

Nanji Vs. the State

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Court : Madhya Pradesh

Decided On : Sep-16-1955

Reported in : 1957CriLJ199

Judge : Nevaskar and ;Samvatsar, JJ.

Appellant : Nanji

Respondent : The State

Judgement :

Nevaskar, J.

1. Accused s/o Punja Bhil was prosecuted before the Sessions Judge Ratlam for an offence under Section 302, I. P. C. who found him guilty and sentenced him to transportation for life.

2. This is an appeal by the accused against his conviction.

3. Prosecution case is that on 8-4-54 accused Nanji, deceased Ramla, Poona, Mangatia and other villagers had collected in the morning to aid the construction of the hut of Thavaria. On this occasion the accused hit Ramla with an axe on his head and left cheek causing incised wounds measuring 3' x 1/2' x 1' & 2 1/2' x 1' x 3/4' respectively. Left parietal bone was fractured. Death was due to haemorrhage caused by the injury resulting in the fracture of left parietal bone treating the

meninges and lacerating the brain substance.

4. Report of this incident was lodged by accused Nauji at the Police Post Khavasa at about H a.m. the same day. Akhtarbeg Police constable who took down the report carried the same to Police Station Thandla whereupon Sub-Inspector of Police Kanhaiyalal Sharma undertook the investigation. He went to the place of occurrence, seized the axe, elected Panchnama of the place of incident and of the dead body. The dead body was sent for postmortem examination which was conducted by Dr. Lalita Shankar. The accused who was arrested on 8-4-1954 was sent to jail custody the following day. He was produced before Mr. Davey the Magistrate Thandla for recording his confession on 12-4-1954. The Magistrate recorded the confession on the same day.

In this confession the accused admitted to have struck Ramla with an axe after he and other members of the party had taken liquor. The reason stated in this confession for this conduct was stated by the accused to be that Ramla had illicit connection with his wife Dhapudi. On a Panchayat having been called by him he had condoned Ramla on assurance by the Panchas that Ramla would not persist thereafter in this misdeed. The deceased however continued in the same conduct. When they had taken drink this conduct of the deceased appeared prominently before his eyes and he struck him with an axe.

5. On these facts the accused was put up for trial Principal witnesses examined at the trial were P. W. 2 Dhapudi, P. W. 3 Poona brother-in-law of the accused. P. W. 4 Manglya and P. W. 7 Thavar.

6. Dhapudi stated that her husband Nanji suspected her intimacy with Ramla hut stated that it was baseless.

7. Poona, Manglya and Thavar were eye-witnesses to the occurrence. According to Poona accused suspected intimacy between his wife Dhapudi and Ramla. He further stated that on the date of the incident people had gathered for construction of a hut of Thavar. There the accused hit Ramla with an axe. He gave blows, one on the head and the other on his check. Ramla fell down. Accused tried to run away but was caught whereupon he stated that he would go and report the matter

to the Police at Khavasa. He accordingly went and reported, He and Manglya followed him to the Police Station. Mallaya and Thavar corroborated Poona as regards the fact that the accused hit the deceased twice on the head and the cheek.

8. Besides this evidence the axe with which the injury was caused was smeared with blood. There was no report either of Chemical Analyser or the Imperial Serologist about the same being stained with blood or human blood.

9. The statement of the accused in the Committing Magistrate's Court was produced at the trial. Accused in his statement admitted that he had suspected illicit connection between his wife and Ramla and that a Panchayat had taken place in respect of that matter. He further admitted that he struck Ramla with an axe twice on his head in the presence of witness Manglya, Thavar etc., when they had collected for building Thavar's hut which caused his death on the spot. He further accepted the axe produced as the axe with which he had struck. He stated that he was in temper and was also intoxicated and hence he struck.

10. On the review of this material the learned Sessions Judge held him guilty under Section 302, I. P. C.

11. In the present appeal Mr. R. R. Joshi who appears for the accused has attacked the decision of the Court below on various grounds:

Firstly-

He contended that the confession of the accused produced in evidence is not admissible as the learned Magistrate who recorded that confession did not disclose to the accused his identity as the Magistrate nor did he assure him that he would not be sent back to the Police Custody. Reliance was placed in this connection upon the decision reported in *Sanatan Badchat v. The State* : AIR1953 Ori149 and *Findal v. The State* .Secondly-

He contended that the admission of the statement of the doctor recorded by the Committing Magistrate under Section 509, Criminal P. C. was improper when the doctor was actually present in Court for giving evidence. Reliance in this

connection is placed upon Rangappa Goundan v. Emperor AIR 1936 Mad 426 (C). Thirdly-It is said that the prosecution kept back material witnesses such as Rangji Fulji, Ramsingh and Sukia whose presence at the place of the incident was beyond controversy.

12. Legality of the recovery of the dead body and the axe was also questioned on the ground that Police Officer was present then.

13. None of these contentions have any substance,

14. As regards the first contention failure of the Magistrate to disclose his identity specifically to the accused and failure to assure him that he would not be sent back to the Police custody have a relevancy only to the voluntary character of the confession. But where the voluntary character of the confession is beyond all doubt in view of the statement of the accused in the Committing Magistrate's Court, which itself is a substantial piece of evidence, the argument loses much of its weight. Moreover these are not the specific legal requirements as provided by Section 164, Criminal Procedure Code. All that Section requires is that the Magistrate before recording the confession should explain to the accused that he is not bound to make a confession and that if he does so make the same will be used against him as evidence.

15. The Magistrate no doubt has to satisfy himself about the voluntary character of the confession. As a matter of prudence and to lend assurance to the voluntary character of the confession the accused no doubt ought to be told that the person before whom he is to make the confession and that he need have no apprehension that he would be sent back to the Police custody.

But where the voluntary character of the confession is otherwise clear mere absence of these factors in the confession cannot render it inadmissible in evidence. In the present case the accused was sent to jail custody the next day and had been brought from there three days later. The accused from his statement knew this. His statement in the Committing Magistrate's Court puts an end to all argument bearing on this question.

16. As regards the second contention having, regard to the wording of Section 509, Cr. P. C., there is no force in the same. Section 509, Cr. P. C. provides:

(1) The deposition of a Civil Surgeon or other Medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceedings under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine such deponent as to the subject matter of his deposition.

17. Under Clause (1) deposition of a medical witness in the Committing Magistrate's Court satisfying, the necessary formalities as indicated in that clause may be given in evidence in spite of the fact that deponent is not called as a witness. This means that this evidence is not held admissible merely as a corroborative piece of evidence but it is by itself a substantive piece of evidence at the trial when tendered. In order to secure fair deal to the accused and the prosecution who might desire to put questions to such a witness, Sub-section (2) confers discretion upon the Court of trial to summon and examine such a witness as to subject matter of this deposition. This is intended to clarify any obscure points in his statement.

18. If therefore the statement is tendered and with a view to avoid undue delay the witness is called and kept present for the purpose of the object indicated in Clause (2) of Section 509, Cr. P. C. no illegality occurs. In fact this is perfectly consistent with the requirement of the Section.

19. The view taken therefore in AIR 1936 Mad 426 (C) and *Bharosey v. Emperor* AIR 1947 Oudh 41 (D) that where a medical witness is kept present in Court and his statement in the Committing Magistrate's Court is then admitted such admission is illegal, does not appear to be justified by the wordings of the Section for reasons discussed above.

20. In *Hashmat v. Emperor* AIR 1947 Lah 37T (E) the aforesaid Oudh decision in dissented from.

21. As regards third contention all I need to say is that in the first place the prosecution are not under obligation to examine all the witnesses upon any point though they be eye-witnesses. This is clear from the decision of the Privy Council in *Malak Khan v. Emperor* AIR 1946 PC 16 (F). Moreover, in this case, the accused admitted everything which the prosecution witnesses who were examined had stated. No substantial argument was advanced regarding legality of recovery of the dead body and the axe. Section 27, Evidence Act, permits such recovery.

22. There is therefore no substance in any of these contentions.

23. The accused therefore is clearly responsible for the death of Ramla.

24. Having regard to the fact that two blows were given with sufficient force with an axe on vital part of the body such as head and cheek resulting in instantaneous death, the accused has been rightly convicted under Section 302, I. P. C., and has been dealt with leniently as regards the sentence.

25. The appeal is therefore dismissed.

Samvatsar, J.

26. I agree.

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