

HasaruddIn Mohommad Vs. Emperor

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Court : Kolkata

Decided On : Aug-09-1928

Reported in : AIR1928Cal775

Appellant : HasaruddIn Mohommad

Respondent : Emperor

Judgement :

C.C. Ghose, J.

1. The accused in this case was committed to take his trial in the Sessions Court under two charges, one under Section 302, I.P.C., for having committed murder by causing the death of his wife, Ohati Bibi, and secondly, for having attempted to commit suicide by cutting his throat and thereby committing an offence under Section 309, I.P.C. In the committing Magistrate's Court there were no less than ten witnesses for the prosecution. It appears that when the charges were read and explained to the accused he pleaded guilty in the committing Magistrate's Court. The occurrence in question took place on 6th September 1927; the commitment was made on 2nd April 1928 and the trial in the Sessions Court took place on 18th June 1928. It appears that in the Sessions Court the charge under Section 309, I.P.C., was not pressed, but on the charge under Section 302, I.P.C., being read and explained to the accused, the latter pleaded guilty. The accused was thereupon convicted under Section 302 and sentenced to death without the jury

having been empanelled and evidence in support of the prosecution being placed before the jury. The learned Judge, Mr. D. Vaughan Stevens, in his judgment observes as follows:

The accused Basaruddin : Mohammad stands charged under Section 302; I.P.C. with causing the death of his wife, Ohati, by cutting her throat.

He pleaded guilty in the lower Court and pleads guilty here. The charge was thoroughly explained to him and I am satisfied that he clearly understands it.

It is dear from the evidence of the doctor recorded in the lower Court that the accused intended to kill the woman. There was no eyewitness, but I see from the evidence given in the lower Court that he pointed to himself as the murderer when the witnesses appeared.

No motive is given in the evidence in which, indeed it is said that the accused became mad and killed his wife. Accused's brother says accused had become mad before the occurrence, but this is not entirely borne out by the F.I.R. which says that for some time the accused had been threatening his wife saying that she had taken another man because the accused had become mad. Immediately after the occurrence the accused attempted to cut his own throat. There is nothing to show that the accused is not normal at the present time.

I cannot conclude from those materials that this accused was not at the time able to understand the nature of his act, or that it was wrong or contrary to law. In fact he seems to have realized it dearly. In those circumstances I can see no reason why the plea of guilty should not be accepted and I have no option but to pass the extreme sentence.

2. We desire to observe that we cannot too strongly impress upon the learned Sessions Judge that in cases under Section 302, I.P.C., it is undesirable to accept a plea of guilty and to bring the trial to an end thereon. The trial of an accused person does not necessarily end if he pleads guilty but evidence may and should be taken in cases of murder as if the plea had been one of not guilty and the case decided upon the whole of the evidence including the accused's plea. It is not in

accordance with the usual practice to accept a plea of guilty in a case where the natural sequence would be a sentence of death : see in this connexion Emperor v. Chinia Bhika [1906] 8 Bom. L.R. 240, Queen v. Bhadu [1897] 19 All. 119, Laxmya Shiddppa v. Emperor [1917] 19 Bom. L.R. 356. Section 271, Criminal P.C., though it directs that the plea shall be recorded does not direct that the accused shall be convicted thereon, but only that he may be so convicted, that is to say, it is left to the discretion of the presiding Judge in each particular case to determine whether in spite of the plea it is or is not desirable to enter upon the evidence. As was observed in the last mentioned case:

the question is, assuming that the appellant is guilty of the murder in question, whether the sentence of death should or should not be enforced. Now that is a question which could only be answered when the circumstances of the crime are known to us and the circumstances of this crime are not known to us.

3. In this case the First Report contains an allegation by the brother of the accused to the effect that the accused while in a state of insanity killed his wife and cut his own throat. There was therefore all the more reason why evidence should have been gone into and the case placed before a jury. We must therefore set aside the conviction and sentence and direct that the case must go back in order that there may be a proper trial of the accused in accordance with the provisions laid down in the Code of Criminal Procedure. Let the record be returned at once.

Jack, J.

4. I agree.