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Court : Madhya Pradesh

Decided On : Jul-03-1951

Reported in : 1952CriLJ946

Judge : Sathaye, J.C.

Appellant : Kanhiayalal

Respondent : State

Judgement :

Sathaye, J.C.

1. The appellant Kanhaiyalal Brahmin of Mouza Sunheti, aged about 50 years has been convicted of an offence under Section 302, Indian Penal Code, by the Sessions Judge, Bhopal for having committed the murder of Mst. Gangabai Nain aged about 25 years of the same village, in the afternoon of the 5th of October 1950, at her house by a gunshot and is sentenced to death. The learned Sessions Judge has also made a reference under Section 374, Criminal P.C. for confirmation of the sentence. This judgment will dispose of both the appeal and the reference.

2. The case for the prosecution in brief was as follows: The appellant, his father, brother and son were residing in the family house, at mouza Sunheti, in separate portions. The appellant was not on cordial terms with the patelan of the village with whom he was at one time in service. His relations with the deceased Gangabai

Nain were also pot cordial as she was a partisan of the patelan. The appellant therefore did not like his young daughter-in-law, aged about 20 years, Mst. Ramrani alias Gayatri visiting the house of the deceased Gangabai. Gangabai had about a couple of months before the occurrence also set up Mst. Ramrani alias Gayatri (P.W. 2), on an offer of substantial reward of land, a pair of bullocks and money to accuse her father-in-law, the appellant of having outraged her modesty. The appellant had, therefore, prohibited Ramrani from associating with the deceased Gangabai or visiting her.

3. On the 4th of October 1950 i.e., a day prior to the occurrence, the appellant had gone to the house of Gangabai in search of Ramrani and had inquired of Gangabai's husband, Malthu (P.W. 1) who had warned him not to go to his house in such inquiry and had threatened him. On the 5th October 1950, in the afternoon, the appellant left his house with a gun in his hand and went to the house of Gangabai to look for Mst. Gayatri and seeing her there pointed her out to Malthu to falsify him. He then went to Gangabai and asked her why she had called his daughter-in-law and said that she wanted to accuse him of a foul charge so as to throw him out of the village.

4. At this Gangabai replied that the charge was true and that he had caught hold of his, daughter-in-law's hand with an evil intention. The appellant suddenly fired a shot from his gun at Gangabai and the bullet Struck her on her chest. He also tried to hit her with the gun after she fell down, but the gun struck against the roof of the house and broke. Gangabai died a few minutes later. The appellant then himself left for the Police Station, but was forestalled by Malthu (P.W. 1) who made the First Information Report.

5. In his plea in the Sessions Court the appellant denied having shot Gangabai, but he admitted all the facts as stated above in the case for the prosecution and added that on the afternoon in question his brother Raghunandan returned from their fields and asked him to go with the gun for watching the crops and stay there for the night. While he was leaving his house for the fields, his mother told him to send Gayatri back home from Gangabai's house where she had gone. He accordingly went there. On his way to his fields and finding her there, he asked her

to go back and asked Gangabai why she had tutored his daughter-in-law to make a charge against him to which she insisted that it was true and therefore he lost his balance and self-control & fired a shot at Gangabai which killed her. On his side it was urged in the Sessions Court that his act amounted to, at the maximum, culpable homicide not amounting to murder as his case fell within the purview of exception No. 1 to Section 300, Indian Penal Code, as he committed the act in grave and sudden provocation. The learned Sessions Judge, on the evidence on record, found as a fact that the appellant shot at Gangabai with an intention to cause her death & she had died of it & had thus committed her murder. He held that the case did not fall within the exception and not finding any extenuating circumstance, sentenced the appellant to death.

6. In appeal in this Court two points are pressed viz.: (1) that in the circumstances of the case the appellant had acted on grave and sudden provocation and, was entitled to the benefit of exception No. I to Section 300, Indian Penal Code and (2) that in view of the provocation the sentence of death was not proper.

7. The record of the case has been carefully perused and examined by me & there is no doubt that Gangabai, the wife of Malthu is dead and that her death was caused by a wound of a gun-shot fired by the appellant from his gun and that he did so with an intention to cause her death. The evidence of Gajadhar (D.W. 3) and Shriram (D.W. 1) clearly establishes that the appellant left his home with a gun in his hand. It is not impossible that he left home with an ultimate object of going to the fields, but it is also established by the evidence of Malthu (P.W. 1) and Mst. Gayatri (P.W 2) that the appellant entered the former's house and bandied words with Malthu (P.W. 1) and scolded Mst. Gayatri and of his own accord questioned the deceased Gangabai and racked up the rankling in his mind re-Jjarding the accusation of his mis-behaviour with his daughter-in-law and when the deceased Gangabai replied to him, he fired a shot from his gun killing her a few minutes later. The evidence, therefore, is more than enough to establish the above facts.

8. The learned Sessions Judge has unfortunately recorded much of evidence from Mohammad Raqib (P.W. 3), Mohammad Azim (P.W. 4) and Nandlal (P.W. 7)

which was wholly inadmissible. The evidence of Mohammad Raqib (P.W. 3) regarding the statement of Mst. Gayatri, under Section 164, Criminal P.C. was not admissible as she herself was placed in the witness-box and could depose to the facts recorded in the statement. The evidence of Mohammad Azim Khan, Sub-Inspector (P.W. 4) regarding what he had heard in the village and his conclusions was again inadmissible as nothing but hearsay or based on information which he had received and so is the case with the evidence of Nandlal (P.W. 7) regarding what the accused told the Police in his presence. Even excluding this inadmissible evidence however, the conclusions arrived at are not shaken.

9. The learned Sessions Judge does not seem to have taken into consideration the confession of the appellant recorded by Mohammad Raqib, Magistrate, Second Class, (P.W. 3). A Government notification authorised the Magistrate to record confessions and there was nothing to prevent the Sessions Judge from considering the said confession. Curiously enough however, there has been a serious lacuna in the matter of the admissibility of the evidence as found in the confessional statement. It appears that the appellant was questioned by the Committing Magistrate regarding his having made the confession as found in Ex. P-2, but the learned Sessions Judge has omitted to question the appellant over again in the matter so that the latter was not given an opportunity to explain it. Another omission committed by the learned Sessions Judge is that he has failed to question the appellant under Section 342, Criminal P.C. even regarding his previous statement in the Committing Court. It is obvious that the record of the examination of the accused, duly recorded by the Committing Magistrate, was tendered In the Court of Sessions, but it does not seem to have been read as evidence in the latter Court as required under Section 287, Criminal P.C. These two omissions, therefore, do not permit this Court to consider the confessional statement, as found in Ex. P-2, as evidence for or against the appellant.

10. The facts as stated above are not challenged & it appears to me unnecessary to dilate on that matter. I have referred to these defects in procedure followed by the learned Sessions Judge with a view to point them out to the Courts subordinate to this Court, so that they should avoid them.

11. The first point for determination, on the contentions of the appellant in this Court, is whether the appellant's case falls within the purview of exception No. 1 to Section 300, Indian Penal Code. It must be remembered that the provocation, if any, must be not merely sudden nor only grave but must be both grave as well as sudden which alone gives the benefit to the culprit. The effect of such grave and sudden provocation, if any, must be the loss of self-control. If there was time enough to cool down & the accused afterwards avenges himself for the insult or offence given, he can hardly plead the extenuating circumstance as enacted. It is difficult and almost impossible to lay down any hard and fast rule as to what amounts to grave and sudden provocation.

'What amounts to grave and sudden provocation may vary according to circumstances of each case and according to the general standard of self-control amongst the people of the class involved'. Nga Paw Yin v. Emperor AIR 1936 Rang 40.

Any attempt in my opinion, to determine the existence or presence of grave and sudden provocation in a particular case on the authority of other cases, should be futile as the point has to be determined, as pointed above, on the circumstances of each case. At page 215 of Law & Practice of Hurt & Homicide by P.J. Rust, Second Edition, it has been observed that

In judging the conduct of the accused one must not confine himself to the actual movement when the blow which ultimately proved fatal, was struck that is to say one must not take into consideration only the events which took place immediately before the fatal blow was struck.

This obviously suggests that provocation may arise at a particular moment of time and would be gradually aggravated reaching to a certain pitch when it suddenly becomes so grave as to cause loss of self-control in the accused. In this connection the learned Counsel for the appellant referred me to a decision of the Lahore High Court in Jan Mahomed v. Emperor AIR 1929 Lah 861. It is unnecessary to state all the facts of that case, but it appears that the accused was vexed and perturbed over the notoriously immoral life which his wife led and in the end, though he controlled himself for some time, lost his balance altogether when

he protested against her conduct in disappearing from his bed-side & the wife in reply abused him in vulgar words. Another case of BHADUR v. EMPEROR AIR 1935 Pesh 78, is also cited in this Court on behalf of the appellant. In that case the deceased was having an intrigue with wife of the accused for a long time and used to sing provocative songs tantamount to declaration of his intrigue and in the end drove the accused to offence of killing him, by singing the song over again which touched the accused to the quick resulting in the fatal assault on the deceased. It was held that

the mere fact that the accused had managed to control himself on previous occasions when provoked, was no reason for refusing to give him the benefit of exception No. 1 to Section 300, Indian Penal Code.

12. In my opinion, however, these cases do not help the determination of the case on hand. It appears that these cases and various other ones of similar type did not involve an element which exists in this case and which falls within one of the provisos to the exception No. 1 under Section 300, Indian Penal Code. It may be safely conceded that a false accusation of the type which the deceased Gangabai had admittedly tutored Mst. Gayatri to make against the appellant could give grave provocation to him, but as I have already said, the suddenness of such provocation was brought about by the appellant himself. It is obvious from the evidence of Gayatribai (P.W. 2) that the accusation had reached the ears of the appellant easily about a couple of months before the occurrence. He had been able to control himself throughout and though several opportunities could have afforded themselves to him, he had not taken any of them during the fairly long period. The maximum that he had done was to order his daughter-in-law Gayatri not to visit the house of the deceased Gangabai any more. This is apparent from the evidence of the father of the appellant, Shriram (D.W. 1). Before the appellant left his home, according to his own statement, his mother had asked him to send back Gayatri from the place of Gangabai where she had gone. There is nothing on record even to indicate that the appellant suddenly flared up and rushed to the house of Gangabai as the evidence of Gajadhar (D.W. 3) indicates that when questioned by him while on his way to the fields, the appellant had told him that he was going to his crops. It is thus obvious that he was not gripped by any

provocation at the information of Gayatri being in Gangabai's house.

13. It is in the evidence of Malthu (P.W. 1) and Gayatri (P.W. 2) that finding the latter in the house of Gangabai, the appellant asked her to go back and then under the condition of his mind as it existed then, he could have walked away or at the most seen to it that the girl went back home. But instead of doing so he raked up the rankling in his mind by inviting the deceased Gangabai to make the same accusation against him over again. He questioned the deceased why she had allowed his daughter-in-law to go to her and that she was plotting to defame him, and according to the appellant himself, Gangabai replied that it was really true and told him to do whatever he liked. It would thus appear that it is here that the case is liable to be distinguished from the other cases on this point as the provocation was sought by the offender himself. To put it in a nut-shell, it was the offender himself who invited the insult which, it appears, he had almost forgotten and it was as its reiteration or repetition that the appellant suddenly took up his gun and fired the fatal shot. In my opinion, therefore, the case of the appellant falls within the first proviso to exception No. 1 to Section 300, Indian Penal Code. It does not appear to be a case of continued or continuing provocation, but is a case of merely grave provocation and that too invited or sought by the appellant himself.

14. In Manju v. Emperor 8 Nag LJ 56 : AIR 1923 Nag 251, it is held that

the repetition of an accusation by A which the accused knew he had already made, on a challenge by him to do so, cannot be called sudden provocation, and provocation must be sudden as well as grave to reduce the intentional killing of another from murder to mere culpable homicide.

In that case the deceased made an accusation against the accused in a Panchayat that he was responsible for her illegitimate pregnancy. The accused was aware of this and did not act at once on it. After some days he met Mst. Phundo, the deceased and questioned her about it and when she repeated it, he struck her with an axe of which the woman died later. It was held to be an offence of murder. In the case on hand, the appellant in spite of his being fully aware for a long time of the fact that the deceased had prepared a false accusation against him almost drove her to make it over again and insisted on it. In such

circumstances, in my opinion, for one thing though conceding for a moment that the provocation was grave, it could not be sudden and for another even if so, it was nothing but sought by the appellant himself. In these circumstances, in my opinion, the benefit of exception No. 1 to Section 300, Indian Penal Code, cannot be given to the appellant and the offence otherwise clearly of murder cannot be reduced to the lesser offence of culpable homicide not amounting to murder. The conviction of the appellant, therefore, for an offence of murder under Section 302, Indian Penal Code is correct.

15. The next point for determination then is whether the sentence of death was proper in the circumstances of the case. It is no doubt true that provocation has been held in several cases to be an extenuating circumstance. In the case on hand, however, the provocation was a story of the past and had even exhausted itself by the appellant's order to his daughter-in-law not to visit the place of the deceased Gangabai over again. Accepting for a moment, that he had merely an intention to correct his erring daughter-in-law and to send her back to her home, there was no reason for him to question the deceased Gangabai at all. In my opinion, it looks as if he took advantage of the presence of a gun in his hand and challenged the deceased by a question in the matter of the accusation and then with the possible loss of the balance of his mind, resulting from his own act, killed the woman then and there. He also tried to strike her after she fell down. In the circumstances, in my opinion, the appellant cannot be treated with any indulgence even in the matter of the sentence & deserved the normal penalty for an offence of murder and I am unable to find any extenuating circumstance on account of which the sentence of death should be reduced to transportation for life.

16. A weak attempt was made to refer to the caste of the appellant being a Brahmin and the deceased being a barber & to contend that an insult of this type coming from a lower class should be held to have reasonably enhanced the degree of provocation. I cannot persuade myself for a moment to agree with such a contention as the question of caste of an accused and the deceased rarely comes into play in such cases. I, therefore, confirm the sentence of death passed by the learned. Sessions Judge against the appellant and dismiss the appeal.

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