In Re: Mansingh Parma Teli

In Re: Mansingh Parma Teli

SooperKanoon Citation : sooperkanoon.com/501697

Court : Madhya Pradesh

Decided On : Jan-28-1959

Reported in : AIR1959MP267; 1959CriLJ850

Judge : S.D. Shrivastava, J.

Acts : Evidence Act, 1872 - Sections 24 and 27; Indian Penal Code (IPC), 1860 - Sections 300 and 304

Appeal No. : Criminal Appeal No. 174 of 1958

Appellant : In Re: Mansingh Parma Teli

Advocate for Def. : S.L. Dube, Adv.

Advocate for Pet/Ap. : L.S. Shukla, Adv.

Judgement :

S.D. Shrivastava, J.

1. The appellant was tried under Section 302, I.P.C. for causing the death of Dulareprasad. The learned Sessions Judge, Indore, found the appellant guilty of the offence under Section 304 (Part 1) LP.C. and sentenced him to suffer rigorous imprisonment for five years. Aggrieved by the conviction and sentence, this appeal has been preferred by the. appellant for his acquittal.

2. The prosecution case was that in the night between 22nd and 23rd March 1958, when the appellant came to his house at about 1-30 A.M., he noticed that the doors were closed and suspected some one present inside. Getting suspicious, he chained one door from outside and tapped the other. Eventually, his wife Shamabai P. W. 12, opened the door and Dulareprasad also came cut of the house. At the sight of Dulareprasad being within his house at that hour of the night with his wife, and both being all alone, the appellant slapped his wife, and took out a bamboo with which he gave a blow on the head of Dulareprasad. Dulareprasad tried to run away but the appellant chased him in the lang nearabout the quarters. After a little while, the appellant returned saying that he had done away with Dulareprasad. The appellant himself lodged the first information report in the police station in which confessing his guilt, he said that the dead body and the knife were lying at the spot where ha had stabbed Dulareprasad and specified that place as the 'last road in Nanda Nagar.'

3. Accompanied by Pratapsingh, Sub-Inspector Police, Harnarayan and Krishnarao, the anpel-lant went to the spot and showed the dead body of Dulareprasad and also mo knife, art. I, which was found near the dead body.

4. The body was examined post-mortem by Dr. N. R. Bhandari on March 23, 1958. There were four stab wounds on the chest and there was one wound on the forehead.

5. In his trial the appellant denied having caused any injury to the deceased. He stated that he wanted to give a blow by the Danda but it did not strike Dulareprasad.

6. The learned Sessions Judge, relying on the statements of Bhagwanram P.W. 1, Gulabsingh P.W. 3, and Harnarayan P.W 4, who were all residents of neighbouring quarters, beliaved the fact that the appellant gave a blow in the presence of thewitnesses to Dulareprasad and further, that the circumstantial evidence about infliction of the stab wounds was very strong and that no other inference was possible except that the appellant caused those injuries to the deceased. In conclusion, he found the appellant responsible for causing the death of Dulareprasad. However, he found that the circumstances of the whole incident

were such as reasonably entitled to the appellant to the benefit of the first exception to Section 300 of the Penal Code.

7. Shri L.S. Shukla for the appellant, first contends that the confessional first information report is not admissible in evidence and it cannot therefore be considered. The argument is that the report is hit by Section 25 of the Evidence Act because it contains a confession and was made to a police officer. It is urged that Section 27 of the Evidence Act also is not applicable because the appellant was not in custody at that time. My attention is invited to the statement of the investigation officer Shri Pratapsingh P.W. 13, who has said that the appellant was arrested by him after he had recorded the first information report, and on this basis it is urged that the appellant was not in the custody of a police officer and as such Section 27 of the Evidence Act could not be used by the prosecution. This contention cannot be accepted. The appellant was undoubtedly in the custody of the police officer as soon as he went to him with the intention of confessing bis guilt and actually placed himself before the police officer and admitted simultaneously his guilt. My attention is invited to Phoolchand v. Manakchand, 1958 MP C 521. The facts of that case are quite different. Here, the appellant himself went to the police station and made a clean breast of his guilt. As I have said above, his intention to submit to the police was evident from his conduct and therefore, he must be deemed to be in the custody of the police officer the moment he mentioned his having caused the death of Dulareprasad.

8. For the purpose of the Section 27 of the Evidence Act, the word 'custody' does not necessarily mean detention or confinement. Submission to custody by any action or by words is also 'custody within the meaning of that section. I am supported in this view by a decision of the Patna High Court in Santokhi v. Emperor AIR 1933 Pat 149 (SB), which was approved in Bharcsa Ramdayal v. Emperor, AIR 1941 Nag 86. The Calcutta High Court also took a similar view in similar circumstances in Legal Remembrancer v. Lalit Mohan AIR 1922 Cal 342. In the present case, the appellant, after committing the homicide, went to the police station and made a cenfessional first information report in which he gave the details of his act and the circumstances which led to the same. The information contained in that first information report a therefore, admissible under Section 27

of the Evidence Act.

9. The Supreme Court has now laid clown in Ram Kishan v. State of Bombay AIR 1955 SC 104, that Section 27, Evidence Act is an exception to both sections 25 and 26 of that Act.

10. Shri Shukla then strenuously argues that the prosecution evidence, so far as it relates to the actual inflicting of the injuries, should not be believed. He lays stress on the facts that there were other persons also who were seen nearabout the place of occurrence and the appellant was shouting 'Chor, Chor'. According to the learned counsel, it is very doubtful what the appellant really told the witnesses when he returned from the lane and the extra-judicial confession cannot be relied oninasmuch as the exact words have not been given by the witnesses. If is suggested that on hearing the shouts of the appellant, someone else may have killed Dulareprasad because he was runningaway. Having perused the statements of Bhagwan-ram P.W. 1, Gulabsingh P.W. 3, Harnarayan P.W 4, and Ratnakar P.W. 6, I have no doubt in my mind that the appellant, immediately on his return from the lane, told these persons that he had done away with Dulareprasad.

11. Shri Shukla then argues that if the appellant said so, it was just to show a heroic act on his part and it was just to boast before others, although he himself had not done it. This contention also cannot be accepted because there is nothing in the evidence produced by the prosecution, nor in the cross-examination of the witnesses examined by the prosecution to draw such an inference. Shri Shukla has relied upon the decision of this court in State v. Ramlal, 1958 MP C 604: (AIR 1958 Madh Pra 380), where, on a difference of opinion between Khan J. and Krishnan J., Shri Justice Bhutt (as he then was) did not rely on theextra-judicial confession. There, the statement of the accused Ramlal to Jadobai that he had exterminated her family on his return to the village, was not relied on. The circumstances of the present cases as stated above, are quite different and in my opinion, the extra-judicial confession must be believed.

12. An extra-judicial confession is undoubtedly weak typo of evidence but when it is corroborated by surrounding circumstances and other reliable evidence, as in this case, it must be taken into consideration. In Raghuwar Singh v. State, AIR

1955 Madh B 43, the extra-judicial confession was relied on as it was supported by other evidence.

13. In the case of Ratan Gond v. State of Bihar, AIR 1959 SC 18, at p. 22, their Lordships have laid down as follows:

'It is enough to state that usually and as a matter of caution, courts require some material corroboration to such a confessional statement, corroboration which connects the accused person with the crime in question, and the real question which falls for decision in the present case is if the circumstances proved against the appellant afford sufficient corroboration to the confessional statement of the appellant, in case we hold that the confessional statement is voluntary and true.'

14. In the case before me, the appellant in the same transaction followed Dulareprasad andhaving put him to death, returned soon after to the place,. from where he had started and where he had left his wife and other witnesses, and told them about his act. From the very statement of the appellant before the sessions judge, it is clear that he admits not only that when he reached his home, he found his wife and the deceased in a closed house and that he became provoked but also that he followed the deceased when the latter wanted to run away from the house. Thus, the extra-judicial confession is amply corroborated, by other evidence and hence it can be safely relied upon.

15. Now, if the story developed before me that it was someone else who killed Dulareprasad were true, the appellant at least could have given such an indication in his statement in the court, Questions Nos. 26 and 37 which were put to the appellant by the learned sessions judge and the answer given by him go to show that the appellant had never this story in his mind.

16. I therefore uphold the conviction as the guilt of the appellant is really brought home to him and there is not th' slightest doubt that the personwho killed Dulareprasad, was no one else than the appellant.

17. I have now to consider the question of sentence. The circumstances of the case preceding the homicide leave no manner of doubt that they provoked the

appellant both gravely and suddenly and the learned sessions Judge has rightly found so. The appellant, when he reached his home at dead of night, found his wife in that situation and naturally he must have lost control of his mind. The framers of the Code have said :

'..... homicide committed in the suddenheat of passion on great provocation ought to be punished, but that in general it ought not to be punished so severely as murder. It ought to be punished in order to teach men to entertain a peculiar respect for human life; it ought to be punished in order to give men a motive for accustoming themselves to govern their passions, and in some few cases, for which we have made; provision, we conceive that it ought to be punished with the utmost rigour. In general, however, we would not visit homicide committed in violent passion, which had been suddenly provoked, with the highest penalties of law.'

A person who finds his wife and her paramour in flagrante delicto, undoubtedly receives the highest provocation and the indulgence which the law shows in such cases is condescension to the frailty of human nature. Having regard to all the circumstances of this case, the ends of justice would be served if the appellant is sentenced to three years' rigorous imprisonment.

18. The result is that the conviction is maintained but the sentence is reduced to three years'rigorous imprisonment.