

Laldin Vs. the State

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Court : Himachal Pradesh

Decided On : Jun-18-1951

Reported in : AIR1952HP3

Judge : Chowdhry, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164 and 271; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; ;[Evidence Act, 1872](#) - Sections 18 and 21

Appeal No. : Criminal Appeal No. 5 of 1951

Appellant : Laldin

Respondent : The State

Advocate for Def. : Bakshi Sita Ram, Adv.

Disposition : Appeal allowed

Judgement :

Chowdhry, J.C.

1. This is an appeal from jail by pne Laldin against the judgment & order of the learned Ses. J. of Mahasu & Sirmur, dated 17-4-1951, convicting him under Section 302, read with Section 34, I. P. C., & sentencing him to transportation for life.

2. Four persons, namely, Mohammad Ali, his brother Ranjha, son Bhura & son-in-law Laldin (the present appellant), were committed to sessions to take their trial under Section 302, read with Section 34, I. P. C., for the murder of one Durga.

3. The prosecution case was that Durga deceased having killed some buffaloes of Mohammad Ali, the said four accused avenged themselves by making a forced entry into the 'dogri', or small house, of Durga at about midnight between the 23rd & 24th of August, 1950, & strangled him to death. Mohammad Ali is said to have sat on Durga's chest, Bhura to have held him by the arms & the appellant by the feet, & Ranjha to have throttled him to death.

4. Mohammad Ali having died after commitment, the trial of the other three accused, who were represented by a counsel, commenced before the Ses. J. on 16-4-1951. Their respective charges were read out to the accused on that date. The present appellant pleaded guilty & the plea was recorded, & the following day the Ses. J. convicted him thereon. The other two, who pleaded not guilty, were tried separately.

5. The law as regards acceptance of the plea of guilty is well settled. When an accused pleads guilty he is not to be taken at his word unless the plea is expressed in unmistakable terms with full appreciation of the essential ingredients of the offence. 'R. V. Golathan', (1915) 84 L. J. K. B. 758, & 'Nga Ywa v. Emperor', A. I.R. (22) 1935 Bang, 49 at p. 51. And this rule of law is applied with all the greater stringency where the offence charged is so complicated in its nature & serious in its consequences as murder. In capital cases therefore Courts prefer to err on the side of caution & the practice has grown up not to accept the plea of guilty. 'Emperor v. Chinia Bhika', 3 Cr. L. J., 337 at p. 338 (Bom); 'Queen Empress v. Chinna Pavuchi', 23 Mad., 151 at p. 154; 'Dalli v. Emperor', A. I.R. (9) 1922 All., 233(1); and 'Abdul Kader v. Emperor', A.I.R. (34) 1947 Bom. 345.

6. The charge to which the appellant was required to plead was whether on the night in question he in the company of Mohammad Ali, Bhura & Ranjha entered the room of Durga with the common intention of committing his murder, & in furtherance of that common intention Mohammad Ali sat on his chest, Bhura caught hold of his arms & the appellant his feet, & Ranjha throttled him to death.

7. The record shows that the appellant pleaded guilty to the charge. Very rightly the Ses. J. proceeded thereafter to examine the appellant at length. In this statement, so much of it as is relevant, the appellant said that after approaching various persons for redress, taut without avail, Mohammad Ali & Ranjha came to him on August 23 &, after some confabulations between themselves, told the appellant that they were going on some errand & asked him to accompany them although he had fever then. They further told him that they had been to Theog but nobody listened to them, & therefore they would take revenge with their own hands. The appellant replied that he could not accompany them as he had fever. Ranjha caught him forcibly by the arm & forcibly they took him with them to Sawahu (the locality where the deceased's 'dogri' was). Ranjha broke open, the door of the dogri with a kick & went in & lighted a match & caught Durga by the neck, Mohammad Ali sat on Durga's chest, Bhura caught hold of his arms & the appellant was asked to keep guard outside. Two men & a small boy came from outside & shouted to Durga that they had arrived. Then the appellant & his companions returned from there.

8. Before examining this statement it may be mentioned that the appellant went on to refer to a confession he had made under Section 164, Criminal P. C. That statement has not, however, been proved. All that the appellant said about it was. that he had stated therein that he had caught Durga by his feet, but he added that it was in-correct for he only stood outside the 'dogri'. Noth-ing can be made of this discrepancy for before the alleged confession could be put to any use it was necessary not) only that the whole of it be proved but it be also proved that the requisite formalities had been observed in recording the confession.

9. Reverting now to the above quoted detailed statement of the appellant, there is not a word in it which makes him a participant in the common intention to kill Durga. Before broaching the subject to the appellant Mohammad Ali & Kanjha had a meeting with which he was not associated. In speaking to him of the errand which he was asked to join they only said that they would take revenge with their own hands, which did not necessarily mean murder. On reaching Durga's 'dogri' the appellant does not admit having entered it but only having been asked to keep-guard outside. True, before being so asked he had witnessed Mohammad Ali

sitting down on Durga's chest, Bhura catching hold of Durga's arms and Ranjha catching Durga by the neck; but these diverse acts of his companions were not such as to have necessarily led the appellant to the conclusion that those acts were a preliminary to murder. Commission of murder having never been mentioned before him, it was well within the range of possibility that by their said acts the appellant's companions meant merely to give Durga a sound thrashing. There is therefore nothing in the statement of the appellant which shows that even his companions had the intention of killing Durga, to say nothing of the appellant having at any stage become a sharer of such an intention. What is more, there is nothing in the statement of the appellant--& there is nothing but the appellant's statement to go by--that the death of Durga was caused. It is manifest therefore that the learned Ses. J. has merely presumed, without there being anything on the record to justify the presumption that Durga was murdered & that he was murdered in furtherance of the common intention of the appellant & his companions. The appellant's so-called plea of guilty was therefore not a plea of guilty in fact, & the learned Ses. J. was not justified in convicting him thereon.

10. The learned Govt. Advocate laid great stress on the Privy Council ruling 'Barendra Kumar v. Emperor', 52 Cal., 197, in support of the contention that the appellant would be guilty under Section 302, read with Section 34, I. P. C. even if all that he did was to keep-guard outside. But, in the wordings of the ruling itself,

'the essential part of the section (meaning Section 34), the element of a common intention presecriving the condition under which each might be criminally liable when there are several actors.'

is wanting in this case. Wanting also is the most essential part of Section 302, I. P. C., namely, the causing of the death of Durga. The question of putting an interpretation on the act of the appellant in standing outside Durga's 'dogri' therefore does not arise.

11. The appeal is allowed, the conviction & sentence; of the appellant Laldin are set aside, & the learned Ses. J. is directed to retry the case.

