

Shrilal Vs. State

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Court : Madhya Pradesh

Decided On : Nov-14-1952

Reported in : 1953CriLJ995

Judge : Dixit and ;Chaturvedi, JJ.

Appellant : Shrilal

Respondent : State

Judgement :

Dixit, J.

1. The appellant Shri Lal was tried by the Sessions Judge of Morena for offences under Sections 114, 380, 457 and 302, I.P.C. At the end of the trial, the learned Sessions Judge found him guilty under Section 302 read with Section 109, I.P.C. and sentenced him to six years rigorous imprisonment. The accused has now preferred this appeal from Jail against the conviction and sentence. Mr. J.P. Gupta volunteered to appear on behalf of the appellant and we are indebted to him for helping us In the disposal of this appeal.

2. The prosecution story, briefly stated, was that on the evening of 22.12.47 at about 7 p.m. the appellant Shrilal, one Hukum Singh & some other seven or eight persons with a view to abduct one Mst. Patha. came to a garden in Morena known as 'Madho Prashad ka garden' where Mst. Patha and the complainant Shriya were

staying. It was alleged by the prosecution that Mst. Patha was living with Shriya as his mistress and that Hukm Singh wanted her to live with him. On seeing Shri Lal, Hukm Singh and his companion and hearing their commotion, Mst. Patha closed the door of her room. Thereupon, it is alleged that Hukm Singh asked Mst. Patha to open the door and come out; and that when she did not come out the appellant Shri Lal asked Hukm Singh to fire a gun at her. Accordingly Hukm Singh fired the gun he was carrying through a window of the room and injured Mst. Patha. She died immediately afterwards. In the first information report, which was lodged by Shriya soon after the occurrence, Shri Lal, Lal and Hukm Singh were named as the persons responsible for the crime. According to the prosecution, the appellant was absconding for a long time after the alleged occurrence and the other accused persons Lal and Hukm Singh are still in hiding. The appellant denied his complicity in the crime. He pleaded alibi and also said that he had been falsely implicated on account of enmity.

3. After hearing the learned Counsel for the appellant and the learned Government Advocate, I think the conviction of the appellant must be quashed on the short ground that the learned Sessions Judge was not justified in convicting the appellant of abetment of the offence of murder, on a charge of committing the offence of murder itself. It has already been pointed out by a Division Bench of this Court in - State v. Gauri Shanker Cri. Appl. No. 11 of 1951 (Madh-B)(A), that it is not permissible for a Court to find the accused person guilty of abetment of an offence, when he is charged only with substantive offence. In that case, the Division Bench approving the decision of a Single Bench in - Narvir Chand v. The State AIR 1952 Madh B 17 (B), observed that:

The ingredients that must be proved for the abetment of an offence are quite different from those required to establish the substantive offence. A charge for the substantive offence as such gives no intimation of a trial to be held for abetment. When a person is accused of a substantive offence, he may not be conscious that he will have to meet an imputation of collateral circumstances constituting the abetment of the substantive offence itself. Again having regard to the omission of any reference to an abetment of an offence in Section 238(2)(A), Criminal P.C. it cannot be held that an abetment of an offence is a minor offence within the

meaning of Section 237, Criminal P.C.

4. The learned Govt. Advocate sought to distinguish the above case by saying that in the present case the charge framed against the accused distinctly mentioned the fact that he had instigated Hukm Singh to fire the gun by saying 'Kya dekhata hai lage salee ke banduk' and that the accused was also asked to explain in his examination under Section 342 whether he did or did not utter these words. The distinction drawn by the learned Government Advocate is, in my view, not tenable. From what has been said in the cases referred to above of Narvir Chandra and Gauri Shankar, it is clear that the charge framed on the accused must give him an intimation of the fact that on the allegations stated therein he has to meet a charge of the abetment of the offence and not of the substantive offence itself. The accused clearly does not get any notice of the fact that he has to meet a charge of abetment when the facts alleged against him are said to be constituting the substantive offence itself and when the accused is examined as regards those facts in relation to substantive offence, the important point to note is that unless the accused knows precisely the charge he has to meet, he cannot lead his defence properly. It is obvious that if in the present case the appellant had been charged with the abetment of the offence of murder, the whole trend of the cross-examination of the prosecution witnesses would have been different and the accused would have concentrated all his efforts in establishing the fact that he did not utter the words attributed to him. As it is, in the mass of the details of the main occurrence deposed to by the various prosecution witnesses, the essential fact of the appellant having instigated Hukm Singh to fire a gun by uttering some words has not been brought out with clarity or precision either by the prosecution or by the defence. It cannot, therefore, be denied that in finding the appellant guilty of the abetment of murder on a charge of the substantive offence itself he has not been prejudiced. The conviction of the appellant must therefore be quashed.

5. There appears to me no sufficient ground for ordering a retrial of the appellant. He has been in custody for over two years. The evidence on record as to whether the appellant Shri Lal said anything before the gun was fired, and if he did, as to what exactly he said and with what intention, is by no means clear and unassailable. Again, the learned Sessions Judge himself has observed at one

place in his judgment that it is possible that when the appellant asked Hukm Singh to fire the gun, he really intended to give a threat to Mst. Patha so that on hearing his words she should open the door, and that it was not his intention that Hukm Singh should actually fire the gun if this is the conclusion to which the learned Sessions Judge has arrived, it is difficult to understand how he has found the appellant guilty of the offence of abetment by instigation. Under Section 107, I.P.C. it is the instigation to the commission of the act itself which constitutes the offence, that is regarded as abetment. To ask a person as a mere threat to fire a gun without intending that he should really fire it, is not to instigate him to fire the gun. The threat would become instigation only if it is found that in the event of the threat having no effect the gun should in fact be fired. But this is not the conclusion of the learned Sessions Judge.

6. For all these reasons, I would quash the conviction and the sentence imposed on the appellant and discharge him. He be set at liberty forthwith.

(7) Chaturvedi J.

I agree.