

Gomtu Vs. State

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Court : Himachal Pradesh

Decided On : Nov-10-1971

Reported in : 1972CriLJ687

Judge : M.H. Beg, C.J. and; Chet Ram Thakur, J.

Appellant : Gomtu

Respondent : State

Judgement :

M.H. Beg, C.J.

1. The appellant, Gomtu, was charged under Sections 302, 201 and 436 I. P. C. The charge contained three heads. The first head is a charge for committing the murder of a man called Gover Singh, 'together with Bali and Dharam. Khubu, and Karmu during the night 31st December. 1968 and 1st January. 1969' although no reference to either Section 34 I. P. C. or a 'common intention' is made in the charge. The remaining two heads of charges, one under Section 201 and the other under Section 436 I. P. C., are also framed without invoking the aid of Section 34 I. P. C. The learned Sessions Judge of Mandi acquitted Bali as well as the three sons of the appellant namely, Dharmu Khubu and Karmu because the evidence against them was found by him to be doubtful, but, convicted Gomtu appellant of an offence punishable under Section 302 I. P. C. and sentenced him to rigorous imprisonment for life and to pay a fine of Rs. 700/-, and, in default to undergo

rigorous imprisonment for a further period of one year. The learned Sessions Judge, however, gave even the appellant the benefit of doubt so far as the alleged offences under Sections 201 and 436 I. P. C. were concerned. The transaction or occurrence, of which there was no eye-witness, was presumed to be one. Hence, the joinder of charges.

2. According to the prosecution case. Gian Chand (P. W. I) had purchased about 50 bighas of land in village Rawar at a distance of about 1 1/2 miles from village Siani, had planted an orchard there, and had employed the deceased Gover Singh, a Gorkha, as a Mali, to look after the orchard. Apparently. Gover Singh, deceased, lived alone in this orchard in a small double storeyed house. The house was also isolated from the Abadi which was at a distance of about 500 metres from there. Hence, nobody seems to have been able, immediately after the occurrence, to discover the murder or the fire alleged to have been set to the house at the orchard in order to conceal the murder of Cover Singh. It was only when Gian Chand. P. W. I, whose suspicion was said to have been aroused by the fact that Gover Singh did not come to his shop as usual to take his ration, is said to have gone to the orchard , on 4-1-1969. together with Satyapal. Budh-ram and Sarnu that he discovered what he suspected to be a murder. He gives an account of this discovery which is not quite natural. According to him. he had, even before he suspected a murder, arson, or foul play, gone to the orchard with his brother Satyapal, and Budh Ram, tailor master, picking up a man called Chalangru alias Sarnu on the way, from whom he had inquired (apparently without any reason to suspect a fire) whether he had seen any smoke coming out of the house of Gover Singh, This version is found in the statement made by Gian, Chand (P. W. I) in the Court of the committing Magistrate (Ex. DB), but he : omits to mention, at the trial, the inquiry from Sarnu about the smoke. The preparation to enter the house after a collection of others, suggests that Gian Chand had perhaps already come to know or suspect what had happened. After all. the failure of Cover Singh to turn up for three days could not give him the idea that the house was burnt. Gover Singh could have fallen ill or gone away somewhere. Even if Gian Chand had said that he had gone with his brother first it would not have seemed unnatural. But, the way he collected men and had even asked one of them, apparently without any rhyme or reason, whether he had seen smoke coming from Gover Singh's house,

gives rise to the suspicion that his version was not entirely truthful. Probably, he had visited the house earlier and had then gone again with others because things looked suspicious. It is hard to believe that Gian Chand could have behaved as he did if this was not so.

3. When Gian Chand (P. W. 1) with others, visited the house, they found the door of the room on the ground floor, where cattle were kept, barred from inside with a Jhabbal (iron bar). When the room was opened, by inserting a hand from outside into an opening an ox was found tied but other cattle were loose in the room. This may have been due to the fact that they had got scared and broken loose when there was a fire. A portion of the roof of the room was burnt and had fallen. Buried in the debris was the body of Gover Singh. But, the partially burnt and blackened head was found severed from the body. Blood was also found there, Pieces of burnt bedding and clothing were also found. Hence, a murder followed by arson to cover it up, was suspected,

4. A report was alleged to have been sent by means of a 'ruka' or note signed and submitted by Sarnu. at police station Seraj. District Kulu. at 11 P. M. on 4-1-1969. No name of any suspect was mentioned in this note. Nor was any mention there that Gian Chand had inquired from Sarnu whether he had seen smoke coming from the house. For some unexplained reason, this 'ruka' (Ex P. O.) which purports to be a first information report, was not registered as a first information report, but the first information report is shown to be lodged by Janak Chand (Investigating Officer) at 10.30 A. M, on 6-1-1969, at this very police station. Shri B. S. Verma, the Superintendent of Police of Kulu, examined as a Court witness, stated:

It was brought to my notice that immediately after the occurrence was known. Gian Chand PW. 1 had sent a 'ruka' to the police station, intimating about the death of Gover Singh. I came to know about the fact that although the 'ruka' intimating the death of Gover Singh had been sent, the F. I. R. was not recorded on the basis of that 'ruka'. I called for the explanation of the S H. O. as to why the F. I R was not lodged on the basis of the 'ruka'. I did not enquire whether any daily diary report had been entered on the basis of that 'ruka', I did not call for the 'ruka'. I

interrogated Dharmu. Karmu and Khubu suspects.

Perhaps the Station Officer hoped to register a better and fuller F. I. R. a little later.

5. The post-mortem report indicates that, although the burns on the body had destroyed the evidence of incisions on the neck, yet, the head must have been severed before the body was attempted to be burnt so as to destroy the evidence of the crime. The body was, however, identified later on as part of the face was only blackened and there were pieces of clothes and other circumstances, such as the fact that Gover Singh alone was living in the burnt house, to enable identification of the body.

6. Learned Counsel for the appellant has contended that the evidence in the case shows that Gian Chand, P. W. I, had special animus against the appellant and his family so as to try to implicate them even falsely. He suggested that even if the fire had taken place by accident, in the course of which Gover Singh was burnt to death and fallen into the room in the lower storey, the head could have been severed by the falling of a beam on it. For this submission, he relied upon the post-mortem report showing that the fire had destroyed the evidence of incisions on the neck by which the head was severed. We do not think that this is a reasonable suggestion. It was not impossible, provided Gian Chand had the required animus, to sever the head from the body so as to make it look like murder even though the death resulted from a fire. But, medical evidence did not support such a hypothesis which would be difficult to accept without any evidence that Gian Chand had actually tried to tamper with the corpse. The prosecution case may, therefore, be accepted that death had actually been caused by a murder by decapitating Gover Singh. But, there is no evidence as to precisely how this operation was performed. It is not likely for a single individual to have been able to carry out the operation. There must have been more than one individual involved. As already indicated, all the others had been given the benefit of doubt, and even Gian Chand had been acquitted of the connected charges under Sections 436 and 201 I. P. C.. which formed part of a single transaction, for want of better evidence.

7. The evidence of both Gian Chand. P. W. I, and Smt. Prem Dassi, P. W. 10, the two principal prosecution witnesses, have certainly brought out enough animus on

the part of Gian Chand to try to implicate the appellant even if somebody else had murdered Gover Singh. Gian Chand admitted that he had bought some land from Anup Ram, the father of Smt. Prem Dassi, over which the grove had been planted, and that Smt. Prem Dassi, P. W. 10, and her two children had a claim over it as it had been gifted to her and Gianu before the sale. He alleged that Prem Dassi had agreed that he should keep the land and that he had, with that object in view, got a fictitious sale deed (Ex. PD) showing a consideration of Rs. 500/- executed, although no money was paid to Smt. Prem Dassi. That sale deed was in respect of some other land which Smt. Prem Dassi was to keep in her possession. It was admitted by Gian Chand that this was done in order that the land over which the orchard was planted may be kept by him until Gianu, P. W. 12, the son of Prem Dassi, came of age. He also admitted that the land over which the orchard was planted used to be cultivated by Gomtu, appellant. He stated that Gomtu and his sons had objected to Gian Chand, P. W. 1 getting the land ploughed through Gover Singh and had tried to stop this ploughing. He also admitted that he and Gover Singh had ploughed the land despite the objections of Gomtu and his sons. Again he deposed that there was a quarrel over alleged uprooting of some plants from the orchard, between Dharmu and Gover Singh. Gover Singh was said to have slapped Dharmu, and then Gover Singh, in his turn, had been struck by the appellant Gomtu in the evening. A report of this occurrence was lodged by Gover Singh at police station Seraj. Again, Dharmu had lodged a complaint, in the court of a Magistrate on 27-2-1969, against Gian Chand and Bahadur (Ex. PN). It was alleged there that Gian Chand had beaten Dharmu until he became unconscious. It is significant that Gover Singh was not mentioned in that report. Of course, it could be argued that enmity is a double-edged weapon. While it could provide Gomtu and his sons with a motive to attack either Gian Chand or take some revenge on his servant Gover Singh, it also provided a motive for Gian Chand, P. W. 1 to try to implicate the appellant and his sons falsely on any occasion that may arise in future.

8. Gian Chand had admitted that, when a brother of his, Sukhdev, had been murdered, he had given evidence as a prosecution witness against Hari Chand who was, ultimately, acquitted. It seems that Gian Chand had also alleged, on that occasion, that the real culprit was a man called Khemu, so that the case for

murder of his brother should be re-investigated. In other words, he admitted that a wrong person had been prosecuted. He also admitted that he had been associated with the investigation of that case of murder of his brother. Sukh Dev. and also that he was associated throughout with the police in the investigation of the case of the murder of his Mali Gover Singh. The interest taken by Gian Chand P. W. I in both cases was not unnatural. Nevertheless, the fact remains that he seemed capable of suggesting to the police wrong lines of investigation and had sufficient motive to direct the attention of the police towards the appellant and his family.

9. Smt. Prem Dassi. P. W. 10, had stated : 'Gian Chand. P. W. is responsible for this case Gomtu and his sons used to help me when Gian Chand used to give me troubles. Gian Chand wanted to have revenge from these people. When Gian Chand had forcibly sown wheat in the field, I was present there. At that time, Gomtu and his sons asked Gian Chand not to plough the land of the poor lady and I also protested. At that time, Gian Chand threatened Gomtu and his sons to teach them a lesson. I do not know whether this false case has been made out by Gian Chand against the accused due to that enmity. Gian Chand has entangled the present accused in this case so that they may not help me in future.'

She had stated before the Committing Magistrate (Ex. DD).

Gian Chand has cheated me and my son about our lands. He is first class cheat. Gian Chand witness is responsible for making up this case.

10. The above mentioned statements of Smt. Prem Dassi clearly show that this witness was deposing against the appellant unwillingly and due to some fear or pressure. Otherwise, she would not have accused Gian Chand of implicating the appellant falsely. Indeed, the admissibility of the evidence of Smt. Prem Dassi was questioned on the ground that she was the appellant's wife. Mangal Chand, P. W. 7, a witness of an alleged quarrel between Gian Chand and Gover Singh, on one side and Prem Dassi and Gomtu and his sons, on the other side, had stated that Prem Dassi and Gomtu were living together for the last 8 years as husband and wife. There was also an admission by Smt. Prem Dassi herself in her statement before the police (Ex. DC) that she had developed intimacy with Gomtu Lohar and

had become his wife.

11. Prem Dassi admitted having left the village with her two children, Bhimkali, aged 19 years, and Gianu, aged 15 years, on 1st January, 1969, for 4 or 5 days so that the statements of Prem Dassi and her two children could be taken down by the Investigating officer, Janak Chand (P. W. 25), only on 9-1-1969. The appellant, though alleged to be present at Rawar, was not arrested before 17-1-1969. In his first statement at the trial, the Investigating Officer concealed the fact that he had interrogated the appellant on 11-1-1969 and let him go. But, after the statement of Shri B. S. Verma, the Superintendent of Police, the Investigating Officer was recalled for cross-examination and admitted this. Apparently, only the three sons of the appellant were suspected until 17-1-1969. This is clear from the subsequent admissions of the Investigating Officer. It could be that, by 17-1-1969, the appellant had made some incriminating statements to the police only to save his three sons who had been arrested on 11-1-1969.

12. If Smt. Prem Dassi and her two children had already revealed, on 9th January, 1969, that the appellant had confessed to them the murder of Gover Singh and had come on the midnight of 31st December, 1968, with a blood stained Drat, the appellant would have been arrested on 11-1-1969 when he was interrogated. Our attention has also been invited to the fact that the statements recorded by the Investigating Officer and other papers were sent to the Superintendent of Police after about a month, so that any date could have been put on the statements made. Thus, there were numerous suspicious features to show that the investigation was unreliable. Smt. Prem Dassi as well as her two children, Bhimkali and Gianu, had been acting in such a manner as to avoid interrogation. Such witnesses are treated by Courts as no better than accomplices. Moreover, their subsequent evidence in Court is a considerable improvement on their statements before the police.

13. The main piece of evidence against the appellant consisted of an extra-judicial confession said to have been made by the appellant to Smt. Prem Dassi at about midnight between 31st December, 1968, and 1st January, 1969, immediately after the murder, when the appellant is said to have gone to her house with Bali

accused, knocked at the door, and to have revealed that he had murdered Gover Singh. Prem Dassi deposed that, when she asked the appellant why he had come to her house at that hour of the night with a drat, he stated that she should not ask such questions from him. She denied that she was the wife of the appellant. This denial contradicted her previous statement before the police. If the appellant was actually living with Smt. Prem Dassi, it should not have surprised her if he came to the house at night. Her allegation was that the appellant, even after having chided her for asking what he was doing at that time, had told her that he had come there after murdering Gover Sing, Mali, setting fire to the house and threatened to kill her and her two children if she revealed this to any one. It is alleged by her that the appellant had demanded that she should hand over Smt. Bhimkali, the wife of Teju. in marriage to Bali, as Bali had helped the appellant to kill Gover Singh. She alleged that she had not accepted this proposition. This was a new version not found in her statement to the police under Section 161 Cr. P. C., where this proposal was said to have been made on other earlier occasions.

14. The above mentioned extra-judicial confession was sought to be supported by the evidence of Bhimkali P. W. 11 and Gianu P. W. 12 the two children of Smt. Prem Dassi. But, these two witnesses added the names of Khubu, Dharmu and Karmu, the three sons of the appellant, as persons accompanying the appellant and Bali. This was an improvement on what Smt. Prem Dassi had herself stated probably ' due to fear or compulsion. These allegations were not to be found in the statements made by these two children before the police. Gianu, P. W. 12, had mentioned no extra-judicial confession before the police but deposed to it at the trial. He admitted, under cross-examination, that he had been given some instructions by the Investigating Officer as to how to answer questions. The statements of these two children of Smt. Prem Dassi appear so very similar to each other and are such improvements on statements made by them before the police that they can hardly be relied upon. These two children were bound to be under the influence and pressure of Smt. Prem Dassi.

15. The learned Sessions' Judge, although doubting the admissibility of the evidence of Smt. Prem Dassi P. W. 10 as her statement may be a privileged communication to a wife had considered the evidence of Bhimkali. P. W. 11 and

Gianu P. W. 12 to be acceptable for corroborating Smt. Prem Dassi to support the alleged retracted confession of the appellant. After having been taken through the evidence of Smt. Prem Dassi and her two children, we are satisfied that they too could have been made to depose falsely under pressure and the threat that they would be implicated if they did not depose against the appellant. Smt. Prem Dassi herself had described the case against the appellant as one engineered by Gian Chand. P. W. 1. If this was what she believed, it is evident that she herself was unconvinced about the truth of the appellant's alleged confession.

16. The only other evidence against the appellant consisted of the alleged recovery of a blood stained Drat, a Shirt, a Pyjama, from behind a wooden box in his own house on 18-1-1969 at the pointing out of the appellant. A similar recovery, from inside a box, of a blood stained shirt, a pyjama and a torch are shown, at the pointing out of Dharmu, an acquitted accused person and the son of the appellant. The two boxes were said to be placed just by the side of two walls in the house facing each other. These recoveries could have been made on 11-1-1969 when the sons of the appellant were arrested. It is difficult to understand why the house of the appellant was not searched when they were arrested. If the house had been searched, these recoveries could have been easily made if the prosecution case was true. It needed no help from the appellant to make these recoveries. Nevertheless, the appellant was shown to have pointed out the box containing the blood stained Drat, a shirt, and a pyjama and to have said that this Drat was the instrument with which he had murdered Gover Singh. The appellant is, however, said to have added that the Drat and the clothes had been kept there by him after having been washed. Nevertheless, when the Drat and the alleged blood stained clothes were sent to the Chemical Examiner, human blood was found on them, It is very difficult to believe that the appellant, who is a Lohar, or a blacksmith, would keep an iron implement like a Drat, with stains of blood on it, in his house, when he could have easily removed the blood 'stains by washing and putting the Drat in the fire. In any case, as the recovery was shown from a : place which was easily accessible, without the help of the appellant, it is difficult to admit the statement of the appellant in evidence as one which could lead to the recovery of the objects shown to have been found. This evidence is much too artificial. If, as the Chemical Examiner's report shows, there were stains of human blood on

objects recovered, the artificiality of the evidence is not diminished, It has aroused our suspicions and seems to us to be of a very doubtful nature. In any case, the confessional part of this statement did not fall under Section 27, Evidence Act, and has to be excluded as it was inadmissible in evidence.

17. It may also be mentioned that some evidence was sought to be produced about the movements of the appellant, just before the murder, to show that, on 31-12-1968. the appellant and Bali accused were going towards the village Larj in the evening. Chandi Ram, P. W. 3, was produced to depose that. He admitted, under cross examination, that he had not noted the date on which he saw this, and that he had seen the appellant and Bali for the first time on 31st December 1968. He did not say that the appellant, carried a Drat. It is difficult to understand how. without any previous acquaintance with the appellant or Bali, the witness could tell the police that he had seen the appellant and Bali together on the evening of 31st December, 1968. He could not even give the date when he made a statement to the police. It is obvious that this evidence was concocted. This feature too arouses our suspicions. Other evidence could also have been similarly concocted.

18. It may be that there were strong reasons to suspect the appellant, but, as the retracted confession of the appellant comes from unreliable sources and the investigation in this case does not appear to us to be above board, we are unable to hold that the prosecution case against the appellant is proved beyond reasonable doubt.

19. Learned Counsel for the appellant contended that, the co-accused having been acquitted of the charge of having helped the appellant, the appellant could not be convicted singly for an offence punishable under Section 302 I, P. C. Reliance was placed upon the following 'cases for this submission:

Prabhu Babaji Navle v. State of Bombay AIR 1956 SC 51; Krishna Govind Patil v. State of Maharashtra AIR 1963 SC 1413; and Baul v. The State of U.P. AIR 1968 SC 728.

20. The cases cited above are not, strictly speaking, applicable to the case before us inasmuch as there was no charge under either Section 149 or a charge with the

help of Section 34 I. P. C. before us, although the facts stated in the charge may give rise to an inference of an implied charge. The most that could be said was that the charge against the accused under Section 302 I. P. C. only was somewhat ambiguous. The accused was not shown to have been misled by the failure to frame alternative charges which is the safer course, in such cases, for trial Courts. If the evidence had established that he, together with other persons, had committed the murder beyond any reasonable doubt, it is difficult to see why the appellant could not be convicted simply because Section 34 I, P. C. was not mentioned or it was doubtful which of the other named persons had helped him. We need not, however, deal further with this aspect of the case, because we have found the evidence against the appellant, for an offence punishable under Section 302 I. P, C., to be not above board. It is possible that he was one of the murderers, but, after having anxiously examined the various suspicious features of the case mentioned above we are not in a position to hold that the prosecution has succeeded in establishing, beyond reasonable doubt, even the offence of which the appellant was convicted.

21. We may observe once again that the Sessions' Judge had himself given the benefit of doubt to the appellant for offences under Sections 201 and 436 I. P. C., which were parts of the same transaction. We find it difficult to break up the occurrence into several transactions and to hold that only the offence under Section 302 I. P. C. is proved beyond reasonable doubt on the unreliable evidence before us. We think that mystery and reasonable doubt envelop the whole prosecution case. The prosecution has not succeeded in dispelling these. On the other hand, the unnatural and contradictory pieces of evidence and at least partially perjured evidence of the prosecution witnesses have deepened the mystery. The evidence of such witnesses cannot be acted upon without satisfactory corroboration (See : V. Thevar v. State of Madras AIR 1957 SC 614.

22. We, therefore, allow this appeal and set aside the conviction and sentence of the appellant who is in jail. We also discharge the notice for enhancement of the sentence from that of life imprisonment to that of death. He will be released forthwith unless wanted in some other connection.

