

**Amarsingh Ramiyaram Vs. State**

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**Court :** Madhya Pradesh

**Decided On :** Nov-04-1955

**Reported in :** 1956CriLJ408

**Judge :** Chaturvedi and ;Samvatsar, JJ.

**Appellant :** Amarsingh Ramiyaram

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. R. C. Vyas, Mr. Vyas

**Judgement :**

**Chaturvedi, J.**

1. This is an appeal filed by Amarsingh Jat of Neemuch, a Constable in Central Reserve Police at Neemuch, who has been convicted under Section 302, I. P. C by the Additional Sessions Judge, Mandsaur and sentenced to transportation for life for murdering one Gurbuxsingh on 13-11-1953 in the office of the Central Reserve Police, Neemuch

2. The appellant was performing the work of tatlor-constable and Gurbuxsing, the deceased, was head-constable in the office of the Quarter-Master, First Battalion. It appears from the record in this case that Gurbuxsingh was a man of loose morals, and from the statement of the accused in this case, the deceased had

committed rape, on 21-9-1953, on his sister aged 30 years who was residing at Neemuch with her brother.

From the statements of P. W. 11 Chintamani Gandhe, Investigating Officer, and that of P. W. 12 Pyarelal, it can be taken that there was sufficient rumour in the Central Reserve Police about dishonouring the sister of the appellant by the deceased Gurbuxsingh and that supplied the motive for the murder by the accused. During those days, the appellant was confined to bed and from the evidence of P. W. 5 Dr. Milandas, the Medical Officer in the C. R. P. Hospital at Neemuch it appears that the appellant was seriously ill and was in the hospital from 22-9-1953 to 9-10-1953.

On the first day his temperature was 104 and he was in a state of delirium the night when he ran away from the hospital to his home, and after enquiry as to his whereabouts had to be brought to the hospital next morning. He was discharged on 9-10-1953 from the hospital. It also appears from the statement of P. W. 8 Rameshwarlal Anand that Gurbuxsingh deceased had gone out and returned to Neemuch one or two days before the incident.

The appellant must be waiting for him as the witness deposes that the appellant came to his office-room on 12th November and asked Gurbuxsingh when he had returned. The witness then states that on 13th November at about 8 A. M. he was working in the room along with the deceased and Nawalsingh P. W. 8. The witness was typing same papers when he heard deceased shouting 'mar dala, mar dala'. On hearing the shouts, the witness stood up but in the meanwhile the accused had dealt four or five blows on the head, shoulder and chest of Gurbuxsingh with a dagger (Chhura).

The witness was confused and states that he threw a tray on the hand of the accused but it struck his head. Meanwhile P. W. 3 Virendranath Agnihotri, Jamadar in Quarter-Master First Battalion, Neemuch who was in an adjoining room with Deputy Superintendent of Police Shri Acharya (P W. 2), came to the room hearing the shout.

The said Virendranath along with P. W. 9 Bhagwandas Constable tried to snatch the dagger from Amarsingh's hands and, after some struggle, were successful in arresting the appellant who was also bleeding in the head. Shri Acharya and others took Gurbuxsingh to the hospital in a car. but he immediately died there. Dr. Ganpatlal (P. W. 7) performed the autopsy and found as many as eleven incised wounds on the body of the deceased.

Death was caused by shock due to profuse haemorrhage caused by multiple injuries on the body of the deceased. Three wounds were grievous and dangerous. The first was an incised penetrating wound 2'x 1' leading downwards into the abdominal cavity obliquely mid clavicular line at the level of 7th and 8th rib right side. Both ribs had been cut and momentum was protruding. The second was an incised wound 3 1/2' x 2' bone deep and the left shoulder muscles and-big vessels had been cut.

The ninth injury was an incised wound 1 1/2'x 3/4' x 2 1/2' left side on neck; big vessels had been cut. Any of these three injuries, according to Dr. Ganpatlal, was sufficient to cause death. All had been by a sharp-edged weapon and would have been caused by the 'Chhura' - Article A recovered from the appellant. The plura on the right side had been torn and the right lobe of the liver had been rent.

3. The doctor also examined Amarsingh and found an incised wound on the head 1' x 1/4' x skin-deep transverse inter-parietal bone. It was a simple injury but was caused by a hard and sharp-edged weapon.

4. The prosecution stated that Rameshwarlal being confused threw a tray (Art-M) which struck the head of the accused and caused this injury. This tray is not a metallic one but is a wooden tray and Dr. Ganpatlal was clear in his opinion that the injury on the head of the accused could not have been caused by this tray.

After going through the statement of Mr. V. N. Agnihotri and the First Information Report lodged by him in Police Station Neemuch shortly after the incident, which does not contain any reference to throwing of this tray by Rameshwarlal, we are of opinion that this story has been introduced by the prosecution as an afterthought.

In our opinion, the prosecution has failed to furnish any explanation about this injury on the head of the accused. The learned Additional Sessions Judge has referred to page 201 of Modi's Medical Jurisprudence, 8th edition, for stating that occasionally wounds produced by a blunt weapon or by a fall may look like incised wounds when inflicted on tense structures covering the bones such as the scalp, eye, brow etc. This extract from Modi ought to have been shown to the doctor when he was being examined. But this has not been done.

In our opinion, when a doctor of Shri Ganpatlal's experience opines that the injury on the head of the appellant cannot be caused by the tray, the Additional Sessions Judge was not entitled to draw the conclusion that the injury was caused by the wooden tray (Art.-M)

5. Now, both the eye-witnesses of this case P. W. 6 Rameshwarlal Anand and P. W. 8 Naval singh were present in the room when the deceased Gurbuxsingh was attacked by the appellant. But both of them deposed that they did not see when the appellant entered the office-room and whether he had any talk with Gurbuxsingh when the latter was fatally attacked.

Both were busy in their work and there can be no ground for suspecting that the witnesses have suppressed something connected with the origin of the quarrel. Mr. R. C. Vyas, learned Counsel for the appellant states that a gap had been left by the prosecution in the case as to the cause of the quarrel and cites my decision in - 'Hayatoon v. State' Madh-B LR 1953 Cr. 188 (A) for the proposition that the view most favourable to the accused must be taken.

The circumstances of that case were different inasmuch as there was a deliberate suppression of facts by the prosecution in that case which we do not find here. The two witnesses Rameshwarlal and Nawalsingh were both busy in their work in the office and it was natural for them not to care for anybody coming in the room and talking with Gurbuxsingh, the deceased.

So there is no surprise that they did not see the appellant entering the office-room and talking with the deceased till he was assaulted. The shriek of the deceased attracted their notice and they ran to help him. Immediately the other three

witnesses P. W. 2 Shri Acharya D. S. P., P. W. 3 Shri Virendranath Agnihotri and P. W. 9 Bhagwandas Constable arrived there and after some time were successful in snatching the dagger from the hands of the appellant.

These three witnesses were not present in the room and so they could not give details about the origin of the quarrel on that day. So nothing has been suppressed by the prosecution in this case. Whatever the witnesses saw had been deposed by them. Whether any talk took place between the accused and the deceased could have been deposed only by them. And it is, therefore, necessary to see the statement of the accused (Ex, P/9) made before the Magistrate on 17-11-1953.

The learned Additional Sessions Judge says that it is not a confession and, therefore, cannot be taken into consideration. But both the learned Additional Sessions Judge and the Committing Magistrate have put questions to the accused about this statement. If it was not a confessional Statement, it ought to have been discarded. The appellant, however, stuck to this statement throughout and if there is any virtue in the defence, it is that of consistency.

Even in the Sessions Court, the appellant stated in clear terms that he does not want to add anything to his statement made before the Magistrate on 17-11-1953. This is a lengthy and elaborate statement in which he begins with the rape committed by the deceased on his sister on 21-9-1953 and that he learnt of it in the hospital where he was seriously ill. In high temperature he ran to his home and next day was brought back.

During his sickness and during the absence of the deceased from Neemuch, he had to put up with ignominy for a considerable length of time as a result of the misconduct of the deceased with his sister. Then the appellant narrated that the doctor had spoken to the C. O. The C. O. did not take any action against Gurbuxsingh.

On the other hand, during his sickness he heard that the Quarter Master was very favourable towards the deceased; and that when he resumed his duties Subedar Chetansingh, Jamadar Bagichasingh and Jamadar Vishwambhar Singh were

talking in terms which amounted to taunts against him. He also heard that when Gurbuxsingh was having sexual intercourse with his sister one officer, Sohony, had seen it. But Sohony was quite helpless.

In this statement of the accused there are insinuations against the C. R. P. and the high officers at that time stationed at Neemuch who, in the words of the accused, did not want to do justice but were encouraging favouritism and nepotism. The accused concludes by saying that the did not get justice, he went to Gurbuxsingh who abused him in such words as 'tere bahin kee aisi kee taisee'. At that, there was a scuffle between him and Gurbuxsingh, and he himself got injury on the head and Gurbuxsingh was stabbed and was sent to the hospital.

Allowing for a confused state of mind which, in the circumstances of the accused, was natural, the statement is quite clear and it is also clear on the point that he was guilty of culpable homicide not amounting to murder. In our opinion, this will amount to a confessional statement as he confessed about his guilt for giving blows by a dagger on the body of Gurbuxsingh.

6. Mr. Vyas, learned Counsel for the appellant, places reliance on - 'Hattesingh v. State of Madhya Bharat : AIR 1953 SC468 for the proposition that the statements of an accused person recorded under Sections 208, 209 and 342, Criminal P.C. are among the most important matters to be considered at a trial. It must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him.

Because of the presumption of innocence in his favour even when he is not in a position to prove the truth of his story, his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false.

7. The proposition enunciated by the Supreme Court in the case mentioned above is well settled, and we may accept the version given by the accused in his statement. We take it that there has been injustice with the appellant that nobody took action against the deceased when he outraged the modesty of his sister, and

it was natural for the appellant to experience shame and humiliation.

But the real question is that the appellant has not given the true story as to what took him to Gurbuxsingh on 13-11-1953. If he himself went to Gurbuxsingh on that day, that must be either with a view to attack him or to kill him on the spot. There can be no other conclusion, for, ordinarily the appellant would not go to Gurbuxsingh's room.

And if Gurbuxsingh said something about his sister that day, it was the appellant himself who sought provocation, for, he ought to have avoided going there. We feel that the appellant must have been smarting under the grievance. The appellant also does not say how he got the dagger (Chhura) and why he entered the room with the dagger.

He would like us to believe that the 'Chhura' belonged to the deceased and the deceased attacked him first. It is at its face a false story. It is, of course, true that it is not possible for us to come to any conclusion how the appellant sustained a simple injury on his head. But there does not seem to be any possibility of appellant's getting this injury from the deceased as the latter seems to have been taken over by surprise, otherwise he would not have sustained so many injuries on his body.

The learned Additional Sessions Judge has also remarked that the deceased, a Sikh gentleman of 32 years, had a stronger constitution than the appellant who has some defect in his leg. There is no doubt that the whole unfortunate affair is to be looked upon as prolonged agony preying upon the appellant's mind. But we do not think it is a case where a larger and more liberal view of Exception 1 to Section 300, I.P.C. can be taken.

The facts of 'Jan Muhammad v. Emperor' AIR 1929 Lah 861 (C) are different from the case before us. In that case there was a long and previous history of the wife's notoriously immoral conduct and the husband taking her to task. On the night in question she suddenly disappeared from the bedside of her husband and on returning was reprimanded for her act. The wife vulgarly abused him.

The husband lost all self-control after all that he had undergone and picking up a rough stick lying closely struck a fatal blow to the erring wife. It was held by the learned Judges in that case that the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which led to the fatal assault on the woman resulting in her death.

Having regard to the circumstances of that particular case, they took a larger and more liberal view of Exception 1 to Section 300, I. P. C and treated the case as one falling under the same.

8. In our opinion the present case can be distinguished, for, as we have stated above, the provocation was sought by the appellant himself by going to the office-room of the deceased and clearly he sought an opportunity to attack the deceased with a 'Chhura'. There is no doubt that he had a grievance against the deceased and a just grievance.

It is, however, well settled that if a man were to see a stranger in the actual act of committing adultery with his wife or sister i. e., in flagrant) delicto, and if he committed murder of either, the offence would be culpable homicide not amounting to murder. But if that opportunity is gone and sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and if the man commits murder of either, the provisions of exception 1 to Section 300 I. P. C will not be attracted.

In this view of the matter, we think that it is a case falling under Section 302, I.P.C., and we will not like to interfere with the sentence passed. We are, however, of opinion that it is pre-eminently a case fit for recommending to the Government for commuting the sentence for a shorter term of imprisonment under Section 401, Criminal P.C.

9. It was also contended that the trial with the aid of assessors in some districts and a trial by a jury in other districts constitutes a contravention of Article 14. Constitution of India.

10. Section 268, Criminal P.C. runs as follows:

All trials before a Court of Session shall be either by jury, or with the aid of assessors.

It was pointed out in 'Ramanugrah v. Emperor' AIR 1946 PC 151 (D) that the Legislature has drawn a sharp distinction between a trial by jury and a trial with the aid of assessors. A jury, aided by the Judge, is the final tribunal for deciding the facts : assessors merely aid the judge who decides the facts as well as the law

Mr. Vyas urged that Section 268 Criminal P.C. is an indirect contravention of the Fundamental Right as to the equal protection of the laws embodied in Article 14, Constitution of India.

11. So far as this State is concerned, jury trials have not been introduced and it is now well-settled that the normal procedure under Section 268 is trial by assessors - 'Skilling v. Empress' 18 Pun Re 1888 Cr (E); and - 'Jogneswar Ghosh v. Emperor' AIR 1936 Cal 527 (F) It is only when the State Government publishes an order in the Gazette, that the trial of some offence can be by jury.

The point that the jury trial constitutes a contravention of Article 14, Constitution of India was raised in - 'Badri Prasad v. State' : AIR1953 Cal394 and in - 'Dalchand v. State' : AIR1953 All123 It was held in both these cases that the classifications made by notification under Section 269, Criminal P.C. were based on reasonable considerations, and therefore, the provisions of the notification were perfectly valid and could not be impugned on the ground that they introduced such a discrimination as is prohibited by Article 14 of the Constitution.

In the Calcutta case it was pointed out that the Government has not been given power to provide that in individual cases the trial shall be by jury. The Government has to provide by notification that the trial of all offences or a particular class of offences in any district shall be by jury. Therefore, as regards the accused concerned in any particular class of offences, there is no discrimination; according as the class of offences is or is not included in the Government notification relating to trial by Jury, such accused will be tried by jury or with the aid of assessors.

It is obvious that there is a reasonable basis for the classification. The same view had been taken by a Division Bench in - 'Radhanath v. State' : AIR1953 Cal602 . In our opinion, the point is devoid of substance and the learned Counsel could not substantiate it by any authority.

12. The result is that we dismiss the appeal and uphold the conviction and sentence passed; but we strongly recommend to the Government for commutation of the sentence passed to that of a short term of imprisonment.

**Samvatsar, J.**

13. I agree.

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