

Behari Vs. King-emperor

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Court : Allahabad

Decided On : Sep-07-1926

Reported in : AIR1927All479

Appellant : Behari

Respondent : King-emperor

Judgement :

1. This is a criminal ap-peal from a conviction under Section 302 of the Indian Penal Code. The accused has been charged with the offence of murdering his wife Mt. Gobardhani For the last three years or so there had been an illegal intimacy between the accused's wife and a shopkeeper named Masna. The brothers of the accused disliked this, and when the intrigue was not stopped they separated their part of the house by means of a partition wall a few months before the occurrence. Some complaint had been filed by Masna's father in a criminal Court, and the 3rd of June 1926, was, fixed for its hearing. Masna came) over and asked the accused to give evidence on behalf of his father. The accused declined to do so. His wife Mt; Gorbardhani also tried to persuade him to give evidence, but he persisted in refusing to go to Court. Mt. Gobardhani, however,, herself offered to give evidence on behalf of her paramour's father. One can imagine that the accused would not have liked this idea. The prosecution theory is that the accused very much disliked it and feared that as soon as Mt, Gobardhani was cross-examined the whole scandal would be made public and he would be disgraced, Mt. Gobardbani was certainly murdered on the night preceding the 3rd of June 1926. Her dead body

was found in a well next morning. (The judgment then discussed the 'evidence relating to the post mortem examination and the conduct of the accused and concluding that she was murdered by the accused on that night proceeded to discuss the question of law). We have overruled the point of law raised by the learned vakil for the accused that the statements of Roshan and Tiku made before the committing Magistrate, though admitted by the Judge, under Section 288 of the Code of Criminal Procedure, cannot be used as substantive evidence and could only have been used for the purpose of corroboration or contradiction. Under the old Code there was some conflict of opinion. In the earlier cases, namely, Queen-Empress v. Dan Sahai [1885] 7 All. 862 and Queen-Empress v. Nirmal Das [1900] 22 All. 445 it was suggested that such statements could not be used as substantive evidence. But in the case of Emperor v. Dwarka Kurmi [1906] 28 All. 683 a Bench of this Court held that statements made before a committing Magistrate could be admitted as evidence. Since then the section has been amended and reads as follows:

The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes, subject to the provisions of the Indian Evidence Act, 1872.

2. This, in our opinion, makes it quite clear that statements when admissible under the Indian Evidence Act can be admitted 'for all purposes' and not only for the purpose of corroboration or contradiction. The use of the expression 'for; all purposes' was clearly intended to remove the previous conflict. The words 'subject to the provisions of the Indian Evidence Act, 1872,' mean nothing more than that such statements should not contain matters which would be irrelevant or inadmissible under that Act. After expressing this opinion our attention was drawn to the case of King-Emperor v. Jehal Teli A.I.R. 1925 Patna 51 where this view has been accepted.;

3. We find, however, that the accused is a young man of about 22 years of age and his wife was openly immoral. He put up with her immorality for some time, hut she proved too much for him and was bold enough to offer to go to Court and give

evidence on behalf of her paramour's father very much to the dislike of the accused. The accused must have resented it extremely and must have felt that he would be considerably disgraced by this act. It was in that moment of despair that he must have committed this murder.

4. We, therefore, think that the ends of justice will be met by reducing the sentence to one of transportation for life. We accordingly uphold the conviction but reduce the sentence to one of transportation for life.

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