
(1952) 07 RAJ CK 0007
In the Rajasthan High Court
Case No : Criminal Appeal No. 65 of 1949

Bhairon Lal

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 22-07-1952

Acts Referred:

Evidence Act, 1872 — Section 133, 24, 30
Penal Code, 1860 (IPC) — Section 300, 302

Citation : AIR 1953 Raj 131 : (1952) RLW 376

Hon'ble Judges : Wanchoo, C.J.; Dave, J

Bench : Division Bench

Advocate : P.C. Jain, for the Appellant; R.A. Gupta, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an appeal by Bhairon Lal against his conviction u/s 302, I. P. C., by the Sessions Judge of Jhalawar.

2. The prosecution story was briefly this. The deceased Panna was the husband of Mst. Bhonri, P. W. 9. It appears that for some time past illicit intimacy had sprung up between the accused and Mst. Bhonri. We find that Mst. Bhonri was at her father's house in April 1949. Panna went to fetch her on Sunday, 3rd April, 1949. On Monday 4th April 1949, they were both returning from Mst. Bhonri's father's house. It further appears that Bhairon appellant was also at Mst. Bhonri's father's house on that day, though he left the place a few hours before Panna deceased and Mst. Bhonri. It may be mentioned that the mother of Bhairon accused is now the wife of Mst. Bhonri's father, and that is how the accused used to go there. The evidence of Mst. Bhonri is that she and her husband reached a place called Richwa-ka-Barda on 4th April after sunset. The appellant was seen coming from the other side, and he immediately asked Panna why Panna had abused him. Thereafter, he started pelting Panna with stones & also hit him with a lathi which he had with him, Panna started running away, and

was chased by the appellant, who continued to hit him with stones. Panna raised an alarm, but no one came to his help, and eventually he was killed by the accused and his body was dragged and thrown into a pit, which is situated somewhere there. Thereafter, the accused and Mst. Bhonri went away together. Her statement in this connection was that she was threatened by the accused, and therefore, she submitted to whatever he ordered.

The same night the accused and Mst. Bhonri were seen at the shop of Bhairon Lal Mahajan of Richwa. The appellant is said to have sold certain things there, which Mst. Bhonri had brought from her father's house. Thereafter, the two of them went to Jhalawar and from there to Durgapura. The two stayed together in Durgapura for a number of days, and Mst. Bhonri's statement is that the accused had sexual intercourse with her by force there. Then the police arrived, and both of them were arrested.

After the arrest, the appellant was put up before a Magistrate, where he made a confession. This confession was retracted by him in the Court of the Committing Magistrate. The main evidence for the prosecution in this case is the statement of Mst. Bhonri. We have been taken through that evidence, and have no hesitation in believing it to be true, except for the part where she tries to make out that she went unwillingly with the accused from Richwa-ka-Barda, where her husband had been murdered. We have the evidence of Kanwar-lal, own brother of Mst. Bhonri, to the effect that there was illicit intimacy between the accused and Mst. Bhonri, and that Kanwarlal was told this by no less a person than Panna deceased. It seems, therefore, that Mst. Bhonri went away with the accused after he had murdered her husband because of the previous connection between the two. The accused, in his statement in the Court of Session, has completely denied having any connection whatsoever with Mst. Bhonri; but there are certain circumstances which go to show that Mst. Bhonri's evidence as to what happened must be true. It is admitted by the accused even in the Sessions Court that he was in village Kalyanpura at the house of Mst. Bhonri's father (who was his step-father) on 4th April, and that he had left that village before the deceased and Mst. Bhonri left it. There is evidence that the accused was seen in village Akoria that day, and he has admitted that also in his statement. But he says that from Akoria he went to river Tindhar, which he reached at 2 p.m. and thereafter he went to sleep till he woke up at 8 p.m. Then he suddenly found that Mst. Bhonri was standing nearby, and she told him that she had run away from her husband. He, therefore, took her with him and kept her at Durgapura. He, of course, denies that he had any sexual intercourse with her. These facts, which have been admitted -by the appellant, clearly corroborate-the statement of Mst. Bhonri as to what happened up to the time they left Kalyanpura, and also as to what happened after Panna had been murdered. It is only for the crucial period of 5 or 6 hours, in the afternoon when Panna was murdered that the appellant pretends that he was sleeping at the banks of the river Thindhar. In his confession, however, he had clearly admitted that he met Panna and Mst. Bhonri near Richwa-ka-Barda, and struck Panna first with a stone, as Panna abused him

and later with, lathi, and when Panna started running from the place, he followed him and gave him more blows with lathi and stones, with the result that Panna died.

3. It is true that this confession was retracted by the accused when he came to make a statement in Court; but we see no reason why we should not believe this confession, because it appears to be both voluntary and true. The Magistrate, who took down the confession, asked the accused whether he had been induced by the Police after his arrest to make the confession, and he said that that was not so. The Magistrate also explained to the accused that he was not bound to make a confession, and that if he did so, it would be used in evidence against him. It has been urged that the evidence of the Magistrate discloses that the accused was handed back to the police after the confession had been recorded, and he might have, therefore, made this confession out of fear of the police. It would have been better if the Magistrate had taken care to send the accused to judicial custody after his confession had been recorded; but in the peculiar circumstances of this case, we are not prepared to hold that this confession was not voluntary, simply because the accused was given back to the custody of the police. We may point out that there is corroboration available of various parts of the confession which goes to establish its truth. (His Lordship then examined the evidence corroborating the confession and held that the confession was true).

4. It has been urged on behalf of the accused that Mst. Bhonri is an accomplice, and, therefore, we should not rely upon her evidence, unless it is corroborated in material particulars. It does appear from the fact that there was illicit connection between Mst. Bhonri and the appellant before the murder and also from the fact that Mst. Bhonri went away with the appellant after the murder and lived with him for about 3 or 4 days without raising any alarm and without even informing the Mahajan who had seen both together soon after the murder, that she was, what we may call, an accessory after the fact. To that extent, therefore, she is an accomplice, and her evidence should be looked upon with caution. But in this case we are satisfied that the circumstances show that her statement is quite true. We have the evidence of independent witnesses that she and her husband left Kalyanpura together on 4th April. We have the evidence of independent witnesses that the accused was also at Kalyanpura that day and left some time before. We have also evidence that after the murder Mst. Bhonri was living with the accused. These are circumstances which clearly show that Mst. Bhonri must be knowing as to what happened and though she might be under the influence of the accused, she, at any rate, has no reason to implicate him falsely. Further, even if her statement is no better than the statement of an accomplice, it has been, in our opinion, corroborated by the retracted confession of the accused, which we have believed to be voluntary and true. We may, in this connection, refer to two cases. The first is --"Lalan Mallik v. Emperor" 15 Ind Cas 987 (Cal). In that case the Calcutta High Court held that in all cases depending on the evidence of an informer, the degree of support that the evidence required must depend on the amount of the credit in each particular case to be attached to the

informer, and that the confession of the accused was ample evidence to corroborate the approver. In that case there was the evidence of the approver and it was corroborated by the retracted confession of the accused. The case of an accomplice is more or less on the same level as that of an approver, and this case, therefore, supports the view that a retracted confession can be used as corroboration of the statement of an accomplice so far as the maker of the retracted confession is concerned.

5. The next is --Pallia v. Emperor". 49 Ind Cas 604 (Lah). In that case the Punjab Chief Court held that "the retracted confession of an accused person may be sufficient corroboration of the approver's story as against himself".

6. In this case we are satisfied as to the truth of the statement of Mst. Bhonri. We have already pointed out that there is circumstantial evidence which goes to show that that statement is true. It is corroborated by the retracted confession "of the accused, which we have believed to be voluntary and true, and which is corroborated in some particulars like the recovery of the turban of the deceased from the well at the instance of the accused, and recovery of the dhoti of the deceased from the possession of the accused also at his own instance. We are, therefore, satisfied that the case against the accused has been proved beyond all reasonable doubt.

7. Lastly, learned counsel for the appellant referred to -- Bandhu and Another Vs. Emperor, and submitted that in view of the fact that the body of the deceased had not been found in this case we should not convict the accused u/s 302, Penal Code, but only u/s 307 of that Code. In "Bandhu's case it appears that the deceased Dina was brutally beaten and dragged up to a certain river. Thereafter nothing was heard about him. The learned Judges were of the view that the probabilities were in favour of the man being dead; but they came to the conclusion that the possibility that the man might be alive had not been excluded. In the present case, however, we have the statement of Mst. Bhonri to the effect that her husband was dead. There is also the statement of the appellant himself in his confession that he beat Panna till he was dead. He also said that he dragged the dead body for some distance, and threw it into a pit. Lastly, in his statement in the Sessions Court, where he tried to shift the blame to Mst. Bhonri, he said that Mst. Bhonri had told him that she had killed her husband. We may also point out that the clothes of the deceased were recovered nearabout that place; there is also the evidence of Kalu Gujar, Ex. PP., to the effect that he had seen a dead body in that locality, though of course he could not say whose body it was. The question whether a man is dead or not is always a question of fact to be decided on the facts of each case. In this particular case, we have no doubt that Panna is dead and was killed by the appellant.

8. The appellant has been sentenced to transportation for life which was the punishment in Jhalawar in 1949 for murder. We, therefore, dismiss the appeal.