Dissu Vs. the State

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SooperKanoon Citation : sooperkanoon.com/888257

Court : Himachal Pradesh

Decided On : Sep-20-1952

Reported in : AIR1953HP1

Judge : Chowdhry, J.C.

Acts : Indian Penal Code (IPC), 1860 - Section 325

Appeal No. : Criminal Appeal No. 8 of 1952

Appellant : Dissu

Respondent : The State

Advocate for Def. : B. Sita Ram, Govt. Adv.

Advocate for Pet/Ap. : Ved Vyas Mahajan, Adv.

Disposition : Appeal dismissed

Judgement :

Chowdhry, J.C.

1. Dissu, aged 25 years, of village Sanhol, pargana Bakan, district Chamba, was challenged under Section 302, I. P. C., for causing the death of his wife Mt. Chelo, aged 22 years, at his own house in the afternoon of 12-12-1951. The Magistrate concerned committed him to Sessions to take his trial for an offence punishable

under paragraph 2 of Section 304, I. P. C., and the learned Sessions Judge has convicted him under Section 325, I. P. C., and sentenced him to five years' rigorous imprisonment. Against that conviction and sentence Dissu has filed the present appeal.

2. The facts, as found from the testimony of P. W. 3 Musahibu, who was an eye-witness to the occurrence and is the appellant's mother's brother, and from the confession of the appellant himself to which he stuck in the main to the last, are not in dispute. The appellant had acquired Mt. Chelo for his wife by exchange. The bargain was however not a happy one, for the woman was a termagant. A day before the occurrence she had been coaxed against her will to return to his house from her parental home. In the afternoon in question the appellant asked her to bring hay. She not only refused to carry out the behest but foully abused him involving his mother. This enraged the appellant and he gave her two blows with a 'tehanta', causing her simple injuries. The woman repeated the foul abuse, and thereupon the appellant gave a blow on her back with a 'danda' causing simple injury and catching her by the locks and holding her close to the ground with her face downwards gave two blows on her neck which proved fatal.

3. The appellant was in the act of giving these blows when Musahibu reached the scene of occurrence. The latter asked him not to beat his wife whereupon the appellant stopped giving her blows. But the blows already inflicted proved fatal, and within a short time the woman expired. The injuries on the neck, which proved fatal, have been described by the doctor in his post-mortem report as marks of contusion on both sides of the neck all over joining with each other with ecchymosis of underlying tissues. The doctor found the pupils dilated, mouth slightly open with frothy discharge, the liver, spleen, both the lungs and the brain congested and the larynx and trachea congested with some mucus. The victim has been described by the doctor in the report as a young well-built girl of about 22 years. In the opinion of the doctor death was due to asphyxia due to strangulation and must have been caused within five to thirty minutes of the infliction of the injuries.

4. There are two particulars in respect of which the confession differs from the other evidence on the record, and it was argued by the learned counsel for the appellant on the authority of -- 'Balmukand v. Emperor', AIR 1931 All 1 (FB), that the other evidence on the record being inconclusive, the confession must be accepted as a whole. The first is as to whether Musahibu reached the scene of occurrence after Mt. Chelo's death, as stated by the appellant in his confession, or whether he reached there while blows were being given, as stated by the witness himself. The confession of the appellant on this point appears to be false because he admitted that Musanibu asked him not to beat his wife. The warning could have been administered by Musahibu to the appellant only if the former saw the latter inflicting blows on his wife. The point is not of any importance, however, because the infliction of blows is admitted by the appellant.

The other fact is however important, and that relates to whether Mt. Chelo died as a result merely of the blows inflicted on her neck by the appellant, or of strangulation. There is nothing in the confession of the appellant suggesting that he throttled her to death, but the postmortem report is clear that death was due to asphyxia caused by strangulation. The other details of the postmortem report given above also point to the same conclusion. Had the difference between the post-mortem report and the statement of the appellant stood at that, there would have been no difficulty in accepting the former and disregarding the latter. It was however elicited from the doctor in cross-examination that the fatal injury in question (described above as marks of contusion on both sides of the neck all over joining with each other with ecchymosis of underlying tissues) could have been caused by fist blows. After this statement it was incumbent upon the counsel for the prosecution, and, if he failed to do so, on the Sessions Judge, to question the doctor further as to whether it was possible for fist blows to have caused strangulation. It is very unlikely that they should have, but as the point was not clarified the matter is left in doubt. This is not the only circumstance showing the unsatisfactory nature of the trial before the Sessions Judge, for there was no question put to the doctor as to the number of fist blows which in his opinion could have caused the said fatal injury. The argument of the learned Government Advocate that this was a clear case of strangulation, or in any case of a large number of blows having been persistently inflicted on the neck of the deceased,

cannot therefore be accepted, and it has to be taken on foot of the appellant's confession that the said fatal injury was caused only by two blows inflicted by him on the deceased's neck.

5. The main point argued before me was as to the offence committed by the appellant. The learned counsel for the appellant argued that, regard being had to the fact that death was caused only by two blows struck on the neck, it could not be said that the hurt was a grievous one endangering life under the eighth clause of Section 320, I.P.C. He further argued on the same ground that the appellant could not also be said to have voluntarily caused grievous hurt to the deceased because he neither intended to cause or knew himself to be likely to cause the hurt in question. According to the learned counsel therefore this was merely a case of simple hurt under Section 323, I.P.C. On the other hand, the contention of the learned Government Advocate was that even if it be conceded that the prosecution had failed to establish a case of strangulation, or of repeated and persistent blows on the neck, this was a clear case even on facts conceded by the defence of culpable homicide not amounting to murder under Section 304, I.P.C. He therefore advocated that, after giving the necessary notice to the appellant the conviction be altered by this Court in exercise of its appellate jurisdiction to one under Section 304, I.P.C., and the sentence of the appellant enhanced in exercise of its revisional jurisdiction.

6. It is not necessary to adopt the course suggested by the learned Government Advocate since the sentence imposed upon the appellant is adequate even under Section 304, I.P.C. At the same time, it must be remarked that the learned Sessions Judge was clearly wrong in his view that this was a case of merely a hurt which endangered life within the purview of the eighth clause of Section 320, I.P.C. The hurt in the present case did not merely endanger but extinguished the life of Mt. Chelo. In view of the adequacy of the sentence, however, I would confine myself to the argument, of the learned counsel for the appellant that this was not a case of even grievous hurt. The victim was a young and well-built girl of 22 years of age. The blows in question were inflicted on a vital part of the body, i.e. the neck. That being so, even though the appellant stopped raining blows upon his wife on being reprimanded by Musahibu, the blows already inflicted by him on

the said vital part of the body must not only have been so hard as to have endangered life, but the appellant will be deemed to have intended to cause or at least to have known that he was likely to cause hurt which endangered the life of the victim of his assault. There can therefore be no doubt whatsoever that the appellant voluntarily caused grievous hurt to Mt. Chelo.

7. The learned counsel for the appellant cited a number of rulings. The first was -- 'Emperor v. Shah Alam', AIR 1931 Lah. 275. That was a case where the accused put his safa round the neck of a boy on his refusal to accompany him to a certain place and dragged him for a distance of about 50 or 60 yards as a result of which the boy subsequently died. It was held that as it was a common practice to put a pugree round the neck of a boy and to drag him in order to compel him to go in a particular direction, and as the practice generally led to no more evil consequences than a swollen neck, the accused could not be saddled with the knowledge necessary to constitute an offence under Section 304, Part II, nor could he be presumed to have caused grievous hurt inasmuch as such grievous hurt was not the natural consequence of his act. It could not however be said in the present case that hard and determined blows struck on a vital part of the body like the neck leads to no more evil consequences than a swollen neck. On the contrary, it must be presumed from the nature of the blows and the vital part of the body where the blows were struck that at least grievous hurt was the natural consequence of the act of the appellant.

8. The next case cited by him was that of -- In re Marana Goundan', AIR 1941 Mad 560. That was a case where the accused kicked a man twice on the abdomen as a result of which the man collapsed and died soon after, and it was held on the ground that there was no mark of external or internal injury that the accused could not be said to have intended or known that he was likely to endanger life, and therefore he was convicted only under Section 323, I.P.C. With all respect, I find myself unable to agree with the view expressed in this case. In view of the clear finding that the accused kicked the deceased twice on the abdomen as a result of which the latter died, it was quite immaterial that there was no mark of external or internal injury. And as two kicks were administered on a vital part of the body like the abdomen, the kicks must have been hard enough to impute the intention or at

least the knowledge to the accused that he was likely to cause hurt which endangered life.

Another case cited by the learned counsel was that of -- 'Radha Kishen v. Emperor', AIR 1938 Lah. 714. That was a case where conviction under Section 304 was altered to one under Section 325 I.P.C., but as for reasons recorded above I am not going into the question of culpability of the appellant under Section 304, I.P.C., it is not necessary to consider this ruling.

Four other rulings were cited by the learned counsel, all of which fell under one and the same category: -- 'Emperor v. Saberali Sarkar', AIR 1920 Cal. 401; -- 'Empress of India v. Fox', 2 All 522; -- 'Empress of India v. O'Brien', 2 All. 766 and -- 'Empress of India v. Randhir Singh', 3 All. 597. They are all cases where the victim of the assault was suffering from a diseased spleen, and the accused was unaware of the fact. That being so, it was impossible to conclude, as held in -- 'Empress of India v. Fox', that the accused could have had in view the victim's death as a probable or even possible consequence of his acts, and the measure of the accused's culpability was therefore not, that fatal result but only the blows themselves. Owing to the diseased spleen of the victim, although no great violence may have been used, the hurt was no doubt grievous as it endangered life, but as the 'extreme and perilous sensibility of the body' which made it susceptible to fatal consequences as a result of the infliction of what was seemingly only a simple hurt was not known to, or even reasonably suspected by the accused, the latter could not be said within the purview of Section 320 I.P.C. to have voluntarily caused grievous hurt. In the present case Mt. Chelo did not suffer from any such extreme and perilous sensibility of the body, but was, on the contrary, a young well-built woman 22 years of age. These rulings have no application in the present case.

9. In the result, therefore, I see no reasonto alter the conviction of the appellant or thesentence imposed upon him. In fact, had hebeen rightly convicted under Section 304, I.P.C.,the chances are that the sentence would havebeen severer. The appeal is dismissed and theconviction and sentence of the appellant aremaintained.