

Mendai Singh Vs. the State

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Court : Allahabad

Decided On : Nov-21-1950

Reported in : AIR1952All486

Judge : Misra and ;Chandiramani, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164 and 364

Appeal No. : Criminal Appeal No. 137 of 1950

Appellant : Mendai Singh

Respondent : The State

Advocate for Def. : Uma Shankar Srivastava, Adv. for ;Government Adv.

Advocate for Pet/Ap. : H.K. Ghosh, Adv.

Disposition : Appeal dismissed

Judgement :

Chandiramani, J.

1. The appellant Mendai Singh has been convicted by Shri S.B. Banerji, Additional Sessions Judge, Partabgarh, on 26-4-1950, under Section 302, Penal Code, and sentenced to transportation for life.

2. The appellant Mendai Singh is a Thakur and lives in village Parbatpur. He was carrying on an illicit love intrigue with Mt. Manjokhi, deceased, wife of Bhuar Chamar. She was living in village Bindra, a hamlet of village, Partapur. Her husband used to live away from his village but returned there a few weeks before the present occurrence. The love intrigue between the appellant and the deceased was notorious in the village and Bhuar came to know of it and he made a complaint to the Adalati Panchayat in that behalf. This ended in a compromise on 38-11-1949 and Rs. 40 were paid as compensation by the appellant to Bhuar, husband of the deceased. After the compromise, relations between the appellant and the deceased were broken off so much so that the deceased, whenever she saw the appellant, used to abuse him in filthy language. On 1-12-1949, at about 11 a. m., when the appellant was working near a tank, the deceased also went there to wash some clothes and she again abused the appellant. The appellant at the moment said nothing but apparently he resented this conduct very much. The same day, at about 2 or 3 p. m, the deceased was working in a khalyan of Jugul Kishore P. W. 16 with Mt. Sugni P. W. 14. The appellant came there armed with a spear and straightway inflicted several injuries on the deceased which ended in her death on the spot. Mt. Sugni raised an alarm whereupon some other persons, Aunul Haq P. W. 15, Jugul Kishore P. W. 16 and Darshan P. W. 18 also saw either the appellant striking blows on the deceased or the appellant armed with a spear going away from the scene leaving the deceased dead on the scene. The appellant himself went with the blood stained spear to the police station and made a report of the occurrence at 4.30 p. m. His clothes were found blood-stained and were seized by the police. The spear was also seized by the police and the appellant was promptly arrested. The police started investigation and the appellant was put up before a Magistrate the next day for the recording of his confession. The Magistrate gave the appellant 24 hours to think it over and on 3-12-1949, the confession of the appellant was recorded.

The appellant's defence in the Court below was that he was entirely innocent, that he had made the confession only under the influence of the police, that in fact he had not committed the murder, that in spite of the compromise relations between him and the deceased continued, that on the day of the occurrence at about 2 p. m., he was in a sugarcane field with the deceased in a compromising position that

her husband happened to come there and first tried to attack him with a spear but when he avoided it he attacked his own wife, the deceased, that somehow he managed to get hold of the husband and snatch away the spear from him but unfortunately the deceased had died as a result of the injuries inflicted on her by her husband, that he himself went to the police station with the spear and his clothes which were blood stained to make a report implicating the husband and not himself, and that somehow the report taken down is not his report. He produced no witness in defence. The eye witnesses produced by the prosecution and the confession made by the appellant and his admission of illicit love intrigue with the deceased and what happened on the day of occurrence at 11 a. m. before the actual murder, were considered by the learned trial Court to be sufficient to prove beyond any reasonable doubt the guilt of the appellant. The appellant was accordingly convicted and, in view of the resentment caused to the appellant by the abuse from the deceased, the learned Judge inflicted the lesser penalty, i.e. transportation for life.

3. It has been urged before us by the learned Counsel for the appellant that the earlier incident mentioned in the first information report ought not to have been taken into consideration against the appellant, that the confession was not voluntary and therefore was not admissible in evidence and that in any case the learned Judge did not comply with the requirements of the law in recording the confession inasmuch as he recorded it in English and not in Hindi, the language of the accused and that the eye-witnesses too are not reliable. We have heard the learned Counsel at considerable length and have no hesitation whatever in holding that the appellant has been rightly convicted.

4. It seems to us that the evidence of the eyewitnesses alone is more than enough to warrant the conviction of the appellant. [His Lordship then referred to the evidence of the eye witnesses and continued :]

5. In addition to the above evidence, we have the admitted fact that the blood-stained spear with which the offence was committed was handed over by the appellant himself to the police and that at the police station from his person were removed his clothes which were blood-stained. The reports of the Chemical

Examiner and the Imperial Serologist show clearly that all these were stained with human blood. The explanation of the appellant that they were stained with blood because he snatched away the spear from the murderer of deceased is certainly not credible and not supported by any evidence whatsoever. It is to be remembered that the murder took place in broad daylight.

6. The confession made by the appellant is again a very strong corroboration of what the eye-witnesses have stated. The learned Counsel for the appellant says that the confession is not admissible because it was not voluntary and further because it was not recorded strictly in compliance with the provision of the law. The Magistrate, Shri Simlanandan Prasad who recorded the confession has stated on oath that he recorded the confession after he satisfied himself that it was voluntary and that for his satisfaction he asked the appellant certain questions which are actually recorded in the confession. The learned Magistrate promptly and explicitly brought it to the notice of the appellant that he was not bound to make a confession, that he, the recorder, was a Magistrate and that if the appellant made any confession it may be used in evidence against him. The learned Magistrate had the appellant before him one day before the actual recording of the confession and gave him 24 hours to think over. He sent him away to Jail and it was 24 hours later, after the appellant had plenty of time to think over matters, and after the appellant had fully realised that he was not bound to make a confession and that it might be used against him, that he actually made the confession. We are satisfied that the learned Magistrate was perfectly justified in holding that the confession was voluntary, and the learned Sessions Judge was equally justified in coming to the same conclusion.

It is true that the confession has been recorded in English, but under Section 364. Criminal P. C., a Magistrate is authorised to record the confession in English if necessary. Certainly it would have been better if the confession had actually been recorded in Hindi, but we do not see how the recording of the confession in English can be said so be contrary to the provisions of law. The learned Magistrate has stated that he translated to the appellant exactly what he himself had recorded and that after the appellant had assured him that he had correctly recorded in English what the appellant had said that he made the appellant affix his thumb

impression. We find no reason therefore to believe that there was in fact any irregularity Committed in the recording of the confession, nor are we satisfied that even if there was any irregularity it has caused any prejudice to the appellant. The appellant himself never stated that he had not made the confession, Ex. 6 recorded by the Magistrate. All that he said was that it had been made under the influence of the police. We are satisfied, therefore, that the confession as recorded by the Magistrate clearly supports the prosecution case and shows that it was the appellant who inflicted the injuries on the deceased leading to her death.

7. The question whether the portion of the first information report relied upon by the Court below should have been considered in evidence against the appellant does not seem to us to be of any importance in view of the testimony of the eye-witnesses and the confession of the appellant. Assuming, without deciding, that the whole of the first information report is inadmissible against the appellant, we have still no hesitation in holding that the evidence already established against the appellant leaves no room for doubt that he killed the deceased Mt. Manjekhi and he has, therefore, been rightly held guilty under Section 302, Penal Code.

8. The result is that we dismiss the appeal.

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