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Court : Allahabad

Decided On : Jul-13-1926

Reported in : AIR1927All119

Appellant : Mangalia

Respondent : King-emperor

Judgement :

1. The appellant Mangalia alias Mangali has been convicted by the learned Sessions Judge of Allahabad of the offence under Section 302, Indian Penal Code, and has been sentenced to transportation for life.

2. The case for the prosecution was briefly this: On the morning of 7th February 1926, at about 9 a.m., people collected at the house of the appellant on hearing an alarm raised by the deceased, the wife of the appellant. People entered into the house of the appellant and found his wife lying murdered in a pool of blood and the accused with a sickle in his hand. The accused admitted before the witnesses examined in the case that he had killed his wife.

3. A report was made at the thana and the case was investigated and sent up. The appellant throughout stuck to the story which he had told on the first occasion he was questioned and it was this. He had gone away to purchase some corn and came back earlier than was expected; on arrival at his house he found, inside his own room, on a charpoy, his wife and the prosecution witness, Uma Shankar, the

zamindar of the village, both in the act of adultery. He tried to catch hold of Uma Shankar but he slipped away and ascending the roof of the house fled into his own, which adjoined the house of the appellant. There was a tickle near at hand, the appellant picked it up and killed his wife with it.

4. There is no statement of any witness in support of the appellant's entire case but there is circumstantial evidence showing that the deceased was on terms of intimacy with Uma Shankar. The learned Sessions Judge was inclined to accept the story of the appellant, namely, the appellant found his wife in the act of adultery and, therefore, having lost his self-control killed her. But the learned Judge thought that some evidence, in the shape of statements of witnesses, was necessary under the law in order to enable him to give the benefit of his version to the accused person. The learned Judge says after quoting the statement of the accused person:

On the face of it, there is probably truth in what the accused say, although what he says may not be the whole truth and nothing but the truth.

5. We are of opinion that although under the Indian Evidence Act the burden of proving an exception under the Indian Penal Code is on the accused person, it does not follow that the circumstances together with the accused person's statement cannot be sufficient evidence to establish the exception in his favour. Such a case is the present one before us. The learned Judge himself was inclined to accept the appellant's statement and the assessors unanimously accepted the same, and we are inclined to regard the offence committed to be one tinder Section 304, Indian Penal Code. In the circumstances, we think the learned Judge might very well have accepted the appellant's story as the correct one and we do accept it as the correct version.

6. We find that the appellant, having been suddenly deprived of the power of self-control by grave and sudden provocation, caused the death of his wife who was one of the parties who gave that provocation. The case falls within the purview of Section 304, Indian Penal Code.

7. We alter the conviction under Section 302, to one under Section 304, Indian Penal Code, and reduce the sentence to three (3) years' rigorous imprisonment.

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