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Queen-empress Vs. Lochan

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1886)ILR8All635

Judge : Straight, Offg. C.J. and; Mahamood, J.

Appellant : Queen-empress

Respondent : Lochan

Judgement :

Straight, Offg. C.J.

1. This is a case of revision in reference to a decision of the Judge of Gorakhpur, convicting the accused Loch an of culpable homicide not amounting to murder, and sentencing him to five years' rigorous imprisonment. The case was called up by me, on perusal of the Gorakhpur sessions statement for March, and we have had notice issued to the accused to show cause why the conviction recorded against him should not be altered to one of murder under Section 302 of the Penal Code, and why his sentence should not be enhanced to that provided for that offence.

2. The circumstances of the case are shortly these. The accused Lochan, son, of Janki, Sainthwar by caste, aged 25, resided at the village of Balohi in the Tarkalwa Police circle. Along with him lived Musaramat Jadni, deceased, aged about 25, the

widow of his deceased first cousin Ramphal. On the evening of Thursday, the 10th of December last year, about 8 o'clock, the accused was near his house, cutting up sugarcane with a gandasa and near by him were two men, Wali Julaha and Musa Ahir. According to the evidence of these persons the deceased, Musammat Jadni pass close to them alone going in a northerly direction, and soon after she had gone on her way, the accused followed, taking his gandasa with him. As to what then happened we learn from the evidence of one Beni Madho, a caste-fellow of the accused, who says that on the night of the 10th the accused came to him and stated that Musammat Jadni was lying dead in the arhar field.' She was committing fornication with Phul, Panthwar. I went up, and Phul ran away. I then killed her with my chopper.' The body of Musammat Jadni was found on the 11th lying under a mango tree, with a number of wounds upon the neck, head, and arms, and it was obvious that death must have supervened almost immediately upon the infliction of these injuries. Complaint was lodged at the Tarkalwa police station on the morning of the 12th, and the accused was, in due course, arrested. Before the Magistrate Phul, the man referred to by the accused in his statement to Beni Madho, deposed to the effect that he was in the act of having connection with Musammat Jadni under the mango tree when be was surprised by the accused; that he thereupon jumped up and ran away,. and as he ran be turned round and saw the accused striking the deceased woman., In the Sessions Court he denied that he was in the act of having connection with Musammat Jadni when the accused came up, and stated he was only conversing with her. The assessors did not believe the evidence for the prosecution, but such reasons as they gave for not doing so appear to be quite insufficient. The learned Judge was of opinion that the guilt of the accused, of having caused the death of Musammat Jadni, was fully established; but he considered that, having regard to all the facts, the act of the accused in doing 80 was, by reason of grave and sudden provocation, reduced to culpable homicide not amounting to murder. He therefore convicted him of that lesser offence, and sentenced him to five years' rigorous imprisonment. With regard to this decision, all 1 have to say, in the first place is, that the evidence and all the surrounding circumstances, to my mind, place it beyond doubt that the hand of the accused did the unfortunate act which caused the deceased woman's death. I see no reason whatever for distrusting the testimony of Beni Madho, and I think

the learned Judge gives a reasonable explanation of his somewhat ' singular conduct in not at once reporting what the accused had said to him on the night of the commission of the crime. No doubt there is the contradiction to which I have already adverted in Phul's two depositions; but the learned Judge has preferred that made in the first instance before the Magistrate, and it was in the prisoner's interest that he did so, for the purpose of measuring (he nature of his offence; and though he may have so far discredited his later statement, I do not think this discrepancy should invalidate the rest of his evidence. But I think the learned Judge was wrong in holding that there was grave and sudden provocation of the kind that reduced the offence of the accused from murder, with which he was charged, to culpable homicide not amounting to murder. I have already, in the case of Queen-Empress v. Damanui Weekly Notes 1885 p. 197 stated the rule, as I believe it to be, which governs the matter, and my brother Bhodhubst and I have recently acted on the same view in Queen-Empress v. Mohan ante p. 622. In the first place, the relation in which the accused stood to the deceased was not that of a husband, though it is quite possible, from her living in the house with him, that they were on intimate terms, and that his act may have been animated by jealousy. But there is no proof of this, and I must take the accused's own version of the matter; and even adopting the learned Judge's view that he caught Musammat Jadni in the very act of connection, I am of opinion that there was no grave and sudden provocation proved of the character that Court of Justice ought to accept as reducing the crime of murder to that of culpable homicide. The accused taking the chopper with him, and thereby indicating that he contemplated resorting to violence, followed the deceased woman a considerable distance, obviously, to my mind, with the belief that she was going to keep an assignation, and with the deliberate purpose of detecting her in doing so. He neither called her to come back, nor remonstrated with her, nor sought to induce her to return, but silently pursued her, and marked her down at the spot where he killed her. In other words, he went deliberately in search of the provocation, which is now sought to be made the mitigation of his offence. As I have already observed, he wan not the husband of the woman, and there was no moral obligation upon him to constitute himself her executioner for her transgression. I cannot for a moment hold that, under the circumstances disclosed, he was deprived of self-control by grave and

sudden provocation, for (to quote a passage cited from Oneby's Case 2 Lord Raymond 1485, in 'Russell on Crimes and Misdemeanours Vol. 1, 4th ed. p. 725 'in cases of this kind the immediate object of the inquiry is, whether the suspension of reason Arising from sudden passion continued from the time of-the provocation received to the very instant of the mortal stroke given; for if, from any circumstance whatever, it appears that the party reflected, deliberated, or cooled any time before the fatal stroke given; or if, in legal presumption, there was time or opportunity for cooling, the killing will amount to murder, as being attributable to malice and revenge, rather than to human frailty.' Such being the view I take of the case here, the conviction of the accused must be altered to one of murder under Section 302 of the Penal Code, and in accordance with Section 439 of the Criminal Procedure Code, the sentence will also be altered to that provided for the offence, namely, transportation for life. I think, however, that, having regard to the facts, and making allowance for the peculiarities of native character in reference to the misconduct of women of their families, especially among the less advanced and more ignorant residents of the rural districts, I may properly recommend the Government to commute the sentence to fourteen years' transportation.

Mahmood, J.

3. Concurred.

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