(1921) 04 CAL CK 0001

Calcutta High Court

Case No: Govt. APP. No. 5 of 1921

Legal Remembrancer, Bengal	APPELLANT
Vs	
Lalit Mohan Singh Roy	RESPONDENT

Date of Decision: April 25, 1921

Judgement

Teunon, J.

In this case one Lalit Mohan Singh Boy was placed on his trial before the Sessions Court of Hooghly on a charge of murder. The trial was by jury, and by their unanimous verdict the jury found him not guilty. Accepting the verdict, the learned Sessions Judge acquitted the accused, and against this order of acquittal the Local Government has preferred the present appeal. The person whose death is in question is a young girl or woman, Tarlika Debi, the second wife of the accused. She was about 16 years of age, while the accused is over 50, and the case for the prosecution is that on the night of the 23rd March 1920, or early morning of the 24th, while they were in their bed-room together, the accused from motives of jealousy attacked his wife with sword, inflicting many injuries on her neck, head, face and other parts of her person and causing practically instantaneous death.

2. The first information of the murder was lodged at the thana (Pursura) by the accused himself at 7 A.M. on the 24th of March and the main ground taken in this appeal is that this first information, or all but the first portion thereof, marked Ex. 21 has been erroneously excluded from the consideration of the jury as amounting to a confession made to a police officer.

3. That by reason of the provisions of section 25 of the Evidence Act the first information is not admissible in its entirety is conceded. But it is contended that the preliminary portions of the first information, giving a history or narrative of events preceding the night of the 23rd of March, are admissible as statements or admissions not being confessions and that of the 2nd half of the first information, such portion as led to discovery e.g., in the bed-room, of the dead woman''s body, the sword and a certain padlock, are admissible under the provisions of section 27

of the Evidence Act.

4. In support of the first branch of this contention, reference is made to section 27 of the Evidence Act and to certain decisions of this Court, more particularly to cases of Queen-Empress v. Macdonald (1872) 10 B.L.R. App. 2, Queen Empres v. Meher Ali Mallick (1888) 15 Cal. 589, Emperor v. Kangal Mali (1905) 41 Cal. 601= 26 I.C. 161, also of the judgment of Carnduff, J., in Barindra Kumar Ghose v. Emperor (1909) 37 Cal. 467 = 7 I.C. 359 = 14 C.W.N. 1114.

5. On the other hand, on behalf of the accused, it is contended that as part of the first information is inadmissible, the whole is inadmissible, and that the preliminary narrative should be regarded as merely leading up to the confession and not severable from it.

6. Though, no doubt, when portions of the statement are admitted, the persons affected thereby may demand that the statement should be admitted and considered in its entirety, yet the principle that portions of a statement or confession may be admitted and others excluded is recognised in the Evidence Act itself (e.g. section 27) and also in the cases cited in support of the appeal. We are, therefore, of opinion that, as contended by the Crown, the first information in so far as it speaks of events prior to the night of occurrence, i.e. down to the words "I have not been successful" if and when proved, is admissible in evidence.

7. With regard to the second branch of the Crown''s contention, the principle enunciated in section 27 of the Evidence Act cannot be disputed. But one of our difficulties here is that the first information was excluded at the outset of the trial and before any evidence had been taken. The examination of the police officer or officers has, therefore, not been directed to the provisions of section 27 of the Evidence Act. All we can say, therefore, on this point is that, if and when certain facts are deposed to as discovered in consequence of information received from the accused when in custody of the police, so much of the information as relates distinctly to the fact or facts thereby discovered will become admissible. On the point of discovery we may refer to the case of Surendra Nath Mookerjee v. Emperor (1918) 16 A.L.J. 478 = 47 I.C. 659 = 19 Cr. L.J. 935 though, with all deference to the learned Judges who decided that case, we should say that in our opinion the words "I have killed my wife" should not have been treated as admissible.

8. On behalf of the accused it is here contended that when facts are already known to persons other than police officers, such facts cannot be said to be discovered in consequence of information received within the meaning of section 27 of the Evidence Act. We are unable to accede to this contention. The language of the section and its place in the Evidence Act, in our opinion, make it clear that the discovery therein referred to is discovery to or by police officers and in support, of this view we may refer to the case of Adu Shikdar v. Queen-Empress (1885) 11 Cal. 635.

9. On the point of custody we may refer to the provisions regarding "Submission" in section 46 of the Code of Criminal Procedure, Sub-section (1).

10. The second contention on behalf of the Crown is that the learned Sessions Judge had improperly admitted evidence of opinion, and the third contention is that he has similarly admitted evidence of rumour. In the cross-examination of prosecution witness No. 33, Devendra Nath Singh Roy, who is the accused''s brother-in-law and was defraying the expenses of the defence, the witness was permitted to say "I had no talk about the evidence in the case with Mr. Roy (counsel for the defence) beyond this that Mr. Roy said he did not find any evidence in the case". Similarly, prosecution witness No. 30" Satish Chandra Singh Roy, accused''s cousin, was permitted to say in cross-examination. "The reply I gave was it is a case of a man killing his mistress'' (or ''of a fight between a man and his mistress''). I had heard this from Jogendra Mullick. I spoke to Nitai about this Nitai said that he also heard about it."

11. The introduction of defence counsel''s opinion of the value of the evidence and of the above hearsay statements regarding the nature of the occurrence in question is clearly reprehensible, and the absence from the Judge''s charge to the jury of any caution against the attaching of any value thereto is to be regretted.

12. It was next contended on behalf of the Crown that in the charge to the jury the Sessions Judge misdirected them by saying "there is no evidence adduced before you to show that the accused Lalit had actually slept in that room that night."

13. Now, on the 25th of March, the accused was produced before a Deputy Magistrate, Jnanendra Nath Banerjee, prosecution witness No. 32. The accused made no confession, and the statement which he did make was for that reason not recorded in the manner provided in section 164 of the Code of Criminal Procedure. There being no record, the Deputy Magistrate was then required and permitted to give oral evidence regarding the statement made to him by the accused. Inter alia, he deposed that the accused said to him that he (accused) had slept that night with his wife.

14. The Crown relies on this part of the Deputy Magistrate''s evidence, while the defence contends that the whole of the Deputy Magistrate''s evidence, in so far as he speaks of the unrecorded statement made to him by the accused, is inadmissible. In support of their contention, the defence relies on the decisions of this Court in Queen-Empress v. Bhairab Chander Chuckerbutty (1898) 2 C.W.N. 702, King-Emperor v. Rajani Kanto Koer (1903) 8 C.W.N. 22 = 1 Cr. L.J. 10, Amiruddin Ahmed v. Emperor (1917) 45 557 = 22 C.W.N. 213 = 44 I.C. 321 = 27 C.L.J. 148. On behalf of the Crown it is contended that the word "statement" in section 164 of the Code, sub-section (1) refers to statements made by persons appearing as witnesses, and that the section has no application in the case of statements not being confessions made by accused persons. In support of this contention the learned

Advocate-General cites the case of Queen-Empress v. Bhairab Chunder Chuckerbutty (1898) 2 C.W.N. 702. But this view has not been generally accepted, and, following the cases of King-Emperor v. Rajani Kanto Koer (1903) 8 C.W.N. 22 = 1 Cr. L.J. 10, and Amiruddin Ahmed v. Emperor (1917) 45 557 = 22 C.W.N. 213 = 44 I.C. 321 = 27 C.L.J. 148, we must hold that in this respect no distinction can be drawn between a statement made by an accused person and a confession made by him. It follows that the statement made in this case should have been recorded as provided in section 164, and that the Deputy Magistrate''s evidence regarding the unrecorded statement is inadmissible. In the result, there was on this point no misdirection.

15. Lastly, it has been contended that the Judge''s reference in the opening passage of his charge to the punishment provided for the offence of murder, and the consequent need for careful consideration, involve a misdirection Personally, we are of opinion, that to suggest that in capital cases stronger evidence or a higher degree of certainty is required than in other criminal cases is wrong, but we need not hold that what was said by the Judge in the present case amounts to a misdirection.

16. Having regard, however, to the just grounds of complaint advanced by the Crown, and more particularly the manner in which the first information was dealt with, we must set aside the order of acquittal and direct that the accused be retried. The retrial, we further direct, will take place before the Additional Sessions Judge of Hooghly sitting at Howrah.

17. The accused will now be called upon to surrender to his bail in the Court of the District Magistrate of Hooghly. On his thus surrendering he may make such further application in the matter of bail as he may be advised.

Ghosh. J.

18. I agree.