SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Dibia Vs. State

Dibia Vs. State

SooperKanoon Citation : sooperkanoon.com/463750

Court : Allahabad

Decided On : Feb-22-1952

Reported in : AIR1953All373

Judge : Raghubar Dayal and ;Agarwala, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 342; Indian Penal Code (IPC), 1860 - Sections 300

Appeal No. : Criminal Appeal No. 888 of 1950

Appellant : Dibia

Respondent : State

Advocate for Def. : J.R. Bhatt, Asst. Govt. Adv.

Advocate for Pet/Ap. : Jagdish Narain Agarwala, Adv.

Disposition : Appeal dismissed

Judgement :

Agarwala, J.

1. This is an appeal by Dibia who has been convicted under Section 302, I. P. C., and sentenced to transportation for life.

2. The appellant was prosecuted for having murdered one Puswa, his cousin, on 11-12-1949 at about noon in the house of one Bhikhari in village Todarpur in the district of Hamirpur. The prosecution case was that in Baisakh (April) of 1949 the appellant beat his wife whereupon she left his house and came to stay in the house of Puswa deceased and his brother Baddu, cousins of the appellant. She stayed there for the night and in the morning Baddu persuaded the woman to go back to her husband and calling the appellant made his wife to go with him. The accused took his wife out of the village and since then her whereabouts were not known. It was not known whether she was alive or dead. The appellant then began to give out in the village that Puswa had dishonoured his wife and that, therefore, he would kill him whenever he would get a chance.

On 11-12-1949 at about noon one Sheo Nath was having his hair cut by Babu Lal barber in the house of Bhikhari barber, Puswa deceased also went there for his hair cut and shortly thereafter Dibia appellant also went there. After Sheo Nath had his hair cut, the hair of Puswa deceased were also cut and while his nails were being trimmed, Dibia appellant suddenly took up an axe, which was lying there, and gave one severe blow on the head of Puswa and ran away. He was chased by Sheo Nath but could not be caught. Puswa fell down on the ground after getting the blow. His brother Baddu when informed of the incident came to Bhikhari's house and then took Puswa to the police station Korara, which is at a distance of seven miles from the village, by putting him in his cart. On the way to the police station Puswa died.

3. The first information report was lodged the same day at 5 p. m. The police came to the village in the night and investigation was made. Some of the clothes which the deceased was wearing and were blood-stained were taken possession of. The axe which was also blood-stained was also taken into custody and two pairs of shoes, one belonging to the deceased and the other alleged to belong to the appellant, were also taken possession of. A recovery list was made and the articles were sealed in a bundle with the exception of the shoes belonging to the appellant.

4. The post-mortem examination was held the next day at 11-30 a. m. Two injuries were found on the body of the deceased--(1) contused wound 1/2' x 1/3' x skin just above the outer half of the left eyebrow--(2) incised wound 3 x 1/2' 1'x brain on the right side of the parietal region of the head 3' above the right ear. The brain matter was protruding through the wound and clotted blood was present. The skull had been cut through and a circular piece of bone was completely separated. The membrane and the brain underneath the injury No. 2 were cut through. In the opinion of the doctor, injury No. 1 could be caused by a fall or blunt weapon and injury No. 2 was the cause of death of the deceased.

5. The appellant denied that he assaulted the deceased and said that the case was started against him due to enmity. He did not, however, suggest what enmity there was between him and the prosecution witnesses, nor was such enmity put to the witnesses when they were cross-examined.

6. In support of the prosecution case three eyewitnesses were examined. Babu Lal barber who was cutting the hair of Sheo Nath and the deceased, Sheo Nath who had his hair cut by Babu Lal and was sitting at the time when the appellant struck the deceased with the axe, and Ram Bilas, a boy of 14 or 15 years of age who was standing in front of his house, which was opposite the house of Bhikhari, and who saw the appellant running away from the house of Bhikhari and being chased by Sheo Nath.

7. Besides these eye-witnesses, three other witnesses were produced. Pirbhu Singh and Bans Gopal, zamindars of the village, deposed that Puswa deceased had illicit connection with the wife of the accused. Pyare Lal deposed to an extra-judicial confession by the accused of having murdered the deceased. From the statements of the eye-witnesses alone, apart from the evidence of other witnesses, we are perfectly satisfied that the prosecution story that the appellant struck the deceased with an axe on the head which resulted in the deceased's death is true.

8. It was urged that the examination of the accused was wholly insufficient and consequently he was prejudiced and the trial was vitiated. There can be no doubt that the examination of the accused both by the Magistrate and by the Sessions

Judge was faulty. The Magistrate put the following questions to the accused :

''Q. Did you on 11-12-49 at about noon, at mauza Todarpur, P. S. Kurari, inflict injuries on Puswa son of Mahadeo with an axe, with the intention of killing him, as a result of which he died

A. No sir. I did not assault him.

Q. Why was this case initiated against you

A. It has been initiated through enmity, I shall produce defence in the Sessions Court.'

In the Sessions Court the following questions were put to the accused :

'Q. Did you make this statement (Ex. P/12) dated 11-6-50 before the committing Magistrate and whether it is correct

A. Yes. It is correctly recorded.

Q. Do you want to state anything more

A. Nothing.

Q. Is Ex. 3 shoe yours

A. No. It does not belong to me.

Q. Do you want to produce defence

A. No.'

9. Section 342, Criminal P. C., lays down that

'For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and

before he is called on for his defence. ....

The answers given by the accused may be taken into consideration in such inquiry or trial. . . . .'

10. It has been held that the Courts are bound to observe the provisions of this section and to put to the accused all such circumstances upon which reliance is to be placed by them against the accused. The object of the examination of the accused with reference to all the circumstances which appear against him is to afford the accused an opportunity of explaining those circumstances. The explanation so offered has to be taken into account in determining whether the circumstances are, in fact, against the accused and, ultimately whether the accused is guilty of the offence with which he is charged. If the material circumstances are not put to the accused and his explanation is not called for, there is a danger that injustice may be done. As to what circumstancesshould be put to the accused depends upon the facts of each particular case.

Where the evidence against the accused consists of circumstantial evidence only, it is of the utmost importance that the various circumstances which clinch the issue against him should be put to him and an explanation called for from him. But in a case in which there is direct evidence of eye-witnesses concerning the commission of the offences by the accused and the conviction can be based upon their statements alone, if the direct evidence is put to the accused and the other circumstances are not put to him, it cannot be said that the accused has been prejudiced thereby.

11. Our attention has been drawn to a decision of the Supreme Court in Tara Singh v. The State, 1951 ALL. L. J. 640 ; A. I. R. 1951 S. C. 441.We do not think that there is anything in that decision which is in conflict of what we have stated above.

12. In the present case, the substance of the offence which is alleged against the appellant and which was deposed to by the eye-witnesses was put to him. The reason why the prosecution witnesses were deposing against the accused was also put to him in the second question put by the Magistrate, though the names of

the witnesses were not specifically mentioned. In the Sessions Court the ownership of the shoes, Ex. 3, was also put to him.

The question regarding the motive of the offence, illicit connection of Puswa deceased with the appellant's wife, as alleged by the prosecution, and the facts that the appellant had beaten his wife six months before the incident, that she had gone to live with the deceased and Baddu P. W., that she was returned to the appellant the next morning by Baddu P. W., that the appellant had taken her out of the village and that her whereabouts were not known, were not put to him. The extra-judicial confession made to Pyare Lal was also not put to him.

13. In our opinion, some of these questions should have been put to the appellant. But we are unable to say that because of the omission the appellant has been prejudiced in any way. We arrive at this conclusion for the reason that, in our opinion, the statements of the eye-witnesses are amply sufficient to justify the conviction of the appellant. The worse that can be said for the omission of the material circumstances to be put to the accused is that those circumstances may be omitted from consideration against the accused. If after omitting those circumstances the accused's conviction can be maintained, it can be said that he has not been prejudiced by the omission.

In our opinion, in the present case, even after omitting all the circumstances narrated above, which were not put to the accused, we are prepared to hold that the appellant did in fact inflict the injury on the head of the deceased with anaxe which resulted in his death and consequently the appellant was rightly convicted of having caused the death. Causing of a serious injury oh a vital part of the body of the deceased with a dangerous weapon, like an axe, must necessarily lead to the inference that the appellant intended to kill the deceased. He was, therefore, clearly guilty of murder.

14. We accordingly dismiss this appeal and confirm the conviction of and the sentence imposed upon the appellant by the Court below.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com