Emperor Vs. Durga Charan Sing

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Court : Kolkata

Decided On : Jul-22-1937

Reported in : AIR1938Cal6,173Ind.Cas.475

Appellant : Emperor

Respondent : Durga Charan Sing

Judgement :

Guha, J.

1. The accused Durga Charan Sing was charged under Section 302, I.P.C., for having committed the offence of murder on 18th February 1937, by intentionally causing the death of Mt. Raimoni, daughter of the complainant Ramu Khatri, with a dao, a dangerous weapon. He was placed on his trial before the learned Sessions Judge of the Assam Valley Districts and a jury. On the unanimious verdict of the jury, the learned Judge convicted the accused under Section 302, I.P.C., and sentenced him to death. The case of the accused is before us, under the provisions of Section 374, Criminal P.C.; the records have been submitted to this Court by the learned Sessions Judge for confirmation of the sentence of death passed on the accused person. There is also an appeal by the accused directed against the decision of the Sessions Judge convicting him under Section 302, I.P.C., and passing the sentence of death upon him. At the very-outset, our attention was drawn by the learned advocate appearing for the accused to a note made by the learned Judge in the record to the following effect:

When the Court was ready to begin the case, learned pleader for the accused asked verbally for an adjournment in order that the accused might be kept under mental observation. His request was based only on an impression he had gained while taking instructions from the accused. I can see no reason for thinking he is of unsound mind or incapable of making his defence. His behaviour in the dock is perfectly normal. He listened intelligently to the charge, and gave a clear plea in answer to it. No suggestion has been made before that he is in any way mentally unsound. He has been in jail awaiting his trial, and presumably the civil surgeon or jail doctor would have noticed and reported any mental abnormality. The only course available to me would be action under Section 465, Criminal P.C. I can see no reason whatever for taking such action. Nor do I see any reason for incurring the expense to Government and inconvenience to witnesses which would result from an adjournment. I consider the accused perfectly normal in mind, judging from his behaviour.

2. This note was recorded by the learned Sessions Judge on 31st May 1937. It was urged before us on behalf of the accused that it was incumbent upon the Sessions Judge to adjourn the trial in view of the provisions contained in Section 465, Criminal P. C; it was contended that there was no option left in the Judge in the matter of granting an adjournment for the purpose of ascertaining whether the accused was of unsound mind, and whether he was in a position to take his trial before the Court of Session. It seems to us that the argument advanced in this behalf in favour of the accused person entirely overlooks the two different stages of procedure contemplated by Section 465, Criminal P.C. Section 465 of the Code contains the provision that if any person committed for trial before a Court of Session appears to the Court at his trial to be of unsound

mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that affect and shall postpone further proceedings in the case and the jury, if any, shall be discharged.

3. The first stage in the procedure laid down by the section is that it must appear to the Court that the accused placed on his trial was of unsound mind and incapable of making his defence. The next stage that was to follow when it appeared to the Judge that the accused was of unsound mind and consequently incapable of making his defence was that the fact of such unsoundness of mind and incapacity should be inquired into on the materials placed before the Court. In the case before us, as it appears from the Judge's note, there was merely a verbal application made by the pleader for the accused for an adjournment in order that the accused' may be kept under mental observation. The Judge on that recorded his opinion that there was no reason for thinking that the accused was of unsound mind or incapable of making his defence. It was further noted by the Judge that no suggestion had been made, before the trial commenced, that the accused was in any way mentally unsound and incapable of taking his trial. In that view of the case, it appears to us to be clear that the provisions contained in Section 465 could have no possible application to the case before us. It did not appear, in the case before us, to the Judge that the accused was of unsound mind or that he was incapable of making his defence and it was not therefore necessary, much less was it incumbent upon the Judge to adopt the procedure provided by the second part of Section 465, namely to hold an inquiry as to the unsoundness of mind of the accused placed on his trial, for the purpose of ascertaining whether he Was incapable of making his defence. The learned Judge in his note has adverted to circumstances which made it clear that the accused was not of unsound mind, and that he was not incapable of making his defence. He has made special reference to the statement made by the accused before the Court in his defence and on that, and from the demeanour of the accused in Court, the Judge came to the conclusion that the accused was perfectly normal in mind judging from his behaviour.

4. In support of the contention that it was incumbent upon the Judge to hold an inquiry on the question of the unsoundness of mind of the accused placed on his trial, and of the incapability of making his defence, reliance was placed before us on a decision of this Court in Radhanath Bharat Patra v. Emperor : AIR1927Cal289 in which a passage occurs that the preliminary issue as to the unsoundness of mind and incapability of the accused to take his trial was to be tried by the jury, the moment the question of insanity was raised. In the case before us, the question of unsoundness of mind or incapability of the accused of making his defence was not raised before the Court at all. There was only an application made by the pleader for the defence for an adjournment of the case in order that the accused may be kept under mental observation. That is not what is contemplated by Section 465, Criminal P. C, and that is not what was taken into consideration by the learned Judge deciding the case to which reference has been made above. In advancing the contention on the basis of the decision to which reference has been made, the position has not been kept in view that the Sessions Judge's charge to the jury in that case showed that the accused was undoubtedly suffering from a disorder of the mind. In view of the fact that that position was indicated in the Judge's charge to the jury, this Court held that the preliminary issue had to be tried by the jury the moment the question of insanity was raised, the Judge having, as provided by Section 465, Criminal P.C., himself noticed that the accused was undoubtedly suffering from a disorder of the mind.

5. Cases not exactly bearing upon the point but which throw some light on the position to which reference has been made above, were also placed before us for our consideration. In Shib Das Kundu v. Emperor : AIR1924Cal713 , a petition was put in, saying that the accused was of unsound mind, and the Judge considered it necessary, in the circumstances of the case before him, that the jury empannelled in the case should try the question of unsoundness of mind first. In another case, Emperor v. Gopi Mohan Saha AIR 1926 Cal 479, unsoundness of mind was inquired into by way of a preliminary inquiry conducted for the satisfaction of the Court. It is not very clear however from the order recorded by Pearson J. in the case, presiding over the High Court Sessions, whether at the stage when the order for preliminary inquiry was made the jury had been

empannelled or not. Reference in this connexion was also made to the case in Santokh Singh v. Emperor AIR 1926 Lab 498, in which it was held that it was incumbent upon the Sessions Judge, if he had any doubt about the accused's mental state at the time of the trial, to hold an inquiry. That is just in consonance with what has been provided in the first few words contained in Section 465 (1), Criminal P.C. In an old case, Queen v. Bheekoo Kalwar (1871) 19 W R Cr 15, Queen v. Bheekoo Kalwar (1871) 19 W R Cr 15, it was said by the learned Judges of this Court that when an accused person appears to the Sessions Judge to be of unsound mind, the trial of the issue of insanity is a part of the trial of the accused, and ought to be tried by the jury, and not by the Sessions Judge himself. That is also in consonance with the provisions contained in Section 465(1), Criminal P.C.

6. As has already been indicated above, in our judgment the learned Sessions Judge was right in the conclusion arrived at by him that there was no case for adjournment of the trial, and there was no case for an enquiry as contemplated by Section 465, Criminal P.C. The question raised before us by way of preliminary issue on behalf of the defence must be decided against the accused person.

7. In support of the appeal by the accused person, questions of misdirection were raised, as an appeal must be on questions of that description. The learned Sessions Judge's charge to the jury in the case has been criticised on behalf of the defence in some detail, and in view of the line of argument adopted by the learned advocate for the accused, we will mention the salient features of the learned Judge's charge on which criticism has been directed on behalf of the appellant. No exception could be taken and was, in point of fact, taken before us to the Judge's explanation of the law so far as it related to the offence under Section 302; I.P.C. Exception was however taken to the manner in which the Judge indicated to the jury in his charge as to why in the case against the accused there could not be any question of the accused person being held guilty either of the offence of culpable homicide or of causing grievous hurt. On this part of the case the attention of the jury was drawn to the position that there was on the evidence no question of exceeding the right of private defence, and there was no question of the presence of grave and sudden provocation. In that view of the matter, the Judge in our opinion rightly directed the jury that the offence of murder may be taken to have been proved against the accused if the evidence as led by the prosecution was sufficient for the purpose of bringing home to the accused the offence contemplated by Section 302, I.P.C., the Exceptions to Section 300 with reference to the right of private defence, or grave and sudden provocation or sudden quarrel not having been made out in the case.

8. The evidence in the case was summarised by the Judge in his charge to the jury. The special attention of the jurors was drawn to the statements made by the accused person at different stages. The first statement, by way of a confessional statement, was made by the accused on 19th February 1937. The next one, which was also a confessional statement, was made before a Magistrate on 20th February 1937 in the manner provided by law. The third one was made by the accused on 27th April 1937 before the committing Magistrate. His version of the occurrence given on 27th April 1937 was different from that given in his previous statements made on 19th and 20th February 1937. But, as the Judge has noticed in his charge to the jury, the central fact that the accused had cut his wife found place in all the confessional statements made on the three different occasions to which reference has been made above. The confessional statements, to which reference has been made above, were retracted at the trial before the Court of Session, and it was with reference to this statement made before the Court of Session that the learned Judge has observed in his note that it could very well be said that the accused was not of unsound mind. We are entirely of the same opinion.

9. The nature of the statement made by the accused on 31st May 1937, going back on his own statements made previously on three different occasions, shows completely that he had had the capacity in him on 31st May 1937 of making a coherent and a very intelligent statement, and that he was not of. unsound mind and was not incapable of taking his trial before the Court of Session. These statements, three of them, taken together establish the guilt of the accused person in spite of the statement made by him on 31st May 1937 in which the previous confessions made by him were retracted. After placing all these statements before the jury, none of which could be held to be inadmissible or irrelevant, the Judge went on to place before them the

evidence coming from the witnesses examined on the side of the prosecution. The evidence given by the witnesses for the prosecution was summarized by the Judge and the points in the evidence of the witnesses were specifically referred to. Discrepancies in the statements of the witnesses, specially those occurring in the statements of Radha Gaonbura (P. W. 8), Sujamon Dosad (P. W. 9) and Padram Saikia (P. W. 10) were referred to by the Judge in his charge to the jury. The Judge rightly pointed out in one part of his charge that there were discrepancies in some mattesa of detail, and that in addition to the discrepancies referred to specially by him in his charge, there were discrepancies on small points.

10. A question on which great importance was placed before us by the learned advocate for the accused was as to the nature of the injuries inflicted on the deceased. The learned Sessions Judge drew the special attention of the jury to the fact that the doctor's evidence went to show that the injuries on the deceased person were from right to left. It was pointed out by the Judge to the jury that it was difficult to see how the injuries going from right to left could be inflicted on the girl if she was lying in the position spoken to by some of the witnesses for the prosecution. The Judge however expressed the opinion that the deceased might have stood up before the actual assault. In our opinion the Judge was perfectly within his province under the law to express an opinion of that description, regard being had to the nature of the evidence relating to the injuries on the deceased person. On the question of motive and intention, and the knowledge for the guilt, the Judge dealt with the subject in some detail. It was expressly pointed out by the Judge in his charge to the jury that the evidence on the point was inconclusive and very meagre; but as observed by the Judge himself very rightly, no direct evidence could be obtained on such matters. In the concluding part of his charge to the jury the learned Judge summarised the case in these words:

The Jury are to take into consideration all the evidence including the confessional statements of the accused, which he now retracts. If they find that those confessional statements, as regards the central fact that the accused 'out' his wife are true, that is that the evidence as a whole and the circumstances clearly indicate that they can unhesitatingly be accepted as true, and that his present statement whereby he retracts that admission is necessarily, untrue, then their verdict will be guilty. If they do not find it so, their verdict will be not guilty. If a reasonable doubt exists their verdict should be one of not guilty.

11. With reference to the learned Judge's charge to the jury, we express our definite opinion that we have not been able, in spite of careful scrutiny of the same in the light of the evidence led on the side of the prosecution, to find that there has been any misdirection or non-direction, far less any material misdirection which could possibly have resulted in prejudice to the accused person placed on his trial, or miscarriage of justice. On the charge to the jury, a verdict was returned by the jurors which was unanimous in its nature, and the learned Judge accepting that verdict, convicted the accused person under Section 302, Penal Code. It remains now to express our opinion on the case as a whole as the case is before us under Section 374, Criminal P.C. In this connection it may be pointed out that the questions of misdirection are of less importance in a case of reference under Section 374, because on a reference to the High Court, this Court is bound to come to its own independent conclusions as to the guilt or innocence of the accused, independently of the verdict of the jury or of the opinion of the Sessions Judge. In the case before us as it has been indicated out already, the Judge's charge to the jury appears to us to be exhaustive and a very careful one; it does not contain any misdirection or non-direction; and in that view of the matter one would unhesitatingly accept the unanimous verdict of the jury arrived at on the Judge's charge. As a case coming before us under Section 374, Criminal P. C, the entire evidence on the record has received our careful consideration; and on an examination of the materials before us, it is impossible to come to any conclusion other than the one arrived at by the jurors before whom the trial of the accused person was held. It is impossible for us to express the opinion that the learned Judge was not right in accepting the unanimous verdict of the jurors before whom the accused was tried. On the materials before us the conviction of the accused must be affirmed, and we direct accordingly.

12. The question of sentence has received the careful consideration of the learned Sessions Judge. As the Judge has observed in passing sentence on the accused person, although it was not possible to say on the

evidence that the crime was a premeditated one, it was a particularly brutal and bloodthirsty murder. The murder was committed with a very formidable weapon, and a number of very savage blows must have been struck on the face and neck of the deceased girl who could not defend herself. There were materials before the Court which were placed before the jury by the Judge with care and attention; there were no extenuating or mitigating circumstances; and the extreme penalty of the law had to be inflicted on the accused by the Judge. On a consideration of the entire evidence, we do not see any reason for coming to any conclusion other than the one arrived at by the learned Sessions Judge in passing the sentence on the accused person. The sentence of death passed on the accused person, Durga Charan Sing, is therefore confirmed.

Lethbridge, J.

13. I agree.