Dhani Ram and anr. Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/472387

Court : Allahabad

Decided On : Oct-30-1915

Reported in : AIR1915All437; 31Ind.Cas.1005

Judge : Henry Richards, C.J. and ;George Knox, J.

Appellant : Dhani Ram and anr.

Respondent : Emperor

Judgement :

1. Dhani Ram and Chotey Lal have been found guilty of the murder of Durga Prasad and sentenced to death. They have appealed. The second accused is the son of the first accused. The deceased was the only son of Sobha Ram, a brother of the first accused. The first accused had another son called Salig who died childless leaving a widow Musammat Deo Kunwar. On the 16th August 1911, Durga Prasad made a Will in favour of the second accused leaving him all his property. Beyond all question, Durga Prasad was most brutally murdered. Dhani Ram in the Court below admitted the murder and he admits it in his petition of appeal. Chotey, however, denies his guilt. The case for the prosecution is that the motive for the murder was to anticipate the succession to Durga Prasad's property and to prevent him incurring more debts, mortgaging or dealing with his property or cancelling the Will. Dhani Ram says that he murdered the deceased because he caught him in the act of having sexual intercourse with Musammat Deo Kunwar. The family house is divided into three parts. The two accused lived in the

western portion. Durga Prasad lived in the eastern portion. There was another brother of the first accused named, Behari. He died leaving a son Choke Lai (not to be confused with the second accused). This Choke Lal lived in the central part. Two doors lead from Dhani Ram's portion into Choke Lal's and there is an open courtyard which belonged half to Durga Prasad and half to Choke Lal. On the morning of May 18th, at day break the second accused went to Tota Ram chowkidar and told him that Dhani Ram wanted him. He and another chowkidar went to the house and found Durga Prasad lying dead. Dhani Ram said that four men Sri Pal, Umrao, Pearay Lal and Ram Sarup had killed Durga Prasad. A report to that effect was made at the thana by Dhani Ram. It is now admitted that this charge was absolutely false. This gives some idea of the class of men the accused are. It is impossible to believe that the second accused did not know of the false charge that was being made against four innocent men, he must also have known that Durga Prasad was lying dead. The learned Sessions Judge has given the most cogent reasons for not believing the story that the deceased was murdered because he was caught in the act of illicit connection with the Musammat. This charge is like the charge made against the four men, an absolute lie. We are quite satisfied that the woman was not even in the house at the time and that the motive was to get rid of Durga Pershad so as to get his property. The evidence against Dhani Ram is overwhelming and he admits it even now.

2. We proceed to consider the case as against the second accused. It is improbable that the father would have committed the murder alone. If we are correct in the view we take of the motive, Chotey had a greater motive than the father.

3. A little boy of the name of Ram Rup, aged about six years, was examined in the Court below. His statement is beyond question of the utmost importance. It directly implicates and if believed, brings home guilt to the second accused. There is evidence that the boy made the same statement immediately after the murder. One of the grounds of appeal was based on the decision in Queen Empress v. Maru 10 A. 207 : A.W.N. (1888) 86. The objection was that the learned Judge having 'advisedly' refrained from administering the oath to the little boy, his statement is inadmissible. We are not prepared to accept altogether the ruling in

the case of Queen Empress v. Maru 10 A. 207 : A.W.N. (1888) 86. No doubt Section 6 of the Indian Oaths Act X of 1873 provides that (save as in the section provided) every witness shall make an oath. Section 13 of the Act, however, provides that no omission to take any oath, shall invalidate any proceeding or render inadmissible any evidence whatever in or in respect of which such omission took place. We are unable to hold that the mere fact that the Court advisedly refrained from administering the oath, renders the statement of the witness inadmissible. In our opinion, a Court should only examine a child of tender years as a witness after it has satisfied itself that the child is intellectually sufficiently developed to enable it to understand sufficiently what it has seen and to afterwards inform the Court thereof. If the Court is of opinion that by reason of tender years, the child is unable to do this, it ought riot only to refrain from administering the oath but from examining the child at all. If on the other hand the Court thinks that the child, though of tender years, is capable of informing the Court of what it has seen or heard, it is best that the Court should comply with the provisions of Section 6 in the case of a child just as in the case of any other witness. Whether or not, a child should be examined, must depend on the circumstances of the particular case including, of course, the mature of the evidence he is about to give. It seems to us pretty clear from the record that the boy Ram Rup was intelligent. We thought it nevertheless advisable to examine the boy ourselves, the charge being the grave one of murder. We accordingly had the boy produced before us in the presence of the accused, the oath was duly given and the witness examined. Having seen and heard the boy, we have not the least hesitation in saying that he was quite capable of giving evidence in the case. The Committing Magistrate examined the boy on oath and appears to have been favourably impressed. As already stated, this appeared from the record itself. Not only was the boy examined on the direct but he was cross-examined at considerable length on behalf of the accused. In many ways, it is much more difficult to tutor a child than an older person. The child may no doubt learn a story, but it would be very difficult to prepare a child for questions on cross-examination outside the story. Furthermore a child of tender years finds it difficult to disguise the fact that he has been tutored. When the matters deposed to, are not beyond the intelligence of the child, he is frequently a most satisfactory witness. His tender

years render him less capable of deceiving the -Court. In the trial Court, Ram Rup was asked if he had seen Chote's sister-in-law (the woman with whom the first accused said he caught the deceased in the act of sexual intercourse) the boy said he did see her that day, that she lived in her father's house. We think if the woman had been in the house, the boy most certainly would have said so. The question was asked by the Court. The statement which the 1st accused has made throughout corroborates the boy in so far as the boy says that he witnessed the occurrence. If Choke tutored his little son, he need only have tutored him to substitute the 2nd accused for himself. He need not have tutored him to deny the presence of the woman. Ram Rup in the Court below stated that he had seen the two accused hitting Durga Prasad. He said that Dhani Ram used a lathi and Chote a gandasa. In the Court below, some point was made that the story of the gandasa must be untrue. The learned Sessions Judge points out that it does not necessarily follow that because the wounds on the body do not appear to have been inflicted by sharp edged weapon, neither accused had a gandasa. The side of the gandasa or the back have been used. The little boy still adheres to the statement that there was a gandasa. There is a discrepancy between his evidence before us and his statement in the Court below when he states before us that both the accused had lathis. The real important matter for consideration with respect to the evidence of this witness is not ether he is accurate in every detail but whether it is possible that he has been tutored by his father Choke to substitute the second accused for him. As we have already stated, the first accused has admitted all along that Durga Prasad was murdered by him and that another man was with him but he says that the second man was Choke and not his son Chote. According to the evidence of Gokul Chand, the little boy stated that Durga Prasad had been killed by Chote Lal and Dhani Ram immediately after the murder. Brij Basi says the same thing. We ourselves are quite satisfied that the little boy has told the truth when he says that both the accused committed the murder. It must be borne in mind that Choke, the father of this little boy, had no motive for murdering Durga Prasad. Chote, the second accused, had a motive. The Will was in his. favour. It was he who went to fetch the Chowkidar and told him that Dhani Ram wanted to see him. It is true that he did not tell the Chowkidar why he was wanted but this fact is rather against Chote than in his favour. When he went to fetch the

Chowkidar, he must have known that Durga Prasad was lying dead in the house. He must also have known that his father's charge against the four men was false. It seems to us much more probable that Chote would have been, his father's accomplice in the murder than Choke.

4. After the boy Ram Rup had been examined before us, Dhani Ram put some questions and made a long statement reiterating that Durga Prasad was killed because he was caught in the act of having intercourse with the Musammat. Chote, the son, however, declined to ask any questions or make any statement. We believe that the old man is trying to save his son and that the probabilities are that the latter is morally speaking the more guilty of the two. We are quite satisfied that the evidence given on behalf of the 2nd accused that he was absent when the murder was committed, is false. This is shown by the evidence of Toto that it was the 2nd accused who came to him with the message that the 1st accused wanted him. The message was delivered very early in the morning.

5. After careful consideration of the case, we are quite satisfied that the unanimous opinion of the learned Sessions Judge and of the assessors is correct. We dismiss the appeal, confirm the convictions and sentences and direct that the latter be carried into execution according to law.