Bhamra Vs. the State

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Court : Madhya Pradesh

Decided On : Jun-02-1952

Reported in : 1953CriLJ217

Judge : Radke, A.J.C.

Appellant : Bhamra

Respondent : The State

Judgement :

Radke, A.J.C.

1. This is a convict's appeal from jail. The prosecution story is that on 21.8.50, the accused Bhamra of Barkhera was returning to his village by the way which passes by the side of the field of the deceased Bhagirath of Banana. Bhagirath was ploughing his field at the time and the accused, on seeing him, called him for a chat. Both of them sat on the boundary line of the field and the accused offered him Supari. The accused remonstrated with the deceased for ill-treating his-own wife, whereupon the parties flared up. Ultimately a scuffle ensued. In that scuffle the accused struck the victim with a stone on his head with the result that ho sustained a fracture of his skull to which he succumbed three days later.

At the time of the incident Ratiram, p.w. 1, and Lalchand p.w. 3, were working in their respective fields close to the field of the deceased. Lalchand was the first man to see the scuffle. He ran to the field of the deceased and shouted for

Ratiram. Both of them came to the spot and the accused, on seeing these persons ran away. But ho was caught by Pannalal p.w. 2. The victim and the accused were taken to the village. As both parties had received injuries, it was not thought advisable to make a report to the Police but three days later, the condition of Bhagirath became very serious and so a report was made to the Police through Bansilal, p.w. 7, and a Hakim was also sent for to examine the victim. The same day Bhagirath expired.

2. On receipt of the information the Station Moharrir Abdul Aziz Khan, p.w. 12, came to the village, as the Station House Officer was out on tour. He hold an inquest on the body of Bhagirath and prepared an inquest report. The dead body was sent to Bhopal for post mortem. The post mortem was held by Dr. Bose on 26.8.50. The doctor found that there were two fractures on skull which ultimately proved fatal.

3. The accused appeared in the Station House on 27.8.50, of his own accord and was arrested. On being examined by the Addl. Sessions Judge the accused stated that he did not strike the deceased at all. But on the contrary, he was him half beaten by him. The challan was put up under Section 302, Penal Code, in the Court of the S.D.M. Berasia, for enquiry, by the Naeirabad Police. After the enquiry the Magistrate framed a charge under Section 304, Penal Code, and committed the accused for trial to the Court of Session. The Addl. Sessions Judge who tried the case found that no case under Section 304, Penal Code, was made out and that the case fell within Section 325, Penal Code. He accordingly recorded the conviction under the latter section and sentenced the accused to 3 years' R.I. and to a fine of Rs. 100 and in default to a further term of imprisonment for six months. It is against this conviction and sentence that the accused has come up in appeal.

4. The main question that arises for consideration in this appeal is whether the injuries which were found on the skull of the deceased Bhagirath und to which ho succumbed were caused by the accused by striking him with a stone as alleged by the prosecution.

His Lordship after considering some pieces of Evidence proceeded:

5-9. The next piece of evidence on which the learned A.S.J. relied is the conduct of the accused soon after the incident. On seeing Ratiram and Lalchand coming to the place he ran away, There is no doubt that the conduct of an accused soon after an incident plays an important part in the determination of the guilt. If really the accused was innocent and was himself the victim of assault, it was not necessary for him to make good his escape, There is no doubt that this piece of conduct of the accused will be a corroborative piece of evidence. This evidence has been used by the trial Court for that purpose. In my opinion, the trial Court was justified in doing so.

10. The trial Court next considered the evidence which was admitted under Section 27, Evidence Act. During investigation, the investigating officer recorded the statement of the accused in the form of a memorandum and it is Ex-p. 2. In this memorandum the accused gave out the details of the occurrence and also promised to point out the stone with which he had struck the deceased. On the strength of this information the stone, Article 'A' was discovered at the scene of occurrence and was seized by the Police, Similarly Lalchand, p.w. 3, also supplied the information which was taken down as Ex. P. 4. This information is not provable under Section 27, Evidence Act, as Lalchand is not an accused. That evidence must be discarded. Ex. p. 1 is the information supplied by the accused which gives all the details of the occurrence and the place where it took place. This information is not provable as it does not load to any discovery.

11. It is unfortunate that the learned A.S.J. admitted the entire statement contained in Ex. p. 1 and Ex-p. 2 under Section 27, Evidence Act. So much of the information which leads to the discovery of a fact is admissible provided the relevancy of that fact with the crime is duly established. There was a considerable divergence of judicial opinion regarding the interpretation of Section 27. The rival views will be found expressed on the one hand in the judgment of Shadilal C.J. in Sukhan v. The Crown 10 Lab. 283 (F.B.), and on the other hand in the judgment of Beasley C.J., in Re Athappa Goundan, I.L.R. (1937) Mad. 695 (F.B.) and dissenting judgment of Fordo and Jailal JJ. in Sukhan v. The Grown. The majority view of the Madras High Court was also followed in Motilal v. Emperor A.I.R. 1940 Nag. 66. At p. 60 the Judges remarked as under:

Section 27 contemplates the discovery of material evidence. The material discovered would have no value unless it is relevant to the fact in issue und connected in some manner with the crime under investigation. Any information given by an accused person showing the relevancy of fact to the crime must form an integral part of the discovery of the fact itself, namely, material evidence, although it may indirectly amount to a confession.

In cr. Appeal No. 201 of 1942, decided on 19.10.1942, Babukhan v. Crown the Nagpur High Court referred to the various authorities bearing on the subject and opined that the fact discovered is not merely the visible article but the visible article as related to the crime by the information given. Section 27, according to this view, does not speak of the discovery of the property only but of the, fact discovered on the information contained in the statement to the extent that it is confirmed by the finding of a material fact.

12. The information contemplated in Section 27 is something more than an agreement of the accused's statement with the visible fact discovered. It is the information which goes further to connect the visible fact with the crime. Inasmuch as the materiality of the visible fact discovered lies in its connection with the crime, the information which discloses the materiality of the facts dis. covered must be regarded as forming an integral part of the fact discovered. The circumstance which sets the Police in action is the information which gives a clue to property of an incriminating nature. The Police would have no motive to discover a thing unless they are told by the accused that it has some relation to the crime. It is, therefore, clear, the Judges go on to say that the information which the accused gives to show the relevancy of the visible fact discovered must be admitted in evidence under Section 27, Evidence Act as an integral part of the visible fact discovered.

13. The trend of authorities cited above is that the information which the accused gives to the Police to show the relevancy of the article discovered is also admissible under Section 27, Evidence Act. For example, if the accused discovers a blood stained knife and states that it was with this knife that he cut the throat of his victim, what is discovered is the knife and also the fact that it was used for the

cutting of the throat of the victim, for otherwise the relevancy of the blood on the knife cannot be established.

14. The conflict of judicial decisions is now set at rest by an authoritative decision of their Lord-whips of the Privy Council in Pulukuri Koltaya v. Emperor A.I.R. 1917 P.C. 67 : is cri. L.J. 533. It was pointed oat in this decision that it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, find the information given, must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered.

Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of it, knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into Section 27 something which is not there and admitting in evidence a confession barred by Section 26. Except in cases in which the possession, or concealment of the object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof and the other link must be forged in the manner allowed by law. It was definitely pointed out by their Lordships that Athappa Goundon In re I.L.R. (1937) Mad. 695 (F.B.) was wrongly decided.

15. In view of the law bearing on Section 27, Indian Evidence Act, what is admissible in the present case is that the accused promised to point out the stone actually discovered on the spot. Anything which the accused stated to show the

relevancy of the stone to the crime is ruled out and is not admissible in evidence. It was for the prosecution to establish its relevancy by leading evidence, Instead of resorting to the normal mode of investigation the Police resorted to the method of making a feigned discovery of the stone in order to admit which was not otherwise admissible. Section 27 which is an exception is not meant to be missed by the Police. But in the present case I find that in order to make the confession admissible, the procedure stated above has been followed. The learned A.S.J. should have discarded this evidence but he has not done so. The entire statement which is sought to be proved under Section 27, Evidence Act, in the present case is not admissible, barring the discovery of the stone, but since its relevancy has not been established, that evidence becomes worthless.

His Lordship discussed further evidence and proceeded:

16-17. The accused did not state in his examination before the Judge in what manner he was assaulted by the victim with a stick. None of the eye-witnesses refer to this assaulted by the victim which moans that their attention was diverted only when the scuffle had reached a particular stage. It may be that it has not been stated by the accused that the matter became serious when the accused was assaulted by his victim. The question arises whether the accused had the right of private defence of his person and whether that right extended to causing grievous hurt to the victim. After the victim was felled on the ground and the accused had overpowered him by sitting on his chest, there was no apprehension either of any grievous hurt or death.

Under such circumstances, even accepting the confession as true, the accused had no right to strike his victim with a stone and that too on the vital part of the body and thus cause an irreparable injury to his head which ultimately proved fatal. Skull is a very vital part of human body and an injury caused to it by a stone is always likely to cause fracture. A fracture of the skull becomes dangerous, as haemorrhage is caused inside which usually ends in death. For the reasons set forth above I do not hold that the accused had struck the deceased in the exercise of his right of private defence of his person.

18. The charge-sheet was presented under Section 302, Penal Code and the commitment was under Section 304, Penal Code. The conviction is under Section 325, Penal Code. The State has not filed any appeal against the acquittal of the accused under Section 304, Penal Code. Under these circumstances it is unnecessary for me to ascertain whether the intention of the accused was to kill his victim or to cause such injury to him as was likely to be fatal. I may, however, remark that when a case under Section 302, Penal Code, is put up in a Magistrate's Court for enquiry, it is advisable for him to commit the accused on a charge under Section 302, instead of framing charge under Section 304, Penal Code. The question whether an offence falls under Section 302, or 304, is often a difficult question which a Magistrate is, as a mile, not qualified by training or experience to decide and it should, therefore, be left to the Sessions Court. This view was followed in Himloo Jaddu In re I.L.R. (1942) Nag. 438, relying on Sheobux Ram v. Emperor 9 Cal. W.N. 829, Emperor v. Maung Chit Sein 10 Rang 495.

19. Evidence which was incorrectly admitted by the Addl. Sessions Judge is left out of account. There is enough evidence on record to justify a conclusion that the accused had struck the do-ceased with a stone to which he later on succumbed. He had no right of private defence at all. Under these circumstances his conviction under Section 325, Penal Code must be maintained.

20. The learned A.S.J. awarded 3 years R.I. together with ii flue of Rs. 100 to the accused and a further term of 6 months imprisonment in default of payment of fine. Looking to the fact that the assault took place at the spur of the moment without premeditation and that victim himself was the aggressor, the sentence imposed by the trial Court appears to be excessive. I would, therefore, reduce the sentence to 18 months' R.I. and set aside the sentence of fine imposed on him. The fine, if paid, shall be refunded.

21. In the result, the conviction of the appellant is maintained and his sentence is reduced as stated above.