

Kalu Khan Vs. the State

Kalu Khan Vs. the State

SooperKanoon Citation : sooperkanoon.com/525928

Court : Orissa

Decided On : Dec-10-1956

Reported in : AIR1957Ori102; 1957CriLJ530

Judge : Narasimham, C.J. and ;Mohapatra, J.

Acts : [Evidence Act, 1872](#) - Sections 27

Appeal No. : Criminal Appeal No. 61 of 1955

Appellant : Kalu Khan

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : M.K. De, Adv.

Disposition : Appeal allowed

Judgement :

Narasimham, C. J.

1. This is an appeal from the judgment of the Additional Sessions Judge, Mayurbhanj Balasore, convicting the appellant under Section 201, I. P. C. and sentencing him to four years R. I.

2. The appellant Kalu Khan, who is a resident of village Tikarapara, P.S. Basta, in Balasore District, was tried for an offence under Section 302, I. P. C. for having murdered his son-in-law, Mahommed Khan, on or about the 18th June 1954. The learned Additional Sessions Judge however thought that the evidence on record was not sufficient to prove the charge of murder and he convicted him of the lesser offence under Section 201, I. P. C., even though no charge under that Section was framed, relying on the well known decision of the Privy Council in *Begu v. Emperor*, (AIR 1925, PC 130) (A).

3. It appears that the appellant and his son-in-law, the deceased Mahommed, Khan, were not pulling on well for some years, chiefly because the appellant would not allow his daughter to join her husband. The deceased Mohammed Khan convened several Panchayatis for the purpose of settling this dispute and in one of those Panchayatis he even agreed to construct a house at a site close to the house of the appellant and live there with his wife,

That site originally belonged to the appellant who transferred it in favour of his daughter, by a gift deed (Ext. 3) and then the deceased built a house there. But even then he was not allowed to live with his wife. The appellant and his family members shifted to the newly-constructed house of the deceased as his own house was burnt. There is some indication in the evidence that there was a suspicion that it was the deceased who had burnt the house of the appellant.

This was said to be one of the main motives for the murder of Mohammed Khan. The last occasion on which he was seen alive was on the 16th June 1934, when P. Ws. 5 and 6 saw him at Basta bazar in the company of his father-in-law, namely, the appellant. Mohammed Khan told these two witnesses that the dispute between him and his father-in-law was going to be settled soon and that he was going to his father-in-law's house for that purpose. For about two days no trace about him was found.,

4. On Saturday the 19th June 1954 the Choukidar of Tikarpara village, one Belu Khan (P. W. 2) was catching fish at Simulia Ganda Nullah, about half a mile from that village. Then he felt something heavy attaching itself to his net and also noticed bad smell coming from the water. Immediately an alarm was raised and

with the help of some villagers who collected there a human body was dragged from inside the water and placed on the ground.

It was found that the body had been tied with stones and wire-ropes so as to remain submerged in water. It was subsequently identified to be the corpse of Mohammed Khan. Information about the discovery of the corpse was sent to the Police Station where, at first a Station Diary entry (Ext. 6) was made. Subsequently, the corpse was sent for post-mortem examination to Dr. Ahmed (P. W. 13) who found an incised wound on the neck, a lacerated wound above the top of the right ear, and another lacerated wound on the left side of the scalp.

The neck injury had cut through the muscles and the thyroid cartilage and the jugular vessels and opened up the larynx. All the injuries were ante-mortem and death was due to shock resulting from the injury on the neck. Investigation of the case was taken up by Shri K.M. Patnaik, the S. I. in charge of Basta P.S. (P. W. 14) who visited the spot on the 20th June 1954 and searched the house of the appellant. He recovered from there a Gameha (Ext. V), bamboo stick (Ext. VIII) and a bag (Ext VI) all stained with human blood.

These articles were identified by the mother of the deceased, Hadiani Bibi (P. W. 3) as belonging to her son. The S. I. further noticed blood stains on the tin door of the appellant's house, on the verandah and also on the wall inside the room. The floor of the verandah appeared to have been washed with cow-dung. He scraped the blood-stained earth and sent it to the Chemical Examiner who reported the presence of human blood stains in the earth. On 22nd June 1954 the appellant took the S. I. to a place, 240 yards away from his house, and pointed out a spot on the sandy bed of a nullah.

There the S.I. noticed blood-stains on the sand and also on the branch of a begum'a tree standing closeby, He seized some of the sand and also the leaves of that branch and sent them both to the Chemical Examiner. The Serologist's report shows that human blood stains were found on them. This place is about 376 yards from Simulia Ganda Nullah where the corpse of Mohammed Khan was discovered lying submerged under the water.

5. On the aforesaid pieces of evidence the learned lower Court thought that the offence under Section 201, I. P. C. was established. It is true that the deceased was in the company of the appellant when he was last seen by P. Ws. 5 and 6 on 16th June 1954 and he had also told them that he intended going to the house of his father-in-law to settle his dispute. There is also no reason to disbelieve the prosecution evidence to the effect that the deceased's Gamcha (Ext. V), bag (Ext. VI) and stick (Ext. VIII) were recovered from the appellant's house.

They have been identified by the appellant's mother to be belonging to her son. This will only go to show that the deceased went to the house of the appellant and probably slept there on 16th June 1954. The presence of human blood stains on the floor, the tin-door, and the wall inside the room of the appellant's house does not, however, show that the murder must have taken place there.

The explanation of the appellant is that his daughter cut her finger cooking fish and that she wiped the blood stains on the wall. He further stated that he and other members of his family were suffering from scabies and this might be the cause of the presence of blood-stains on the other parts of his house.

6. The main circumstance on which the learned lower Court has relied, as fixing the guilt of the appellant under Section 201, I. P. C. is his taking the S. I. to the dried-up bed of the nullah 240 yards away and pointing out the place where some sand and some Begunia leaves were found to be stained with human blood. Doubtless, when questioned about this the appellant totally denied having taken the S. I. there.

But the lower Court admitted in evidence the further statement of the appellant to the S. I. to the effect that the dead body of Mohammed Khan was kept there. He thought that this was admissible under Section 27 of the Evidence Act and this statement, coupled with the other suspicious circumstances mentioned above, would show that the appellant must have taken part in the removal of the corpse, from his house, first to the dried-up nullah 240 yards away and from there to the Simulia Ganda Nullah 376 yards distant.

7. The main question therefore arises as to whether the statement of the appellant to the S. I. will be admissible under Section 27 of the Evidence Act. The law on the subject is very clear. If a statement made during Police custody to a Police Officer leads to the discovery of a fact, so much of that statement as distinctly relates to that discovery may be admissible.

Hence, if it can be said that the appellant first made a statement to the S. I. that he took the corpse to the bed of the dried-up nullah and in consequence of that statement the S. I. went there and found human blood stains on the sand and the beguua leaves, there may be some justification for the view that the discovery of human blood stains on the sandy bed of the nullah and the leaves was in consequence of the statement made by the appellant and such a statement would be admissible under Section 27 of the Evidence Act,

But I find that while recording the evidence of the S. I. the learned Sessions Judge has not made it clear that the discovery of the blood-stains was in consequence of the statement made by the appellant. On the other hand, the record is as follows:

"On that date Kalu Khan pointed out a sandy nullah where I found blood stains and sand mixed with blood clots and a Begunia branch with blood stains. I seized the Begunia (XXI) and sand and seizure list, Ext. 2/4, was prepared by me. Kalu then said that the dead body of Mohammed was kept there.'

The above extract would show that the appellant first conducted the S. I. to the sandy bed of the nullah and there the S. I. found blood stains on sand, with blood clots, and also a Begunia branch with blood stains. It was then that the appellant made a statement to the S. I., to the effect that the body of Mohammed was kept there. The use of the word 'then' would show that it was after the discovery of blood stains that the appellant made such a statement

Hence that statement could not be said to be the cause of the discovery so as to attract the provisions of Section 27 of the Evidence Act. I do not know whether the word 'then' was put in by oversight, or else whether it is a correct record of what the witness said. Whatever that may be it is unfortunate that the learned Judge overlooked its significance and the Public Prosecutor also did not care to put

appropriate questions to bring the statement within the scope of Section 27 of the Evidence Act. The appellant can rightly say that on the record as it stands, that statement is inadmissible.

8. Hence, once the statement of the appellant to the S. I. is ruled out as inadmissible, there is nothing on record to show that he must have participated in the removal of the corpse from his house to the Simulia Ganda Nullah, even if it be assumed that Mohammed Khan was murdered in his house.

It may be that some other persons committed the crime, and the appellant having knowledge of the same thought it discreet to keep his mouth shut. Doubtless there are strong suspicions that in view of his previous enmity with the deceased the appellant must also-have participated in the crime, but the evidence is not conclusive to establish his guilt.

9. I would, therefore, allow this appeal, set aside the conviction and sentence and acquit the appellant. He should be set at liberty forthwith.

Mohapatra, J.

10. I agree.