

Dhula Vs. State of Madhya Bharat

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Court : Madhya Pradesh

Decided On : Aug-08-1955

Reported in : 1956CriLJ241

Judge : Dixit and ;A.H. Khan, JJ.

Appellant : Dhula

Respondent : State of Madhya Bharat

Advocate for Pet/Ap. : Mr. Ravidutta Sharma

Judgement :

Dixit, J.

1. The Additional Sessions Judge of Shajapur has agreeing with the opinion of the assessors found the appellant Dhula guilty under Section 302, I.P.C. for the murder of his wife Bali and has sentenced him to transportation for life. Dhula has now appealed against his conviction.

2.The accused and his wife resided in village Awan. They lived in a 'Gawadi' which consisted of several dwelling rooms separated by thin partition walls. One of the rooms was in the occupation of the accused and his wife. The other rooms were occupied by Bhuli P. W. 1, Devali P. W. 3, Kana P. W. 4 and Nathi P, W. 6. The accused is a step-son of Bhuli. DevaH is a daughter of Bhuli; Kana is a cousin of

the accused and Nathi is a sister of the accused.

It was alleged by the prosecution that Bali used to go away very frequently to her parents' home, and stay there for long periods. This the accused resented. On 30-4-1953 when Bali's brother Poora paid a visit to Dhula, Bali wanted to accompany her brother and return to her parents home. When the appellant did not permit her to go to her parents, Bali became sulky. On the morning of 1-5-1953 the appellant, Bali and Nathi went out to collect lime-stones.

They returned home at about 11 A.M. When the party returned at 11 A.M., the accused and Bali went inside their dwelling room. Nathi went out again to fetch butter-milk. The prosecution stated that on returning home Dhula asked Bali to cook his meals. She declined saying she would rather die in a sweeper's house than cook meals for him. On hearing this reply of Bali, the appellant picked up an axe and dealt several blows with it on Bali's head. Bali shouted (sic)

On hearing her cries the witnesses Bhuli, Devali and Kana came out of their rooms and saw the accused come out of his room with an axe, which was smeared with blood and also saw him throw away the axe in the courtyard. The accused then ran away and absconded. He was arrested on 16-7-1954. Bheru, the chowkidar of the village removed Bali to police station Badod, where he lodged the First Information Report on the morning of 2-5-1953.

In the report Dhula was named as the assailant. Thereafter Bali was removed in an unconscious state to the civil dispensary Agar. She succumbed to the injuries on 3-5-1953. According to post-mortem examination and the medical evidence Bali received four incised wounds on the head and her skull bones were fractured. During the course of investigation, Bhuli handed over to the police on 2-5-1953 an axe smeared with blood which she said, had been thrown away by the accused and subsequently picked up by her and kept in her house.

According to the opinion of the Serologist the axe was stained with human blood. On 21-7-1954 the Sub-Divisional Magistrate of Susner recorded a confession of the accused. The learned Sessions Judge has, however, not relied on the confession. The accused denied having killed his wife. He admitted that he, his

wife and Nathi went out in the morning to collect lime-stone and that they returned home at about 11 A.M.

He said that thereafter his wife went inside the house and he sat outside the house. The accused offered no explanation as to how his wife sustained the injuries that she did and led no evidence in defence.

3. The prosecution sought to prove the guilt of the accused mainly by the evidence of Bhuli, Devali, Kana s/o Kalu P. W. 4 and Kana s/o Bheru P. W. 5. These witnesses deposed before the committing Magistrate that they heard cries of Bali; that they saw the accused come out of his house with an axe which was besmeared with blood; that the accused threw away the axe in the courtyard and then went away.

In the Sessions Court they, however, resiled from their statements before the committing Magistrate and gave evidence to the effect that they did not see the accused coming out of his house with an axe. All that they said was that when they heard Bali's cries, they went to her room and saw her lying on the floor. (After setting out the evidence of these witnesses before the committing Magistrate and that before the Sessions Court His Lordship proceeded. The learned Sessions Judge came to the conclusion that the statements made by these witnesses before the Committing Magistrate were true and reliable and that all these witnesses, who were relatives of the accused resiled from their ...previous statements just to save the accused from punishment.

He, therefore, on the basis of the statements made by the above witnesses before the committing Magistrate, and on the evidence of Nathi that Dhula was the only person with Bali at their house when she left them at about 11 A.M., found the appellant guilty under Section 302, I.P.C.

4. Before us Mr. Ravidutta Sharma learned Counsel for the appellant did not dispute the fact that the evidence given by the witnesses Bhuli, Devali, Kana s/o Kalu and Kana s/o Bheru before the committing Magistrate if accepted, amply established the guilt of the accused. Learned Counsel also admitted that no irregularity had been committed by the Sessions Judge in transferring to his own

record the statements made by the witnesses before the committing Magistrate.

It was, however, urged on behalf of the appellant that the statement made by Bhuli, Devali, Kana s/o Kalu and Kana s/o Bhera should not be acted upon as there was no independent corroboration of those statements. Learned Counsel relied on - 'Parita v. Emperor. AIR 1946 Lah 48 (A). I do not find anything in Section 288 or in other sections of the Code of Criminal Procedure or the Evidence Act to support such a proposition. Section 288, Criminal P.C. deals with admissibility of evidence and not with the question of the weight to be attached to the statements before the committing Magistrate. It lays down:

The evidence of a witness duly recorded In the presence of the accused under Chapter 18 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.

The words 'for all purposes' which occur in Section 288 are very significant and they show that once a statement has been transferred, It Is evidence for all purposes without any limitation.) The statements of witnesses before the committing Magistrate when transferred to the record of the Sessions Court are on the same footing as other evidence and have to be considered like other evidence with all other surrounding circumstances of the case, and it is not necessary that there should be independent corroboration of those statements.

If on a consideration of all the circumstances of a case the Court is of opinion that the evidence of a witness before the committing Magistrate was true and that his subsequent statement in the Sessions Court was not true, the Court is free to act on the statement made before the committing Magistrate without there being any independent corroboration of the statement.

To require independent corroboration of a statement merely because the witness has resiled from his previous statement would be to defeat the very object of the section which is to provide for the contingency of a witness giving a different version in the Sessions Court and to eliminate the danger of witnesses being won over or tampered with between the commitment and trial.

The view that Independent corroboration of a statement transferred to the record of the Sessions Court under Section 288 is not necessary, is supported by numerous authorities beginning with - 'Umar v. Empress', 51 Pun Re 1887 Cr (B). The judgment of Plowden J. in 61 Pun Re 1887 Cr.(B) is regarded as classical on the point and has been quoted with approval in - 'Emperor v Dwarka Kurmi', 28 All 683 (C); - 'Tully v. Emperor' AIR 1925 All 185 (D); - 'Abdul Gani v. Emperor' AIR 1926 Cal 235 (E); - 'Narinjan Singh v. Emperor' AIR 1936 Lah 357 (P); - 'Shamira Mandu v. Emperor' AIR 1946 Lah 380 (G)'and many other cases. Plowden J., observed:

But I am wholly unable to find anything in this section which prescribes the value or weight to be attached to the evidence thus admitted. Once admitted as it seems to me, the power given by this section in respect of the evidence is exhausted; the discretion of the Judge extending only to the question whether the former evidence is to be treated as evidence in the case.

Once admitted it is on the same footing with all other evidence in the case, that is to say, it is to be considered by the jury, or by the assessors and the Judge, according to the nature of the trial, as part of the material upon which the verdict or the finding is to be given. It seems to me that the value of the previous evidence is a matter entirely beyond the scope of the section, as it is also of the evidence Act.

Its value is a question in the particular case for the jury or for the assessors, subject to the directions of the Judge in summing up, or for the Judge in cases where he is a Judge of fact. The section enables certain evidence which is not evidence in the case to be treated, in the Judge's direction, as evidence in the case, and that is all.

Whether any portion or the whole of the evidence thus admitted is entitled to credit, and if so to such a degree that a conviction may be based upon it wholly or in part, are very important questions for the jury, or assessors, or for the Judge as the case may be, but they are in no way affected by this section.

5. These observations make it clear that corroboration of a statement transferred under Section 288 is not required as a matter of law. As to the decision in 'AIR

1946 Lah 48 (A)', relied upon by the learned Counsel for the appellant and other cases such as - 'In re, Chinna Papiiah' AIR 1940 Mad 136 (H); and - 'Nehti Mandal v. Emperor' AIR 1940 Pat 289 (I), I do not think, they can be read as laying down a rigid rule that a statement admissible under Section 288, Criminal P.C. cannot be acted upon unless it is corroborated by any other independent evidence.

It must be noted that in the judgments of Lahore and Madras cases there is no consideration whatsoever of the other prior decisions of those Courts where the view has been taken that independent corroboration of evidence admissible under Section 288 is not necessary.

6. In the instant case, I think the learned Sessions Judge was right in holding that the statements made by the witnesses Bhuli, Devali, Kana s/o Kalu and Kana s/o Bheru before the committing Magistrate were true. All these witnesses are near relations of the accused. They had, therefore, no reason whatsoever for deposing falsely against the appellant at the earliest stage.

Indeed the relationship of the witnesses with the accused while reducing the possibility of their falsely implicating the accused at the earliest opportunity, also affords a reason for exonerating the accused in the Sessions Court. The statement of these witnesses to the effect that it was the appellant who killed his wife fits in with the proved circumstances that the appellant Dhula was the only person with his wife Bali when Nathi left them at their home shortly before the occurrence and that immediately after the incident the appellant absconded.

The accused admitted these circumstances. His explanation that he went away to his uncle's village to find some work as a labourer, stayed there on getting a job and that when he left his village his wife was alive is unconvincing. In my opinion the appellant has been rightly convicted under Section 302, I.P.C.

7. Learned Counsel for the appellant also made a plea that the reply which Bali gave to the appellant when she was asked to cook meals was such as to constitute 'grave and sudden provocation' for the appellant and that, therefore, the act amounted to culpable homicide not amounting to murder. This plea must be rejected. In my judgment, Bali's answer to the appellant cannot, by any stretch of

imagination, be treated as a provocation which would have led an ordinary and reasonable man to act in the manner that the appellant did.

8. For all these reasons, I have reached the conclusion that the conviction and the sentence of the appellant must be affirmed and this appeal must be dismissed.

A.H. Khan, J.

9. I agree.

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