.

On the morning of the 22nd of June Raghubansi learnt from certain children about the presence of a dead body lying in Gularia Har that is the tract of land known as Gularia. She went there and recognised the dead body to be that of her husband. The Chaukidar's son Shyam Lal reached and was asked by her to go to the thana and lodge the report.

3. Shyam Lal lodged the report Ext. 1 at 3.15 p.m. at the thana, which is four miles from the place of incident. The significant statements in this report are:--

'I found that there was no cloth on the dead body. One piece of cloth having stripes of catechu colour, and of check design was pressed in between the thighs. On the right scapulae therewas a mark of penetrated injury. The right ear and face were cut and the front of the head appeared to be scratched. The corpse was decomposed.

I asked Nainsukh's wife to go to the police station to lodge a report. Nainsukh's wife said that four days ago on the midnight of Sunday her husband woke up and went to some place, that Bachchan Kahar alias Doctor, who lives in the adjoining village, and who is a stranger, was sleeping at the same place at the door, that her

husband often used to go without informing Her and that she therefore did not suspect anything and that wlten she saw the corpse she learnt that he had been killed by somebody.

She asked me to go to the police station and, lodge a report, and said that when the sub-inspector of police would go there, she would tell her everything. I have entrusted the corpse to the wife of Nainsukh and Narain Ahir of Munna Purwa and have come to lodge a report.'

It would appear from this report that Raghubansi, the wife of Nainsukh, did not desire to tell all what she probably knew about the incident to Shyam Lal and that she did not specifically mention to him that Bachchan was also not on his cot, when she had gone out during the night.

4. Sub-Inspector Triloki Nath Singh investigated the case upto the 18th of October, 1955. He proceeded to the spot, prepared the inquest report and a site plan. The site plan was lost. He recorded the statement of Raghubansi on the 23rd of June and of Narain Prasad on the 3rd of July. He could not find any trace of Bachchan accused.

5. Bhagwati Prasad Chaube took over the investigation on the 18th of October. On the 23rd of October Bachchan was brought to him under arrest by private persons. None of them has been examined in the case to establish the circumstances in which the accused was arrested. He also prepared a site plan after inspecting the spot. It is Ex. 9. He recorded the statement of Bhagwati on the 11th of December, 1955, and submitted the charge-sheet on the 16th of January against the accused and one Harnam Singh who was acquitted by the learned Sessions Judge.

6. The accused's confession was recorded on the 9th of February by Sri Sinpal Misra, Judicial Officer, in compliance with the orders of the District Magistrate on the accused's application Ex. 7 from the jail. The confession was recorded subsequent to the submission of the charge-sheet. In fact the committing Magistrate had recorded the statements of certain witnesses prior to the recording of the confession of the accused on the 9th of February.

In view of our decision in State v. Ram Autar Chaudhry : AIR1955 All138 this confession cannot be taken in evidence as a Magistrate can record a confession under Section 164, Criminal Procedure Code, during the investigation of a crime by the police and not subsequent to the closing of the investigation and the submission of the charge-sheet. We may, however, briefly mention, in view of the accused's admitting during his statements in court the voluntary nature of this confession and repeating practically what is mentioned therein, that the accused stated that he had taken the deceased Nainsukh to the grove at the asking of one Narain Singh and that at the grove after certain altercation Nainsukh was murdered. In the confession the actual description of the murder is given thus:

'When Nainsukh said this Pratap Singh, Deopal Singh and Uma Shankar felled down Nainsukh, and murdered him. Pratap Singh asked me to hold the legs, and to participate in the murder. He also said that if I did not participate in the murder they would also murder me. On account of fear I caught hold of the legs..... I andNarain, both the persons, took up the corpse.

We took it at a distance of about four or five furlongs.... Pratap Singh said that the dead body could not be taken upto the canal, and that it was at a distance of one mile, hence the dead body should be concealed, and for this reason we concealed the dead body .... Deopal Singh and Rampal Singh took me with them and went towards their home.

Deopal kept me in his custody at his home for three or four days, and told me that I should go to some other place and sell the medicine and that I should not remain there, and that otherwise all of us would be arrested, and that if I made mention of it, I would also be murdered. On account of fear I did not go there.'

In answer to the question 'When had there been consultation about the commission of murder,' he said:

'In the noon or in the evening. They came to call me on the midnight of the day on Which the murder was committed.'

7. In the Magistrate's court Bachchan the accused was put the question: 'Did you, on the same night in between 10 and 2 o'clock, in collusion with other accused, take Nainsukh deceased to a field near Jhaliyawala Bagh on the outskirts, of Munna Purwa, a hamlet of Bhakarauli, and along with other accused murder Nainsukh?' His answer was:

'Yes. But the murder was committed at a distance of 11/2 furlongs to the west from Munna Purwa where there is a row of trees, beyond them (trees) to the south.'

He admitted that he had made the confession voluntarily without any influence or compulsion on the part of anyone. He denied that Nainsukh had found him and Trimohan with a gun some days before the murder and alleged that it was Nainsukh who had brought the gun from the house and that Harnam Singh happened to reach the grove at that time. He denied that Nainsukh rebuked him at that place.

The Magistrate then put him certain questions in a form in which they should not have been put. The object of the examination of the accused under Section 342, Criminal Procedure Code, is to afford him an opportunity to explain away the circumstances which go against him and is not to elicit matter on the record about which there be no evidence. The court is not an investigating agency whose duty is to find out facts which could be put before the court at the trial. The form of the questions deprived the accused to give an explanation about certain conduct which could go against him. We give the questions and answers:--

'Q. With what weapon Nainsukh was murdered?

A. His throat was cut with banka.' There is no evidence on the record that banka was used for committing the murder of the deceased.

'Q: Who were the persons who committed the murder?

A. Nainsukh was murdered by Uma Shanker, me, Pratap Singh and Deopal Singh, the four persons. Harnam Singh was standing there and seeing if some one was coming there. Bharat and Narain of Munna Purwa and Gulzari and Rampal Singh of Atraula were with Harnam Singh. This Rampal Singh, accused present in court,

and Trimohan and Babu Ram accused were not there.

Q. Where did you take that corpse after committing the murder?

A. That corpse was taken away by me and Narain, and I and Narain took that corpse to Khargi Bamba and we concealed the corpse in the jungle under the leaves.

Q. Who are Bharat, Narain, Pratap Singh and Deopal?

A. Bharat and Narain whom I mentioned above are the Ahirs of Manna Purwa. Pratap Singh is the brother of Harnam Singh accused and Deopal Singh is the resident of Atrauli.'

8. In the sessions court also he denied the suggestion that Nainsukh had seen him with a gun and had rebuked him a few days before the incident and said that the facts were in the manner stated by him in his confession Ex. 8. He said further:

'Nainsukh had asked me to keep the gun somewhere and we both were planning about it, when Harnam Singh came. The gun was hidden in a sugarcane field and we came. In the evening Harnam Singh told the wife of Nainsukh that he had seen the gun with Nainsukh and Bachchan (myself). That gun was kept by Gulzari under fodder in the knowledge of Raghubansi, and Gulzari also pressed Raghubansi to get back the gun from Nainsukh. Nainsukh refused to give back the gun and turned out Gulzari from his house.'

He admitted sleeping outside the house that night and stated:--

'Narain Singh asked me to bring Nainsukh on the Eamba as someone wanted to meet him there. I woke up Nainsukh. Narain was Nainsukh's son. Nainsukh went with Narain and I also went with them not knowing at all that there was any plot to murder Nainsukh. We went to the west of village munna Purwa in grove near the Bamba. Deopal, Rampal, Gulzari, Narain, Pratap, Bharat, Uma Shankar and Harnam Singh were there.

They all demanded him to return back the gun. Nainsukh said that he would not give back the gun. An altercation ensued between them. On that Deopal and Uma

Shankar and Pratap pulled down Nainsukh on the ground. I protested against this behaviour meted out to Nainsukh. Pratap Singh showed me gandasa and asked me to catch the feet on pain of death.

I was frightened of my life, so I caught the legs of Nainsukh. Then Uma Shankar cut the neck by another gandasa (which I called banka in my confession. It is the same thing) and killed Nainsukh. Uma Shanker and others asked me to take the dead body myself and Narain lifted it and we took it to Gularia Har and concealed it under Dhak tree as it was getting morning and it was not possible to reach the canal to throw it there.

These persons then took me with them as they feared that I will expose them. I went with them. I was kept in custody for four days by Deopal Singh and Rampal Singh who then asked me to go away somewhere else.'

He alleged that the murder was committed with the connivance of Raghubansi and that he was never employed by Pratap and others as a murderer of Nainsukh. He denied that he absconded and alleged that he was arrested near village Bakhrauli. He examined no witness in defence.

9. Dr. Hakim, Civil Surgeon, Fatehgarh, examined the dead body of Nainsukh and could not detect any external injuries due to the decomposition of the body. It, however, appeared that the trachea had been cut with some sharp-edged weapon in the region of the neck. He expressed the opinion that death was due to shock and haemorrhage as a result of the cutting of the neck in, all probability.

He examined the dead body at 6 p.m. on the 24th of June and expressed the opinion in the post mortem report that the death had taken place about four days earlier. This would make the time of death to be 6 p.m. on the 20th of June, while according to the prosecution case, Nainsukh was murdered between 12 and 4 o'clock in the night between the 19th and 20th of June.

Dr. Hakim deposed that there could be a difference of 24 hours on either side in the duration of death but had not explained why the estimate could be wrong by so many hours. In cross-examination he deposed that due to advanced

decomposition one could not say totally definitely that the cutting of the wind pipe & food pipe was an ante mortem cutting or post mortem cutting. In view of the statements of the accused there is no reason to doubt that Nainsukh was violently murdered and that his neck had been cut by the murderers with a heavy sharp-edged weapon.

10-11. The prosecution evidence on the record is very meagre and is not sufficient to establish the guilt of the accused. (His Lordship then discussed the prosecution evidence and stated).

12. The confession we have already mentioned cannot be treated as evidence in this case.

13. We are then left with the two statements of the accused, one before the committing Magistrate and the other before the Sessions Judge which have already been mentioned in some detail. To base a conviction of the accused solely on his statement in court, the statement has to be accepted as a whole. It follows, therefore, that the only statements which can go against the accused in his statement before the sessions court are that he had awakened Nainsukh at the asking of Narain, that he did not know the purpose of Narain in waking up Nainsukh, that he accompanied Nainsukh and Narain to the grove and that when threatened on his protesting against the treatment meted out to Nainsukh that he would be put to death if he did not hold the feet of Nainsukh he caught Nainsukh's legs and that Uma Shankar cut the neck of Nainsukh by another gandasa & killed him. This statement is insufficient to hold that the accused committed the murder of Nainsukh.

There is nothing in it to show that he had any common intention with the other people to commit the murder of Nainsukh. In fact he alleges that he was ignorant of the purpose and of any plan to murder Nainsukh. What he actually did at the time of murder was that he held the legs of Nainsukh. He could, therefore, be responsible for his own acts in the transaction which resulted in the death of Nainsukh.

He is not responsible for the acts of others as they were not committed in furtherance of any common intention. His act alone amounted to assist the other murderers, if such an assistance given by him was intentional, he would be guilty of abetting the offence of murder by the actual murderers. If it was not intentional he would not be guilty of even such an offence. If he committed the offence of abetment of murder under threats of being put to death in case of non-compliance, he commits no offence in view of the provisions of Section 94, I. P. C. This section is:

'Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably causes the apprehension that instant death to that person will otherwise be the consequence. Provided the person doing the act did not of his own accord, or from a reasonable apprehension of Harm to himself short of instant death, placeshimself in the situation by which he became subject to such constraint.'

He had reasonable cause to apprehend that instant death to him would result if he would not hold the legs of Nainsukh. To hold the legs under such circumstances is not an offence when such holding did not amount to the commission of the offence of murder or any offence against the State punishable with death. Only such offences, even if committed under the apprehension of instant death, are not excused on the ground of committing them under such threat. Similar view was taken in Umadasi Dasi v. Emperor : AIR1924 Cal1031 .

14. It has been contended for the State that when the accused held the legs of Nainsukh during the commission of his murder by others, he too should be deemed to have intended to cause the death of Nainsukh and that therefore he would be guilty of the offence of murder. We, do not agree. The accused is ordinarily responsible for his own acts and is not responsible for the acts of others unless law specifically makes him responsible for the acts of others. The others did not commit acts in furtherance of any common intention between them and the accused in view of the accused's statement,

The accused must have known that Nainsukh was being murdered, but he had no intention to murder him. His act of holding the legs of Nainsukh was not a voluntary act. It was committed under duress. His primary intention at the time was simply to save his life by complying with the orders of the others who were bent upon murdering Nainsukh.

This is a case where intention of the accused cannot be presumed from the natural consequences of his conduct and the conduct of the others who were acting simultaneously with him at the time. In this connection we may refer to pertinent observations in R. v. Steane 1947-1 All ER 813 (C). Steane assisted the enemy under duress. He was held not to have assisted the enemy with the intention to assist him. Lord Goddard, C.J. observed at page 815:

'The case as opened & indeed as put by the learned Judge, appears to this court to be this: A man is taken to intend the natural consequences of his acts. If, therefore, he does an act which is likely to assist the enemy, it must be assumed that he did it with the intention of assisting the enemy. Now, the first thing which the court would observe is that where the essence of an offence or a necessary constituent of an offence is a particular intent; that intent must be proved by the Crown just as much as any other fact necessary to constitute the offence.

The wording of the regulation itself shows that it is, not enough merely to charge a prisoner with doing an act likely to assist the enemy. He must do it with the particular intent specified in the regulation. While, no doubt, the motive of a man's act and his intention in doing the act are in law different things, it is none the less true that in many offences a specific intention is a necessary ingredient and the jury have to be satisfied that a particular act was done with that specific intent, although the natural consequences of the act might, if nothing else was proved, be said to show the intent for which it was done.

The important thing to notice in this respect is that where an intent is charged in the indictment the burden of proving that intent remains throughout on the prosecution. No doubt, if the prosecution proves an act the natural consequences of which would be a certain result and no evidence or explanation is given, then 'a jury mayon a proper direction, find that the prisoner is guilty of doing the act with

the intent alleged, but if, on the totality of the evidence, there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury's satisfaction, and if, on a review of the whole evidence, they either think that the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted.'

He again observed at P. 817:

'In our opinion, it is impossible to say that where acts were done by a person in subjection to the power of another, especially if that other be a brutal enemy, an inference that he intended the natural consequences of his acts must be drawn merely from the fact that he did them. The guilty intent cannot be presumed and must be proved.

The proper direction to the jury in this case would have been that it was for the prosecution to prove the criminal intent, and that, while the jury would be entitled to presume that intent if they thought that the act was done as the result of the free, uncontrolled action of the accused, they would not be entitled to presume it if the circumstances showed that the act was done in subjection to the power of the enemy or was as equally consistent with an innocent intent as with a criminal intent, e.g., a desire to save his wife and children from a concentration camp.

They should only convict if satisfied by the evidence that the act complained of was, in fact, done to assist the enemy and if there was doubt about the matter, the prisoner was entitled to be acquitted.'

15. The offence of murder is committed if the accused had either intended death or had intended to cause such bodily injury as he knew to be likely to cause Nainsukh's death or had intended the causing of bodily injury to Nainsukh and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. When he did not act voluntarily and acted under threats of instant death, he cannot be said to have had any of the aforesaid intentions and therefore his conduct in holding the legs of Nainsukh would not amount to the commission of the offence of murder.

His own act was not so imminently dangerous that it must in all probability have caused death. In fact Nainsukh's death was not due to his holding the legs. The other wanted him to hold the legs merely to keep him in fright and to have his mouth gagged as it would be in his own interest not to divulge what he had seen. His conduct therefore would not amount to the offence of murder even under Clause (4) of Section 300, I. P. C.

16. The accused was charged and convicted of the offence of rioting. It does appear from the accused's statement that there were more than five persons concerned in the murder. The accused could not be said to be a member of the unlawful assembly because he had no common object with them to commit an offence. Even if he was a member of the unlawful assembly, it was under duress and Section 94, I. P. C. will protect him.

17. The accused in his statement before the committing Magistrate had named himself as one of the murderers of Nainsukh. We have already mentioned that the question who were the persons who committed the murder should not havebeen put to the accused. The accused made each a statement in ignorance of the legal position about his conduct. As he had held the legs of Nainsukh when the others committed his murder, he might have thought himself to be also a murderer.

We are not prepared to base his conviction for the offence of murder merely on such a statement of his when he had very clearly stated in the sessions court that he did not know of the plan to commit the murder of Nainsukh, that he was never employed by anyone as a murderer of Nainsukh and that he held his legs under a threat of instant death with a gandasa.

18. It has been submitted for the State that the statement of Nainsukh makes out that he and others removed the corpse of Nainsukh from the grove to another place, that it was done to screen the murderers and that therefore he committed the offence under Section 201, I. P. C. His statement would make out an offence under Section 201, I. P. C. against him.

He would, however, not commit this offence if he helped the others in removing the dead body under the threat of instant death. He has not said in his statement

that he had protested against the carrying of the dead body and that he was again threatened with death. But it appears To us that the threat which had been given to him in the beginning continued in operation during his carrying the dead body to the other place, and in fact could have continued for some time later.

It is clear from his statement that Uma Shanker and others, which would include PratapSingh, who had originally threatened him with a gandasa had asked him to take the dead body and that those persons took him with them to avoid his exposing them. He was kept in custody for four days. In these circumstances it is reasonable to infer that the effect of the original threat had not passed away when he carried the dead body from the place of murder to another place and that his carrying the body was also under the threat of instant death.

In this connection reference may be made to the Privy Council case of Subramaniam v. Public Prosecutor reported in 1956-1 WLR 965 (D). Their Lordships observed at p. 969:

'It does not appear that he was asked whether the carrying of the ammunition, and his conduct generally, was voluntary or the result of duress, and there is nothing in the statement to the effect that duress had been exercised except what might be gathered remotely from the fact that the terrorists were armed.'

This would indicate that the question whether the accused acted under threat of instant death could be inferred from the circumstances even though there be no definite allegation by the accused himself in that regard. Again at page 972 it is observed :

'It is also possible, though in their Lordships' view, improbable, that the trial Judge directed himself and the assessors that there was no evidence of duress because at the actual moment of capture the terrorists had left and the judge thought that duress, if it had existed had then ceased to exist. But threats previously made could have been a continuing menace at the moment the appellant was captured, and this possibility was at least a matter for consideration by a jury or by a judge and assessors. The terrorists or some of them may have come back at any moment.'

In the present case the murderers were still in the company of the accused. It was they who had asked him to take the dead body. The person who had threatened him with a gandasa and had asked to hold the legs of Nainsukh on pain of death was among them. The accused could, therefore, reasonably apprehend that if he refused to comply with their direction he would be killed.

In fact it is clear from the accused's statement that the murderers practically kept him in custody not only when he was removing the body but till four days later. In the circumstances, as statedearlier, it is reasonable to hold that the accused's conduct in removing the dead body was also on account of his fear of instant death at the hands of the murderers in case he refused to do so.

19. Even if it be held that he was not actingunder any apprehension of instant death whenhe removed the dead body, there are other considerations which incline us to the view that theaccused should not be convicted of an offenceunder Section 201, I. P. C. In view of Sections 237 and 535,Criminal Procedure Code, we can still record aconviction for that offence, if we feel satisfied that in doing so there would be no failure ofjustice.

We are, however, not so satisfied. The appellant was not charged with that offence. He was not questioned specifically about his removing the dead body and was asked to explain such a conduct of his. The accused himself made a statement about the removal of the dead body.

In all probability if he had been questioned he might have answered that he removed the dead body on account of the fear of instant death at the hands of the murderers. It would therefore be not fair to the accused to hold in the present case that in view of his omitting to state that he removed the dead body on account of such a fear he is not protected by the provisions of Section 94, I.P.C., and that he committed the offence under Section 201, I. P. C.

20. We are, therefore, of opinion that theconviction of the appellant for the offences underSections 147 and 302 read with Section 149, I. P. C., is bad.We, therefore, allow the appeal, set aside the orderof the court below and acquit him of these offences.We reject the reference and direct that he be released from

custody forthwith if not required tobe detained under any other process of law.

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