Mangi Vs. State

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Court : Allahabad

Decided On : Oct-14-1952

Reported in : AIR1953All228

Judge : Raghubar Dayal and ;Agarwala, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 233, 234, 235, 236, 238 and 239

Appeal No. : Criminal Appeal No. 891 and Referred No. 85 of 1952

Appellant : Mangi

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Hari Swarup, Adv.

Disposition : Appeal dismissed

Judgement :

Agarwala, J.

1. Mangi Lohar appeals against his conviction under Section 302, Penal Code and sentence of death. There is also before us the usual reference for the confirmation of the sentence of death. The incident which was the subject matter of

investigation in the Court below related to the murder of two boys Rameshwar and Badri, aged about 15 and 10 years respectively on 18th December 1951 in the afternoon in village Bilgaon in police station Jalalpur in the district of Hamirpur.

2. It appears that the deceased were the daughter's sons of Smt. Tulsia, an old widow aged 65 whose husband had left a tenancy holding, a house & some other property. She had sent for her two grandsons who used to live in another village to help her in cultivation and it is said that she intended that they should take all her husband's property after her death. Her husband had also left two nephews one of them was the appellant and the other was one Daya Ram.

The prosecution case was that Mangi and Daya Ram did not like Smt. Tulsia calling her grandsons in the village for helping her in cultivation and allowing them to inherit the property after her death. Mangi and Daya Ram wanted that the property should be inherited by themselves instead of by the grandsons. They at first asked Smt. Tulsia to send away the two. boys. But she would not listen. On the day of occurrence, i. e. 18th December 1951, in the afternoon, Mangi told Smt. Tulsia that she could be allowed to keep the two boys upto the month of Chait (Chait next) on condition that she paid him Rs. 100/-forthwith and that if she refused to do so he would take the lives of the two boys. Some villagers intervened and reprimanded Mangi and assuaged the feelings of Tulsia and assured her that no harm would be done to the boys. Smt. Tulsia did not pay the money and returned to her house.

In the afternoon she started for the fields in a bullock cart with Rameshwar in order to bring fodder. Dalli and Dhani Ram, two other boys, friends of Rameshwar, also accompanied the party in the cart. When tne cart was passing along a narrow road with high mounds on either side, Mangi appellant and his brother .Daya Ram got into the cart from behind. Mangi was armed with an axe. Daya Ram caught hold of Rameshwar while Mangi struck nim with an axe. Rameshwar fell down on the ground. Even after this Mangi continued to inflict blows on him killing him on the spot. Tulsia also received injuries while attempting to protect Rameshwar, Dalli and Dhani Ram ran away in fright. After having murdered Rameshwar and injuring Tulsia, Mangi and Daya Ram, so the prosecution story goes on, returned to the

village and found the other boy Badri standing in front of the house of one Ghasya Basor. Mangi killed him also with the axe. Ghasya Basor was inside his house and had just taken his meal. On hearing the cries of the boy he came out. In the meanwhile Tulsia also came weeping and crying on account of the murder of Rameshwar. Ghasya told her that her other grandson had also been killed just then.

3. The first information report of this incident was lodged by Tulsia herself at the police station at about 3 A. M. next morning. The police station is nine miles away from the place of occurrence. Postmortem examination on the body of Rameshwar revealed that he had received seven incised wounds on various parts of his body. The skull bone had been fractured at various places. Post mortem examination on the body of Badri showed that he had received six incised wounds on shoulders, neck & head. In his case also the skull bones were fractured. The cause of death in both cases was injury to the brain, haemorrhage and shock. The appellant was arrested on the 19th December when the investigating officer reached the village. It is alleged by the prosecution that the appellant pointed out the axe with which the crime was committed. A blood-stained axe and a blood-stained 'safi' were recovered from his house. Both these articles were sent to the Chemical Examiner, U. P. and to the Serologist to the Government of India. The blood-stains on the safi had disintegrated and their origin could not be determined. The blood on the axe was found to be of human origin.

4. The appellant denied his guilt and stated that he had been implicated falsely on account of enmity. In support of the attack on Rameshwar, Smt. Tuisia, Dhani Ram and Dalli were produced. Smt. Tulsia had herself been injured. There is no reason to disbelieve her story. She implicated not only the appellant taut Daya Ram as well. But Dalli and Dhani Ram, the other two witnesses, did not support her in so far as Daya Ram was concerned. Daya Ram was, therefore, not prosecuted by the police. In spite of the fact that Smt. Tulsia implicates Daya Ram there is no reason to disbelieve her so far as the appellant is concerned. The statements of Dhani Ram and Dalli are also worthy of belief. No doubt they are in their teens, Dhani Ram being about 15 years old and Dalli about 13 only. The learned Sessions Judge was satisfied with their statements and believed them to

be true. There are slight discrepancies in their statements as to the place from where they accompanied Tulsia and Rameshwar. But this is immaterial. We are satisfied that the appellant indeed attacked Rameshwar with an axe & killed him and also that he injured Tulsia with the axe during the course of his attack upon Rameshwar,

His attack on Badri is proved by Ghasya Basor. We have no reason to doubt his testimony. He raised shouts when he saw Badri being hacked to death by the appellant. Gudda Mali on hearing the shouts came out of his house and saw the appellant running away with an axe smeared with blood. Tne statement of Gudda Mali corroborates the evidence of Ghasya Basor. The recovery of the axe from the house of the appellant at his instance is proved by the statement of Ajodhya. Vishiwa Nath, another witness, proved the extra-judicial confession made by the appellant. It is not necessary to rely upon the statement of Viswa Nath when the other evidence is conclusive against the appellant, though we may say that we see no sufficient reason to discard Vishwa Nath's statement. The motive for the crime was obvious. The only reversioners that stood in the way of the appellant and his brother to succeed to the tenancy and other properties were the grandsons of Tulsia. If they were removed the way was clear for the appellant and his brother to succeed to the tenancy after the death of Tulsia. The appellant, therefore, resolved to kill her two grandsons in order that he and his brother might succeed to the property.

5. Learned counsel for the appellant raised a question about the legality of the trial for the offences of murder and of causing hurt to Tulsia. This point was not raised in the court below. But as this is a point which goes to the root of the matter and is a question of law we have entertained it. The contention of the learned counsel is that the three offences for which the appellant was tried at one trial arose out of two separate transactions and as they were not offences of the same nature they could not be tried together. Reference was made in this connection to Sections 233, 234 and 235 Criminal P. C. and to several decisions of various High Courts in India.

6. It was conceded by learned counsel that the offences of murder of Rameshwar and of causing hurt to Tulsia arose out -of the same transaction but he urged that the offence of murdering Badri arose out of a separate transaction and its trial could not be held jointly with the trial of the other two offences. Further it was urged that if the two murders could be combined under Section 234, the offence of causing hurt to Tulsia could not be so combined.

7. We are not sure whether the transaction resulting in the death of Badri was not so connected with the transaction which resulted in the death of Rameshwar and injuries to Tulsia as to form part of the same transaction. Having regard to the fact that the object of the appellant was to do away with both the grandsons of Tulsia so that the property might ultimately come to the appellant and his brother and having regard to the fact that the murders of Rameshwar and Badri were committed one after the other in Quick succession on the same date and almost so to say, in the same breath, we are inclined to the view that both the murders formed part of the same transaction. But as the case can be decided on the assumption that they were separate transactions we do not express a final opinion upon this matter.

8. The normal rule undoubtedly is that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately. This is laid down in Section 233, Cr. P. C. But the same section refers to the exceptions to the rule which are to be found in Sections 234, 235, 236 and 239 of the Code. Section 234 permits a joint trial of more offences than one not exceeding three provided two conditions are fulfilled; (a) they are of the same nature and (b) they were all committed within the space of 12 months. If Section 234 stood by itself, no doubt, though the offences of the murders of Rameshwar and Badri could be combined in one trial, the offence of causing hurt to Tulsia could not be so combined, We havp, however, to consider the effect of Section 235. Section 235(1) refers to offences committed in the course of the same transaction and it provides that all such offences may be tried together. By virtue of Section 235 the offences of murder of Rameshwar and of causing hurt to Tulsia could be tried together because they arose out of the same transaction. There has been a difference of opinion upon the point whether the operation of

these two sections could be so combined as to authorise the trial of three or less than three offences of the same nature arising out of different transactions to be tried with other offences which arise out of the very same transactions.

9. In -- 'Rex v. Daya Shankar : AIR1950 All167 , a Beach of this Court upon a review of the authorities, held that this could be done. It was observed,

'the provisions of an Act of the legislature must be read as a whole, and in the absence of anything showing a contrary intention, every part of it must be read as supplementing and completing the other part. There is nothing in Section 233 to indicate that Sections 234, 235, 236 and 239 cannot be read together. An examination of the provisions of these sections leads to the conclusion that the legislature intended that they should be read as supplementing each other.'

After making this general observation the Bench held that :

'The principle underlying Section 234 is that offences of the same kind committed within the space of a short period, namely of one year, and consisting of a few transactions, namely, three transactions, are not expected to prejudice the trial of the accused and so may be tried together. But more transactions than three extending over a larger period may not be so tried together.'

Obviously since a trial is in respect of offences and not of transactions, what was meant by the last sentence in the above quotation was that offences of the same kind arising out of more transactions than three could not be tried together. This case was considered by a Full Bench of the Bombay High Court in -- 'D. K. Chanara v. The State', 53 Bom L. R. 923 (P.B.). Chagla,C. J. accepted the principle that sections mentioned in Section 233 can be made use of in cooperation, adding, however, that 'the cooperation must not lead to the contravention of any of the sections mentioned in Section 233'. Commenting upon 'Daya Shan-kar's case' the learned Chief Justice found it difficult to understand that Section 234 dealt with different transactions and added :

'It is only Section 235 that deals with transactions and the limitation in that section is that offences arising out of only one transaction could form the subject-matter of

different charges and be combined together. Section 234 speaks of offences and not of transactions.'

10. We fail to see how cases requiring cooperation of Sections 234, 235 and 233 can arise without at the same time leading to the contravention of one or the other of those sections, that is to say, cases in which joint trial of several offences be justified by resort to more than one section. When a joint trial for several offences is justified by any of these sections alone, that cannot be said to be a case of cooperation of the several sections.

11. If Section 234 were to be construed to mean that in no case can more than three offences be tried together, that would mean ignoring Sections 235, 236 and 239. It is significant that Section 234 does not make any exception in favour of Sections 235 and 236. Under Section 235 any number of offences arising out of the same transaction may be tried together. Such offences may be more than three. Again under 236, in the case of a single act or series of acts when it is doubtful which of the several offences the facts which can be proved will constitute, the accused may be charged for any number of such offences either cumulatively or in the alternative. An interpretation of Section 234, which would restrict the trial of offences to three would contravene the provisions of Sections 235 and 236. It would also contravene the provisions of Section 239. The Privy Council has clearly held that the provisions of Section 234 do not govern the provisions of Section 239, vide -- 'Babu Lal Chaukhani v. Emperor AIR 1933 P.C. 130.

12. It follows, therefore, that Section 234 cannot be. given its literal meaning and must be restricted in its operation in such a manner as not to conflict with Sections 235, 236, 238 and 239. Viewed in this light when Section 234 speaks of the joint trial of three or less offences of the same nature it has refer-ence to offences arising out of different transac-tions and not out of the same transaction because offences arising out of the same transaction are dealt with in Sections 235 and 236. For this reason it was said in 'Daya Shankar's case : AIR1950 All167 , that Section 234 refers to offences arising out of three different transactions.

13. In our opinion, the true effect of Section 234 is not to create a prohibition that more than three offences cannot be tried together. Its true effect is to provide for an instance in which more than one offence but not exceeding three committed in different transactions can be tried together.

14. Though couched in positive terms, Section 233 as already pointed out, in reality contains a general prohibition, namely, that more offences than one cannot be tried together and it also lays down the exceptions to this general prohibition and says that these exceptions are to be found in Sections 234, 235, 236 and 239. Therefore, the true con-struetion to be placed upon Sections 234, 235, 236 and 239 is that they are permissions for joinder of trials, that is to say, they lay down the circumstances in which joinder of trials can take place. When there are more than one exception to a prohibition, all of them have to be read together because they carve out the area which is not covered by the prohibition. Section 234 should not, therefore, strictly speaking, be read as implying a prohibition of trial of more than three offences, but should be read as laying down a permission for the joint trial of not more than three offences of the same nature.

Section 235 permits the trial of all offences arising out of the same transaction in the same trial. So does Section 236 permit the trial of all offences arising out of the same transaction when it is doubtful which of several offences the facts which can be proved would constitute. Seption 239 permits a joint trial of several persons in the circumstances mentioned in that section. So long as a particular joint trial is permitted by one section or the other taken either singly or jointly, it cannot be said to be contrary to the intention of the legislature, though on the face of it it may appear to go bevond one of the provisions of the enactment. The use of the word 'and' between Sections 236 and 239 instead of 'or' in Section 233 tends to support our view that a joint trial need not be justified by the provisions of only one of the sections mentioned in Section 233 but can be justified by the provisions of all such sections taken jointly.

15. Section 237 also may be considered in this connection. Section 237 reads as follows:

'If, in the case mentioned in Section 238, the accused is charged with one offence, and it appears in evidence that he committed a different offence lor which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.'

Take a case in which an accused is tried of three offences of the same nature committed within the course of twelve months and the Court finds that in respect of one of these offences the accused is guilty not of that offence but of a different offence arising out of the same transaction and that before evidence was led it was doubtful which of the two offences on the facts proved in the case the accused could be said to have been guilty. Can the Court convict the accused of a different offence or not. Section 237 clearly says that the Court can do this. It, therefore, follows that the trial would not have been bad if along with the charges of the three offences of the same nature another charge of a different, nature arising out of the same transaction out of which one of such offences had arisen had been joined.

16. Learned counsel conceded that on the view he had urged, there would be multiplicity of proceedings and that the object of the legislature is to avoid such multiplicity. But he contended that in many a case much hardship would be caused to an accused if the view we are taking were uphold. We are unable to agree with this contention. If throe offences of the same nature arising out of different transactions are tried to-gether in one trial and at the same time separate trials are held to try the accused for charges for different offences arising out of the very same transaction out of which three offences of the same nature have arisen, then far from lessening the burden of the accused, the multiplicity of the proceedings will result in his harassment all the more. The number of days on which he will have to appear in Court standing in the dock, engaging counsel, preparing the case, procuring witnesses and all the bother that attaches to the defence of a trial will have to be multiplied by as many times as the number of trials. The same will be the difficulty of the prosecution. Thus every one suffers and no one gains by the interpretation sought to be put upon the section on behalf of the accused.

17. In our view, therefore, the trial of the accused in the present case was in consonance with the provisions of law.

18. The appeal is accordingly dismissed. The reference is accepted.