

Ummed Mal Vs. State

Ummed Mal Vs. State

SooperKanoon Citation : sooperkanoon.com/754643

Court : Rajasthan

Decided On : Aug-07-1974

Reported in : 1975CriLJ923; 1974(7)WLN495

Judge : B.P. Beri, C.J.

Appellant : Ummed Mal

Respondent : State

Judgement :

ORDER

B.P. Beri, C.J.

1. By his judgment dated June 10, 1971 the learned Assistant Sessions Judge. Sirofai convicted applicant Ummed Mai for offences under Section 466 read with Section 114 of the Indian Penal Code, and Section 454 read with Section 109 of the Indian Penal Code. An appeal was taken before the learned Sessions Judge, Pali, who, by his judgment dated December 8, 1971, acquitted Ummed Mai of the offence under Section 454 read with Section 109 of the Indian Penal Code but maintained his conviction under Section 466 read with Section 114 of the Indian Penal Code. The learned Sessions Judge, however, reduced the sentence from one year to four months' simple imprisonment but maintained the fine of Rs. 100/-. Still dissatisfied, Ummed Mai is before me seeking the revision of the judgment of the learned Sessions Judge.

2. In order to appreciate the background in this case, it will be necessary to recount certain material facts. Mst. Sushila Devi (P. W./10) was posted as a nurse in the Ayurvedic Dispensary, Sumerpur, during the material period. No official accommodation was provided for the nurse and on a request being made to the Gram Panchayat, Sumerpur, for allotment of a house to her she was provided with one and the rent fixed was Rs. 25/- per month. Mst. Sushila Devi paid the rent for one month and then neglected and as Mst. Sushila Devi did not pay the rent the Gram Panchayat, Sumerpur, insisted that she should vacate the premises. Certain correspondence followed between Shri Davendra Kumar Vaidhya (P.W./6) with the higher authorities on the subject and the Collector Pali by his order dated November 6, 1965, restrained the Gram Panchayat, Sumerpur, from setting the house which was occupied by Mst. Sushila Devi, vacated till further orders. Ummed Mai Up-sar, panch, Gram Panchayat, Sumerpur, was not happy with Mst. Sushila Devi and began to harass her. It has been alleged that Ummed Mai manipulated the transfer of Mst. Sushila Devi to village Bhoola and even then she did not vacate the house. Her transfer was later on cancelled and when she was asked to join her duties at Sumerpur on April 21, 1966, Mst. Sushila Devi was informed by Arribalal Compounder, that the lock of her house had been broken open by the Gram Panchayat, Sumerpur and her articles had also been removed. She rushed to Sumerpur and found that the lock of her house had been broken open and her articles had been taken away by the Gram Panchayat, Sumerpur. She lodged a written report Exhibit P/14 with the Superintendent of Police, Pali. Thereupon, a case under Sections 451 and 380 of the Indian Penal Code was registered. In the course of investigation it was discovered that the Gram Panchayat convened a general meeting on April 10, 1966 to discuss the business of the Gram Panchayat and as per proceedings recorded in the relevant register eleven Panchas were present and eleven resolutions were passed and thereafter the statement of the income and expenditure of the said Panchayat was recorded. The signatures of the Panchas were also obtained at the end of the recorded minutes but the small space left between the resolution No. 11 and the statement of income and expenditure a resolution No. 12 was squeezed into the effect that as Mst. Sushila Devi had not paid her rent she may be evicted from the house and the lock thereof may be broken open, it was alleged that the said

resolution was a forgery committed by Bhanwarlal, Secretary of the Gram Panchayat, Sumerpur, at the instance of Ummedi Mai Upsarpanch, who was acting as the Sarpanch during the material time. It was said that Bhagirathsingh and Bhikaram were also arrayed for committing offence under Section 454 of the Indian Penal Code., The learned Assistant Sessions Judge, however, found that no offence was made out against Bhagirathsingh, Bhanwarlal and Bhikaram and they were acquitted under Sections 454 and 466 of the Indian Penal Code but he convicted Ummed Mai as already indicated above. The appeal of Ummed Mai succeeded partly as I have mentioned above and he has now come before me.

3. Learned counsel for the 'petitioner contended that assuming that the' resolution No. 12 X to Y in Ex. P/4 is a forgery, the short question still remains namely, that there is no evidence to show that Bhanwarlal forged it at the instance of Ummed Mai.

4. The learned Deputy Government Advocate endeavoured to support the conviction of Ummed Mai by saying that the following are the links that connect Ummed Mai with the abetment of the crime-

1. The statement made by Bhanwarlal, under Section 342 of the Code of Criminal Procedure, 1898 in answer to questions Nos. 6, 7 and 8. ^

2. Statement of Tejrai (P.W./4).

3. Statement of Chouthmal (P. W/5).

5. I have carefully examined the judgment of the learned Assistant Sessions Judge and that of the Sessions Judge, Pali. I agree with the conclusions reached by them that the resolution No. 12 between X and Y in Ex. P/4 is a false document a forgery. The writing has been 'squeezed in a small space and is altogether different in ink and the size of the characters preceding and following the resolution. I have also no difficulty in reaching the conclusion that it is in the hand writing of Bhanwarlal, the Secretary of the Gram Panchayat, Sumerpur, who has been acquitted of forgery. The short and very vital question is whether Bhanwarlal had committed this forgery at the instigation of Ummed Mai Upsarpanch who* was

acting as the Sar-panch of the Gram Panchayat at the relevant time.

6. Section 107 of the Indian Penal Code defines abetment..

A person abets the doing of a thing who instigates any /person to do that thing of who engages with one or more person or persons in any conspiracy for the doing of that, thing... or intentionally aids, by any act or illegal omission, the doing of that thing.

According to the trend of the prosecution, it appears that exercising his superior position, Ummed Mai instigated Bhanwarlal to squeeze the resolution No. 12 in the proceedings of the Sumerpur Gram Panchayat Minutes Book after the signatures of the members. The instigation in the present cases, according to the prosecution, consists, in suggesting or stimulating Bhanwarlal to insert this resolution in the proceedings book on the ground that the Sarpanch had discussed the matter -amongst the members and the resolution was required to be entered into and Bhanwarlal Secretary as a subordinate to Ummed Mai promptly complied. What is the evidence of instigation in this case The answer to this question will settle the fate of this revision. According to the learned Deputy Government Advocate, the totality of evidence is of three counts. Firstly, the statement of Bhanwarlal himself. The question which was put to Bhanwarlal at No. 6 was that Teirai P.W./4 and Chouthmal P.W./5 have said that on 10-4-1966 the meeting of the Gram Panchayat, Sumerpur, had taken place and the resolution No. 12 X to Y was not passed and the language between X and Y was not written on that day. In answer to this, Bhanwarlal has said that Ummed Mai had asked him to write this statement with the assurance that the matter had already been discussed amongst the members and it was his responsibility and that he (Bhanwarlal) should insert it. In answer to question No. 7. Bhanwarlal has admitted that the portion between 'X to Y was in his hand writing and in answer to question No. 8 he admitted -that Sarpanch had told him that he will have to obey him if he wanted to remain in the service. Bhanwarlal added that he did not know why the resolution was inserted.

7. Section 30 of the Indian Evidence Act lays down that 'when_ more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the

Court may take into consideration such confession as against such, other person as well as against the person who makes such confession.' The Indian Evidence Act does not define what confession is but it is now authoritatively settled to the pronouncement of the Judicial Committee in *Pakla Naravana Swami v. R* AIR 1939 PC 47 : (40 Cri LJ 364) where Lord Atkin observed.

No statement that contains self exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed.' This observation has been relied on by the Supreme Court in *Palvinder v. State* : 1953 CriLJ154 and in *Om Prakash v. State* : AIR 1960 SC409 . The authoritative definition in *Pakla Naravana Swami's* case appears to be that a confession must either be an express acknowledgment of guilt of the offence charged, certain and complete in itself, or it must admit substantially all the facts which constitute the offence. The aforesaid statement of Bhanwarlal is not a confession of a charge because he clearly exculpates himself and inculpates Ummed Mai. That being so, it does not fall within the ambit of the word 'confession' as envisaged by Section 30 of the Indian Evidence Act and it is not relevant for consideration and must be excluded. I may here add that in *Balbir Singh v. State of Punjab* : 1957 CriLJ481 their Lordships have observed that 'so far as the confessional statement of one accused is concerned, it may be taken into consideration against the other accused if it fulfils the conditions laid down in Section 30 of the Evidence Act. One of the conditions is that the confession must implicate the maker substantially to the same extent as the other accused person against whom it is sought to be taken into consideration,' The statement in answer to questions Nos. 6, 7 and 8 by Bhanwarlal is a clear proclamation that he was merely an innocent instrument obeying the words of the Upsarpanch without any consciousness that it was a forserv which was being committed. It will be erroneous to rely on his so-called 'confession' and it is thus not admissible in evidence qua Ummed Mai.

8. Then comes the consideration of the statement of the two witnesses. Teirai (P. W./4) has merely stated that Bhanwarlal told him that 4-6 days after 10-4-1966 that at the behest of Ummed Mai he had written an additional resolution relating to the house occupied by Mst. Sushila Devi midwife. He has, however, stated that

such a resolution was not passed in the meeting of the 10th of April, 1966 and that Bhanwarlal used to write the proceedings in accordance with the wishes of the Fanchas or of the Sarpanch. The question which arisen for my consideration is whether the aforesaid statement of Teirai (P. W./4) amounts to instigation. The answer is in the iplain negative. None of the witnesses has stated that Bhanwarlal was directed by Ummed Mai to write resolution No. 12. All that they prove is that it was the duty of the Secretary Bhaniwarlal to write the resolution as the Panchas directed or as the Sarpanch directed. Shouthmal (P. W. 5) has merely sipoken about the practice which prevailed about the recording of the minutes. In my opinion, what Ummed Mai told Bhanwarlal and Bhanwarlal told this witness would -be an instance of hearsay evidence not sufficient to fasten the charge of instigation on the pairt of Ummed Mai to get the forgery committed by Bhanwarlal. Bhanwarlal has been acquitted and nothing more needs be said about him.

9. There is no other evidence that has been Pointed out to me connecting Ummed Mai with the forged passage resolution No. 12 between X and Y in Exhibit P/4. The evidence discussed above, in mv opinion, is insufficient to fasten the guilt of abetment of the offence under Section 466 of the Indian Penal Code.

10. The revision is accepted, the judgment dated December 8, 1971 of the learned Sessions Judge, Pali is set aside and Ummed Mai is hereby acquitted of the charge under Section 466 read with Section 114 of the Indian Penal Code. Fine, if paid, bv him, shall be refunded. He is on bail and need not surrender.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com