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Court : Allahabad

Decided On : Dec-20-1934

Reported in : AIR1935All549; 155Ind.Cas.119

Appellant : Ram Charan and ors.

Respondent : Emperor

Judgement :

Bennet, J.

1. This is an appeal by four persons, Ram Charan, Ram Dayal, Bhimina and Jodha, who have been convicted by the learned Sessions Judge of Mainpuri, under Section 394, Penal Code, and sentenced to seven years' rigorous imprisonment each. The accused were charged under Section 396, Penal Code, by reason of having been participants in a dacoity in the house of Sahara Meghraj on the night of 5th and 6th March 1934, in which Bahora Meghraj was killed. The learned Sessions Judge found that the prosecution case was proved, but because two other persons who are alleged to have taken part in the crime were not before him, the number of accused was less than five and therefore Section 396, Penal Code, did not apply and he says that the accused committed robbery and voluntarily caused hurt to the deceased which was the least proved against them. He therefore did not find that the accused persons had caused death of the deceased, but only that they caused certain injuries to the deceased. These nine

injuries noted in the post mortem; report which was found had been caused were external abrasions and would amount only to simple hurt. The sentence therefore was very severe for a robbery in which simple hurt was caused and it appears to me that although he did not expressly state so, the learned Judge must have passed the sentences on the view that the accused had caused the death of the deceased. If that were his view, he should have convicted the accused of the offence under Section 302, Penal Code, but he has not done so. The case for the prosecution rests on the alleged confession made in the village to three witnesses by one of the accused, Jodha, on 28th, March 1934, and on the discovery of ornaments pointed out by the accused on 30th March 1934. When the accused Jodha was brought before a Magistrate, he refused to make a confession. The history of the affair is as follows:

2. The deceased died sometime during the night and no outcry was made and no one in the village became aware of a crime. At the time he was living alone in his house. Next morning attention was drawn by the fact that the cattle were unattended and that the door remained shut. Balwant Singh, the zamindar, went to the house accompanied by Ajudhia Prasad, the Mukhia, and Kesari. These persons stated that they found Bahora Meghraj lying dead on his bed covered with a cloth and as the witnesses were not of his caste, they sent for Khem Chand, who was a Bahora, of an adjoining village called Seonra. Meanwhile the body had remained covered with the cloth. When Khem Chand came, he removed the cloth preparatory to funeral preparations and he found that there were injuries on the body. He therefore said that matter must be reported at the thana. The chaukidar was sent to make a report. The chaukidar was a dhanukh, a low caste, and he was not taken inside the house or yard and he did not see the injuries on the corpse. He was told to go and make a report and he did BO. This was not a first information report of a crime, but a report made in order that an inquest might be held. The report was entered in the general diary at the thana at 7 p.m., and the report did not mention any injuries on the deceased. The report says that the deceased used to take intoxicating drugs that his eyes were dilated and it seemed that he had died on account of the effects of over-intoxication from opium and bhang. The second officer and the mortuary box were sent for an inquiry into the cause of death which was not clear from the report of the chaukidar. The second

officer held an inquest and noted some injuries in regard to which the medical witness observes in a letter on p. 7 that most of these injuries were probably due to post mortem staining. In the post mortem it was stated that no definite opinion could be given as to the cause and manner of death owing to the fairly advanced state of the decomposition of the body. There were nine places in which there were one or more abrasions. Of some of these marks the Medical Officer stated in evidence:

The above-mentioned injuries could have been produced in struggle when the deceased was being throttled. Injury No. 4 could have been caused during the act of closing the nostrils by force. Injury No. 8 could have been caused by pressure on side of chest by knees, elbow or any other hard substance. The above-mentioned injuries could not cause death separately or jointly; in all probability, therefore it is possible that some other act might have caused the death of the man. Cyanosis of the face, bluing of tongue and nails combined with the congestion of brain and meningitis and redness of eyes may indicate that asphyxia may have been the cause of death. The above injuries cannot be caused by fall from a staircase as they are on the different parts of the body.

3. There is one point in regard to which the Medical Officer was not cross-examined and that is the internal appearances of the throat. The alleged confession stated that death was due to throttling and the medical witness has stated that some of the points he observed point to death by asphyxiation. In Modi's Medical Jurisprudence, 1924, Edn. 3, p. 142, I find it stated as follows:

Internal appearances - There is extravasation of blood due to ecchymoses in the subcutaneous tissues under the ligature mark or finger marks, as well as in the adjacent muscles of the neck... Both the larynx and trachea are congested, and contain frothy mucus. The larynx or the rings of the trachea may be fractured when considerable force is used.

4. In the post mortem report it is stated 'Larynx trachea and bronchi. Empty.' There is no injury noted in these organs. The opinion of Modi is that these organs should show signs of internal injury in asphyxiation. In the present case there is no injury shown and it was not suggested by the medical witness that they were so

decomposed that examination from this point of view would be impossible. And there were no external injuries on the neck. This appears to me to be one weakness in the theory that the accused died from throttling as stated in the confession.

5. The next point is in regard to the confession. After the Sub-Inspector came to the village and held his inquest and made an inquiry, nothing further happened until 28th March. Balwant Singh states that at that date Jodha accused came to him of his own accord and said that he and five other persons, including the other three accused had committed this murder and had stolen a number of ornaments and that he was making a confession because he had not been given his share out of the proceeds of certain gold ornaments - Lar, Goph and two guineas - which were taken by Ram Charan and Jiwa Ram. to Shikohabad and sold. This motive for making the confession is frequently put forward, but it does not seem to be very natural that an accused person should merely from the annoyance at not getting his proper share of the loot take an action which he must know will put himself in jail. Balwant Singh states that when he heard the confession he took the accused, Jodha, before the mukhia Ajudhla Prasad and Kesari and Jodha repeated this confession to these persons. All the three persons give evidence as to what Jodha said to them. No attempt was made by them to take down this confession in writing although they must be literate. They did however send for the Sub-Inspector and after the production of various ornaments, the Sub-Inspector put Jodha and Ram Charan before a Magistrate and they refused to make a statement. It seems extraordinary that if Jodha had been willing to make a confession on the 28th and had been of the same opinion on the 30th when he pointed out various ornaments that he should have changed his mind when he was brought before the Magistrate and no reason is given for this change. This fact throws a doubt on the statement that Jodha did make a confession in the village on 28th March. It was argued for defence that in any case a confession to a mukhia would be to a Police Officer and would be barred by Section 25, Evidence Act. It has been held in *Mga Myin v. Emperor* 1924 Rang 245, that a village headman is not a Police Officer for the purpose of Section 25, Evidence Act. No ruling to the contrary has been shown.

6. Now, in regard to the ornaments, three exhibits have been sent to this Court. The Sub-Inspector states that 'B hi man accused handed over hamel, Ex. P-3, from his house and that Ram Dayal accused handed over a bera Ex. P-4, from an earthen vessel inside his house. In regard to the two karas, Exs. P-2/1 and P-2/2, the Sub-Inspector stated that Ram Charan handed over one of them from under the threshold of his house and that Jodha handed over the other from under the floor of his house. This was confirmed by the two search witnesses, Ajudbia Prasad, Mukhia and Balwant Singh. As to the identity of these articles that property had belonged to the deceased: there was a statement of Balwant Singh that he knew that the karas Exs. P-2/1 and P-2/2 had been worn by Mt. Gaura, sister of the deceased and that the bera, Ex. P-4 was worn by the deceased. There was also the evidence of Mt. Gaura that the karas were hers and the bera was worn by the deceased at times only and she said that the hamel Ex. P-3 belonged to Churna Lodh and she afterwards explains she meant Ram Charan accused and that her brother, Meghraj, told her that Ram Charan had pawned this hamel with him. She says that she had seen the hamel hanging on a peg in the house. Now, as regards the identification of these articles, the gold earrings, Ex. P-4, are mere plain circles of gold which have no mark on them by which they could be identified and there are many such ornaments in villages. The silver karas are also of a very ordinary type with very little ornamentation. Mt. Gaura says that these were made for her by 'her brother-in-law, Kashi Ram, who died 12 years ago and therefore no sonar was called to prove that he made them. She says that she stayed occasionally from one to four months with her brother, Meghraj, and at other times she stays with tier other relatives. At the time of the murder, she was staying with pi her relatives and did not come until the next morning when she was called. Her explanation of how she came to leave the karas in the house of the deceased is:

I had kept my pair of karas with the deceased last year in the month of Jeth. I was then ill and felt rather uncomfortable with them so I put them with the deceased.

7. Her suggestion is that she allowed her karas to remain with the deceased from the hot weather of 1933, because they were rather uncomfortable. It seems unlikely. Further she admits:

The second officer came to me and asked me to see if the things in the house were in order and I replied that they were. I was much grieved and I had not the strength to go upstairs myself.

8. She made no attempt to see whether her karas were missing or not and it was not till after the discovery of the karas that she came forward apparently with a claim that they were hers. These facts render her evidence that these karas belonged to her extremely doubtful. The other article, the hamel, is one which is quite easily capable of identification as it has a number of coins and a large square of silver with various small ornaments on it and an elaborate pattern. This article however is stated by Mt. Haura to have been pawned by the accused, Ram Charan, with the deceased. Her only knowledge on the pawning is attributed to a statement of the deceased. No books are produced to show that there was such a transaction. The suggestion for the prosecution is that the deceased was a man of considerable property and he apparently traded in money-lending as he was a Bahora. Such persons usually keep books of account in which these transactions of pawning are entered. No witness for the prosecution has stated that there were no books of deceased, but no books are produced. Another point in regard to this hamel is that if the hamel had belonged to Ram Charan accused and Ram Charan had taken part in this robbery, he would naturally have asked that this hamel should be given back to him. But the prosecution case is, according to the confession, that it was given to the accused Bhimma and the evidence is that Bhimma handed this hamel up from his house. He is not the brother of Ram Charan as they have different fathers and the evidence of the Sub-Inspector indicates that they have different houses. The confession mentions only a few ornaments as having been found. It would be, in my opinion, quite impossible that at a distribution of the loot Ram Charan would not have recognized his hamel and ask for it, but the confession makes no mention of any such demand by Ram Charan. I think therefore the prosecution altogether fails to show any connexion between the hamel and the deceased. The hamel may no doubt have been found in the house of the accused person Bhimma, but that does not prove that it was in any way connected with the alleged robbery. A lantern was stated to have been taken out from a pond. This was stated to have belonged to the deceased, but lanterns are of a common type and cannot be identified as belonging to any

particular person.

9. To sum up the case, the medical evidence does not prove that the deceased died from asphyxiation by throttling. Some symptoms favour that view and some do not. The confession was not made before a Magistrate and it is only stated to have been made in the village to three villagers whose evidence is of little weight to prove that a confession was made. The evidence of ornaments being found in the houses of the accused may be correct, but the prosecution fails to connect those ornaments with the deceased. For these reasons, I find that the prosecution has not proved the charge against these four appellants. I therefore acquit them of the offence of Section 394, Penal Code, and direct that they be set at liberty.

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