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Dhula Vs. the State

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Court : Rajasthan

Decided On : Feb-22-1957

Reported in : AIR1957Raj141; 1957CriLJ545

Judge : Wanchoo, C.J. and; Modi, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 164, 164(3) and 533; Evidence Act, 1872 - Sections 29

Appeal No. : Criminal Appeal No. 162 of 1956

Appellant : Dhula

Respondent : The State

Advocate for Def. : L.N. Chhangani, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Wanchoo, C.J.

1. This is an appeal by Dhula who has been convicted under Section 302. I. P. C. by the Sessions Judge of Udaipur, and sentenced to transportation for life.

2. A report was made in chowki Chavnu on 22nd of March, 1954, by one Mawa Mina of village Veerpura. In this report, he said that Dhula accused of Veepura

had killed his wife Mst. Kuri with an axe, and had run away. Information of this was sent by Head Constable Abdul Rahim of the Chowki to the police station, Sarara.

Head Constable Abdul Rahim went to the spot at once, and started search for the accused who was, however, not found. He also arranged to keep watch over the dead body till the superior officers arrived on the scene.

3. The prosecution case briefly was that the accused suspected the character of his wife, and there had been some quarrel between him and his wife sometime before the incident. Consequently the accused killed her with an axe on the evening of the 22nd of March, 1954, in the court-yard of his own house. The dead body of Mst. Kuri was found in the court-yard of the house when the police reached the scene.

It is said that Mst. Punji, a daughter of the accused, aged about 10 or 12 years, was present when the murder took place. She made a statement Ex. P-1 in the committing Magistrate's Court. In that statement she said that her father had gone away to work in the fields in the morning after taking stale bread left over from the previous night. He returned in the evening.

At that time, her mother was cleaning grain. Her father asked her mother for food. She replied that she was going to prepare food, and that he could not he so hungry as to be dying of hunger. On hearing these words from his wife, the accused picked up an axe which was lying in the court-yard, and struck his wife a number of times on the neck.

The result was that Mst. Kuri died on the spot. Mst. Punji began to cry and shout on which people turned up. The accused, however had run 'away immediately after hitting the woman leaving the axe behind in the court-yard. Mst. Punji said that among those who arrived were her uncles Dungri and Teji.

She further said that there used to be quarrels between her father and her mother and that her mother had removed her Peenjri on which also there had been a quarrel between her parents. A Peenjri is an ornament for the foot, which is always worn by married women and is not removed except when the husband is dead.

4. The accused was arrested on the night between the 1st and 2nd of April, 1952. He was produced before a Magistrate on 5th of April 1954 ior recording his confession. On that day, the Magistrate sent him to the judicial lock-up. The accused was then produced before the Magistrate for recording his confession on the next day, namely 6th of April, 1954.

On that day the Magistrate gave him the usual warnings and questioned him as to the voluntary nature of the confession. But after these warnings and questions were over, the accused did not make any statement that day and said that he would make a statement next day, the accused was then brought before the Magistrate on the next day, namely 7th of April, 1931.

The Magistrate did not warn the accused any further on that day; nor did he question the accused again as to the voluntary nature of the confession. He immediately started recording the confession when the accused was brought to him on 7th of April. In that confession the accused admitted that there had been quarrels between him and Ins wife as he suspected her chastity, and that he killed her because he got angry on his wife telling him that evening that she had no food for him.

He did so by striking her with a Kulhari in the court-yard of the hou.se. Thereafter, he ran away, leaving the Kulhuri in the court-yard. At that time, his daughter Mst. Punji was in the court-yard. In the committing Court, however, the accused retracted this confession. The Sessions Judge accepted the retracted confession.

He also accepted the statement made by Mst. Punji in the committing Court for she had gone back on that statement in the Sessions Court. He accepted the statement of two witnesses to the effect that Mst. Punji told them immediately on their arrival that her father had killed her mother as corroboration of her statement, and convicted the accused.

5. The accused has filed this appeal from jail. The contentions, which he has raised, are two-fold. In the first place, he says (hat the confession that he made is inadmissible in evidence because he was neither warned nor questioned on 7th of April, 1954, before his confession was recorded that day.

In the alternative be says that, in any case, the retracted confession should not have been acted upon by the learned judge. The second main plea on behalf of the accused is that the Court below should not have accepted the statement of Mst. Punji, which she had made in the committing Magistrate's Court, as true, and should not have convicted him on that statement along with his retracted confession.

6. We shall first deal with the confession made by the accused, and consider whether that confession is admissible in evidence. The facts as to the manner in which this confession was recorded are these.

7. The accused was produced before the Magistrate on 5th of April, 1954. That day the Magistrate sent him to the judicial lock-up in order apparently to give him time to think. On 6th of April, the accused was produced before the Magistrate again, and on that day the Magistrate gave him the usual warning and put certain other questions to him to make sure that he was making the confession voluntarily.

After these questions had been put, the accused was asked to make his confession. He then stated that he would make the confession on the next day. The accused was then sent for the next day, and on that (lay the Magistrate neither warned him, nor put any questions to him to find out if his confession was voluntary. What the Magistrate did was to ask him to make the confession and recorded it as the accused stated it. In the end the Magistrate gave the usual certificate.

8. The question, that falls for consideration, is whether the confession, which was made on 7th of April, is, in these circumstances, inadmissible in evidence, keeping in view the provisions of Section 164 of the Code of Criminal Procedure, Section 164 (3) lays down that a Magistrate shall before recordingany confession explain to the accused that he was not bound to make the confession, and that if he did so it would be used against him. .

In addition to this, it is also laid down that no Magistrate shall record any confession unless upon questioning the person making it he has reason to believe that it was made voluntarily. The Magistrate in this case did warn the accused on

6th of April. He also questioned him generally on that day to satisfy himself that the confession was made voluntarily, but on the accused's suggestion he postponed the recording of the confession to the next day.

On the next day he just went on to record the confession without giving any fresh warning, or questioning the accused again to satisfy himself that the confession was made voluntarily. What is to be decided, therefore, is whether the Magistrate can be said to have complied with Sub-section (3) of Section 164 when he acted in this manner.

It has been urged on behalf of the accused that the Magistrate should have recorded the confession on 6th of April when he warned the accused and questioned him. As he did not do so on that day, and as he gave no warning to the accused on 7th and did not question him again before he recorded the confession, the conlession recorded oh 7th is inadmissible in evidence.

9. We may in this connection refer to Ram Singh v. The State, ILR (1052) 2 Raj 93 (A). In that ease, it was pointed out that Sub-section (3) of Section 164, Cr. P. C. requires three tilings, namely the two warnings that the accused was not bound to make the confession, and if he did so it would be used against him, and thirdly questioning of the accused so that the Magistrate may satisfy himself that it was made voluntarily.

The Magistrate can only record a confession under Section 164, Cr. P. C, after complying with all these three things. It was also pointed out in that case that, in view of the provisions of Section 29 of the Evidence Act, the mere absence of warnings that the accused was not bound to make a confession, and that the evidence of such confession would be given against him, would not make the confession inadmissible if it was otherwise relevant.

In other words, in view of the specific provision of Section 29, the mere absence of warnings would not make the confession inadmissible, provided the Court was satisfied that the accused knew that he was not bound to make the confession, and that if he did so it would be given in evidence against him before he made the confession.

So far therefore as the two warnings are concerned, these warnings had been given to the accused on 6th of April, 1954, and the accused could not have forgotten on 7th of April when he made the actual confession about these warnings;

The confession, therefore, cannot, be ruled out on the ground that these warnings had not been repealed on 7th of April, for wo know that in this case the accused knew before he made the confession that he was not bound to make a confession, and that if he did so it would be given in evidence against him.

10. The matter, however, stands on a different footing so far as the questioning required by Sub-section (3) of Section 101 is concerned. It was pointed out in Ram Singh's case (A), that it was the duty of the Magistrate before he recorded a confession to question the accused in order to satisfy himself that the confession was being made voluntarily, and if' no questions were put besides giving the two warnings, the confession would not be admissible in evidence as the mandatory provisions of Section 164, Sub-section (3) would 'not be complied with.

Section 29 of the Evidence Act makes an exception in the case of the two warnings, but there is nothing in Section 29 to do away with the necessity of questioning the accused for the purposes of finding out whether the confession was made voluntarily. Such questioning is absolutely essential to make the confession admissible.

11. The question, therefore, that finally falls for consideration is whether such questioning can take place on one day, and the confession recorded another day. The reason why the questioning takes place is that the Magistrate should be satisfied that the confession was made voluntarily.

Was it the intention of the legislature that there should be any long interval of time between this questioning and the actual recording of the confession? As we read' Sub-section (3) of Section 164, Cr. P. C., we are of opinion that it was not the intention of the legislature that this questioning should take place on one day, and the actual confession recorded say two months later.

If that is done, the whole purpose of this provision in Sub-section (3) becomes nugatory. The intention of the legislature seems to have been that the Magistrate should question the accused as to the voluntary nature of the confession shortly before recording the actual confession.

If there were to be a long delay, even 24 hours' delay between the questioning and the recording of the confession, it may be possible that the questioning may become useless, for in the interval of 24 hours circumstances may intervene, which may again compel the accused, for one reason or the other, to make the confession involuntarily.

It seems to us therefore that if the purpose of this provision in Sub-section (3) is to be carried out, and is not to be abused, it is essential that only a short time should elapse between the questioning arid the actual recording of the confession, and that, in any case, the Magistrate should record the confession after the questioning while the accused still remains all along in his presence.

If the Magistrate allows the accused to go away from his presence after the questioning, and then records the confession say the next day, the provision can be easily abused. For example, the Magistrate may question an accused to satisfy himself that the confession is made voluntarily. Thereafter, he may hand over the accused to the investigating police.

Some hours or some days later when the investigating police has again worked upon the accused, the Magistrate may send for him and record his confession without questioning him any further. It could not have been the intention of the legislature that this should be allowed to happen when it made this provision in Sub-section (3).

We are therefore, of opinion that there should not be any delay between the questioning under Section 164 (3) and the actual recording of the confession, and, in any case, the record of the confession shouldtake place as soon as possible after the questioning, and while the accused is still all along in the presence of the Magistrate.

As in this case, the Magistrate postponed the actual recording of the confession after the questioning, even though it be on the request of the! accused, and did not question the accused again till the next day, when he was produced for recording the confession, the confession recorded on 7th: of April is, in our opinion, inadmissible because the Magistrate had not questioned the accused before recording his confession on 7th of April itself.

12. We may in this connection refer to three cases.

13. In Emperor v. Panchkari Dutt, AIR 1925 Cal 587 (B), the confession was recorded on two dates as it could not be finished on the 1st day. On the second day, the Magistrate did not question the accused before continuing the recording of the confession. The Calcutta High Court held that the confession recorded that day could not be received in evidence.

14. In Punia Mallah v. Emperor, AIR 1946 PaS 169 (C), what happened was that the Magistrate re-corded part of the confession on one day. The accused was then produced before him the next day for recording the remainder of the confession. On this day, the Magistrate did not give him a fresh warning; nor did he apparently question him again. It was field that the confession was inadmissible.

15. These two cases came up for consideration In re Ramana Reddy, AIR 1953 Mad 74 (D). There-also the confession was recorded on two days as it could not be finished on the first day. The Madras High Court held, disagreeing with the view taken in the two above cases, that it was enough if, before commencing to record a confession, a Magistrate puts the necessary questions required by Section 164, Cr. P. C. to the accused, and it is not necessary that he should keep on repeating these questions to him after every break in the recording of a long confession.

If we may say so with respect, the view taken by the Madras High Court on this point seems to be correct, But that is a case where after the warnings and the questioning the Magistrate begins the actual confession, and the confession is so long that it cannot be finished in one sitting. The Magistrate therefore adjourns the silting to the next day and continues with the remainder of the actual confession.

Such a case is different from a case like the present where the Magistrate did not begin writing the actual confession at ail on the first day. What happened was that after the warnings and the questioning the Magistrate put off, may be at the request of the accused, the actual recording of the confession.

In such a case, we are of opinion that the Magistrate must question the accused again to satisfy himself as to the voluntary nature of the confession if the accused is allowed to go away from the presence of the Magistrate. The confession, therefore, in this case is inadmissible in evidence in view of what we have said above.

16. Having ruled out the confession, let us now look to the other evidence against the accused. There is no doubt that the deceased was murderedin the court-yard of her house. There is also no doubt that her daughter Mst. Punji was there when the murder took place. She is a girl of about 10 or 12 years of age, and we are satisfied that she could easily understand what was happening and could give evidence about it.

We have already set out her statement in the committing Magistrate's Court, which shows that because of some trouble from before between the accused and his wife, the accused was annoyed when his wife spoke somewhat tauntingly to him in the evening, and picked up the axe which was lying there and killed her by hitting her with it on the neck.

The incident was a simple one, and Mst, Punji could not possibly forget the attack by her father on her mother. In her statement in the Sessions Court, 'she has certainly gone back on what she stated in the committing Magistrate's Court. In the Sessions Court she said that she was inside the room, and when she came out she saw two cattle fighting among themselves, and her mother lying dead nearby.

The suggestion seems to be that her mother was accidentally killed in this fight between the two cattle. It is, however, clear from the medical evidence that the injuries were caused to Mst, Kuri with an axe, and could not have been caused in any fight between the cattle in which she might have intervened.

Mst. Punji also stated that her father was not in the village for two days before. She further said that her statement in the committing Court was given at the instance of the police, though she could not name which police officer had tutored her to make that statement. She, however, admitted that the axe, with which her mother was killed, was lying there in the court-yard, and was taken possession of by the police.

She also admitted that food had not been cooked that day by her mother. She further admitted that her mother was not wearing Peenjri that day. This is rather a significant admission, for this shows that Mst. Kuri was fed up with her husband, and that is why she removed the Peenjri to show as if her husband , was dead,

17. We have considered the statement of this girl carefully, and have come to the conclusion that she has gone back on her statement in the committing Court for obvious reasons. As time has passed, she has forgotten her mother and her love for her father has asserted itself and she wants to save her father.

We are, therefore, of opinion that the Sessions Judge was right, in the peculiar circumstances of this case, in relying on the statement of this girl made in the committing Court, in which she said that her father had killed her mother with an axe.

18. Her statement has been corroborated by the statement of Mawa. Mawa states that he went to the spot on hearing the cries of Mst. Punji, and found Mst. Kuri lying dead. He asked Mst, Punji what had happened, and she told him that her father had killed her mother. There is no reason to disbelieve this statement of Mawa.

There is also no reason why, if the, accused was not in the village from two days before as is now stated by Mst. Punji, she should have stated toMawa immediately after the incident that it was her father who had killed her mother. This statement of Mawa, in our opinion, bears out the truth of the earlier statement of Mst. Punji in the committing Court where she said that she had witnessed the murder of her mother by her father.

19. Then we come to the statement of Teji, brother of the accused. This witness also arrived on the scene shortly after the murder on hearing the cries of Mst. Punji. He saw Mst. Kuri lying dead in the Angan, In his statement in the Sessions Court he said that he enquired from Mst, Punji about what had happened, and she said to him that she had not seen anydiing, and had found her mother dead when she came out of her room.

But in his statement before the committing. Court this witness also stated that when he found Mst. Kuri lying dead he enquired from Mst. Punji who was there about what had happened. Mst. Punji then told him that her father had killed her mother and had run away. He further said that the blood-stained axe was lying nearby, though in the Sessions Court he denied even that fact.

It is obvious that this man is also changing his statement out of love for his brother as his consideration for his sister-in-law has weakened with the passing of time. We agree with the Sessions Judge that his statement in the committing Magistrate's Court was true, and that shows that he was also told immediately afterwards by Mst. Punji that it was her father who had murdered her mother.

20. Then there is the Statement of Dungari, another brother of the accused. He also reached the spot on hearing the cries of Mst. Punji and saw Mst. Kuri lying dead. He says that he did not enquire from Punji as to what had happened. He admits that Mawa had also come about the same time and so did Teji. He also denied haying seen the blood-stained axe in the court-yard.

In the committing Court this witness also stated that on arrival in the house of the deceased he enquired from Punji what had happened, and Mst. Punji told him that her father had killed her mother and had run away. He also said that the axe was lying nearby. In his case also we are of opinion that he has changed his statement for the same reason as Teji, and the Sessions Judge was right in relying on his statement in the committing Court.

21. Taking, therefore, the statements of these three witnesses in the committing Court, and the statement of Mawa, it is obvious that the deceased was murdered by the accused and by no one else. The remaining evidence, after we discard the

confession, is in our opinion sufficient to bring home the guilt of the accused,

22. Attention may in this connection be drawn to the statement of the Doctor to the effect that the fatal injury found on the neck of the deceased could not be caused by the axe which has been produced in this case. It is enough to say that we do not agree with the reason given by the Doctor for saying this.

The Doctor says this because, according to him, the wound on the neck is larger in dimensions than the dimension of the blade of the axe. We are of opinion that the fatal wound might have been caused by two blows in quick succession inalmost the same place. We, therefore, do hot accept the evidence of the Doctor to the effect that the fatal injury could not have been caused by this axe.

23. On a careful consideration therefore of the remaining evidence we are of opinion that the accused has been rightly convicted. The learned Sessions Judge has already taken into account the bad blood between the husband and the wife, and has given the lesser penalty in the circumstances.

24. We, therefore, dismiss the appeal.

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