

Vallabh Alias Munna Govan Vs. the State

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Court : Gujarat

Decided On : Mar-22-1961

Reported in : 1962CriLJ540

Judge : V.B. Raju and; R.B. Mehta, JJ.

Appellant : Vallabh Alias Munna Govan

Respondent : The State

Judgement :

V.B. Raju, J.

1. This is an appeal by Vallabh alias Munna Govan, who was original accused No. 1 at the Sessions trial and who was convicted Under Section 304, Part I, IPC and sentenced to suffer R. I. for 7 years, by the learned Sessions Judge, Surat.

2. The prosecution case was that the appellant had developed illicit intimacy with Vanita, the daughter of deceased Ghelabhai Atmaram; that Ghelabhai was adverse to their marriage and that on that account at about 10 P.M. on 9-2-60, the appellant and two others, who were accused Nos. 2 and 3 at the Sessions trial surrounded Ghelabhai and caused his death by inflicting serious injuries on him. Upon hearing the cries, Vinodchandra, the brother of the deceased and others came to the scene of offence. The deceased was taken on a cot to his house and Dr. Navalram was called. The Police Jamadar also came to the scene and

recorded the complaint of Ghelabhai. Ghelabhai succumbed to his injuries on his way to a hospital. The inquest was made on 10-2-60 at 7 A.M. and the dead-body was sent for post-mortem examination. The three accused were arrested in the course of investigation. In due course, they were all committed to Sessions Court for trial. At the Sessions Court the prosecution did not adduce any direct evidence but they relied entirely on the circumstantial evidence, the dying declaration made by the deceased and the confessional statement made by the accused to the Taluka Magistrate on 12-2-60. In addition, they also relied on the fact that there were minor injuries on the person of the appellant.

3. The appellant in his examination at the Sessions trial stated that he and accused No. 2 are 'brothers'; that he was in love with Vanita; that the deceased himself was saying that he would murder the appellant; and that on 9-2-60 at about 7-30 or 8 P.M. Ghelabhai, the deceased, gave blows to the appellant. From there the appellant went home and as he learnt that the deceased was to murder him, he went to one Lallubhai, who is a respectable man, accompanied by the accused Nos. 2 and 3; that on the way near the butcher's shop, deceased Ghelabhai came and gave 2 to 3 blows with an iron pipe on his chest and back; that thereupon his brother, accused No. 2, and accused No. 3, left the place and Ghelabhai came again to beat the appellant with the iron pipe; and that the appellant requested him not to beat him. In spite of that, the deceased gave him one blow and said that he would be quiet only after murdering him. The appellant snatched away the iron-pipe. The deceased then took out a knife; the appellant tried to assault Ghelabhai with the iron-pipe on his wrist and it struck on his head. Ghelabhai fell down. The appellant then tried to snatch away the knife from the hand of Ghelabhai, during which the appellant got an injury near his little finger. The appellant snatched away the knife; Ghelabhai gave a push as a result of which he fell down. In the act of struggle for a knife, two or three times knife might have injured Ghelabhai. In the struggle, the appellant might have been injured by the knife twice or thrice on his back. Ghelabhai held his hand in which there was a knife and forcibly took his hand towards the shoulder. The appellant tried to get out of the grip and during that struggle, the knife injured Ghelabhai near his clavicle. Ghelabhai fell down. The appellant then ran away. The chappal, Article 17, which was at the scene of offence belongs to him as it slipped away from his foot and the

battery fell down from his pocket at the scene of offence.

4. The learned Sessions Judge held that the confession was voluntary and accepted the prosecution case and convicted the appellant Under Section 304 IPC for causing the death of Ghelabhai.

5. The finding of the learned Sessions Judge that Ghelabhai died as a result of injuries inflicted on him on 9-2-60 near the butcher's shop is proved by overwhelming evidence and this finding is not challenged. It is, therefore, not necessary to repeat or to summarize the evidence on this point.

6. The prosecution relied on various items of circumstantial evidence to prove that the appellant was present at the scene of offence at the time of the commission of the offence and that he had taken some part in it. The circumstances relied on are that his chappal, Article 17 and battery, Article 16, were found at the scene of offence; and that his clothes including the bush-shirt, Article 5, were found to have been stained with human-blood. All these circumstances were proved by witnesses and admitted by the appellant in his examination at the Sessions trial. These pieces of circumstantial evidence which are admitted by the appellant himself prove the presence of the appellant at the scene of offence at the time of the occurrence. But the crucial question, however, is whether the appellant caused the death of Ghelabhai. The prosecution have no direct evidence because in the circumstances in which the injuries were inflicted on Ghelabhai, the only witnesses were Ghelabhai and his assailants. According to the prosecution, it was the appellant and his companions who had attacked Ghelabhai whereas according to the appellant, it was he who was attacked by Ghelabhai, who had the intention of murdering him. On this point, we have to look at the various dying declarations made by the deceased, the confessional statement of the appellant which proved to be voluntary and true and his statement made in his examination at the Sessions trial.

7. * * Then there is the dying declaration before Dr. Navalram. In his evidence at Ex. 20, Dr. Navalram has deposed that upon receiving certain information, he reached Ghelabhai's house a few minutes after 10 P.M. He saw Ghelabhai being taken on a cot and a big crowd had collected. The Doctor asked Ghelabhai what had happened. Ghelabhai then told him that he was going to Lallubhai's house

and on the way Vallabh alias Munna, his elder brother and Mohan surrounded him and gave him knife-blows and blows with an iron-pipe on his head and after beating they ran away. The Doctor recorded the statement of Ghelabhai on a rough paper and under the impression that it should be on good paper, he tore the original statement and prepared a fair copy, which is Ex. 23. The dying declaration made to Dr. Navalram is attacked on the ground that the original paper on which it was recorded has been torn and only a copy is produced. The dying declaration made to Dr. Navalram is proved by the oral evidence of Dr. Navalram himself and by the evidence of Kantaben, wife of Ghelabhai, who says that she was present at that time. A dying declaration is not a statement which requires to be in writing and oral evidence as to the statement made by the injured person who 'happens to die subsequently would prove the declaration. If the declaration is recorded the record would be merely a note made by the witness which can be used by him to refresh his memory and would not be substantive evidence. In this case, the words uttered by the injured person have been proved by the oral evidence of Dr. Navalram and the oral evidence of Kantaben. It would have been better if the Doctor had not torn the original paper; but merely because he has done so, it cannot be said that his oral evidence is not substantive evidence to prove the dying declaration. It was further argued that in the fair copy the name of accused No. 3 had been introduced. There was no suggestion that the name of the appellant, who was the original accused No. 1, had been introduced in the fair copy. In any case, we see no reason to disbelieve the evidence of Dr. Navalram as to what he had been told by the injured person.

10. The prosecution also sought to rely on the confession made by the appellant before the Bardoli Taluka Magistrate on 12-2-60. Admittedly, the learned Taluka Magistrate gave three hours' time to reflect before the confession was recorded. In his judgment, the learned Sessions Judge referred to the following observations of Their Lordships of the Supreme Court in *Sarwan Singh v. State of Punjab* : 1957 CriLJ1014 :

It would naturally be difficult to lay down any hard and 'fast rule as to the time which should be allowed to an accused person in any given case before recording his confession Under Section 164 Cri. Pro. Code. However, speaking generally, it

would be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded.

The learned Sessions Judge, however, thought that in the circumstances of the present case, the time given by the learned Taluka Magistrate for reflection was reasonable.

11. Their Lordships of the Supreme Court have observed that generally speaking it would be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Their Lordships observed that in some cases even a longer period should be given. It is hoped that these observations of Their Lordships of the Supreme Court would be treated with due respect by Taluka Magistrates and other Judicial Authorities subordinate to the Supreme Court. In the Criminal Circulars of the Bombay High Court also it is fetated that the Magistrates recording the confession should give the accused reasonable time, which should ordinarily be not less than 24 hours for reflecting in the circumstances in which he would be free from the influence of the police and of any other person interested in having the confession recorded. In such cases, ordinarily the Magistrates recording the confession should allow reasonable time and ordinarily there would not be any special circumstances making it impossible for the Taluka Magistrates to give 24 hours' time. In any case, the observations of Their Lordships of the Supreme) Court are very clear. They have observed that speaking generally it would be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. No doubt, in some cases, a confession may be held to be voluntary even if the accuse had been given less than 24 hours to reflect. Th learned Assistant Government Pleader refers to Ram Parkash v. State of Punjab : 1959 CriLJ90 , in which Their Lordships of the Supreme Court did not treat a confession as involuntary although the time given for reflection was less than th i hours. That was an appeal by special leave and Their Lordships did not interfere with the judgment of the High Court and confirmed the conviction and sentence. Their Lordships referred to a lengthy statement made by the accused in his examination at the Sessions trial

which supported the prosecution case. In any case, the observations of Their Lordships do not run counter in any way to the observations made in : 1957 CriLJ1014 . It is, therefore, hoped that all authorities subordinate to the Supreme Court would treat these observations of Their Lordships of the Supreme Court with due respect.

12. In this case, however, it is not necessary to decide whether the alleged confession is voluntary because, in our opinion, it does not amount to a confession having regard to the meaning given to the word 'confession' by Their Lordships of the Privy Council. If we refer to the English version or the Gujarati version, it is quite clear that the accused stated that it was the deceased who had attacked him first: that the deceased had threatened to murder him and that, therefore, the appellant gave him some blows. In these circumstances, the statement of the appellant would not amount to a confession, It is not for us to decide whether in reality the appellant had that right of self-defence but when an accused person says that he had that right of self-defence, the statement would not amount to a confession as denned by Their Lordships of the Privy Council. We, therefore, hold that this statement does not amount to a confession and need not be further considered.