Lala vs The State on 3 January, 1953

Equivalent citations: 1953CRILJ1361

JUDGMENT

Chowdhry, J.C.

1. This is an appeal by Lala, alias Sukh Lal, aged 27, of Theola, a hamlet of village Pantehra, who was challaned and committed to sessions for an offence under Section 302, I.P.C. for the murder of one Prabh Dayal, aged 25, between 9 and 10 p.m. on 9.8.1951, but who has been convicted by the learned Sessions Judge of Bilaspur under the second Para, of Section 304, I.P.C. because in his opinion the appellant caused the death of Prabh Dayal whilst deprived of the power of self control by grave and sudden provocation within Exception 1 to Section 300, I.P.C. and sentenced to ten years' rigorous Imprisonment and Rs. 200/- fine, or further six months' rigorous imprisonment in default of payment of fine.

2. Prabh Dayal has been described by hi3 widow Mt. Ajudhya (P. W. 2) as a resident of Pantehra but by Didu (P. W. 1), lambardar of that village, as a resident of Theola. This discrepancy is immaterial since Theola is a hamlet of Pantehra and their abadis adjoin each other. Mt. Ajudhya and the deceased's mother Mt. Gandhu (P. W. 3) have stated that in the early part of the night in question Prabh Dayal left his house co secure the help of one Lohku and others for the ploughing of his fields, that shortly after that they heard an outcry that he had been murdered by Lala, and that they left immediately and found Prabh Dayal's dead body lying on the thoroughfare with blood oozing out of the wound on the right side of the neck. According to the postmortem report, there was only one incised wound 3 × f" × 21" deep parallel with the lower margin of the right jaw just in front of the ear, and death was due to shock and hemorrhage as a result of that injury. According to the prosecution, this injury was caused with a hatchet which was recovered blood-stained from the house of the appellant when Didu lambardar and others reached there within only about half an hour of the occurrence and arrested him. The way from the deceased's house to the house of Lohku has been shown in the sketch Ex. P.R. The spot on this thoroughfare where the dead body was found is in close proximity to the abadi of Theola. The nearest house was only 3 ft and 4 inches away. The houses of Chaudhari (P. W. 15) and Mangtu (P. W. 16), produced as eye-witnesses, were only 33 paces and 16 yards respectively from that spot. The house of another important witness Gonju (P.W. 18), who over-heard the altercation between the deceased and the appellant immediately before the murder and the sound of the fall of Prabh Dayal on receiving the hatchet blow, was at a distance of only 12 ft. from the said spot. A number of other residents of the neighbourhood also reached the place of occurrence soon after and found the dead body in the aforesaid condition as described by the deceased's widow and mother. From the statements of these witnesses and the medical evidence it has been established that within a short time of leaving his nouse Prabh Dayal was done to death with a sharp cutting weapon between 9 and 10 p.m. on 9.8.1951, on a thoroughfare close to the abadi of Theola, Injected the learned Counsel for the appellant did not seriously challenge the correctness of the conclusion. What he challenged was the finding that it was the appellant who had committed the murder.

3. The evidence against the appellant consists, firstly, of the testimony of the said witnesses Chaudhari (P. W. 15), Mangtu (P. W. 16) and Gonju (P. W. 18), who profess to have over-heard the altercation or seen the murder committed; secondly, of extra judicial confessions which the appellant is said to have made at the time of his arrest at his house soon after the occurrence, and again when brought from there to the spot where the dead body was lying; thirdly, of the recovery of a blood-stained hatchet from his house at the time of his arrest, and of a blood-stained shirt from his person at police-station Ajmerpur on 11.8.1951, by Section I. Sukh Ram (P. W. 20); fourthly, of a confession which he is said to have made on 18.8.1951 before Sri Solmn Singh (P. W. 19) Magistrate first class Ghumarwin; and, fifthly, of actual or suspected illicit connection between the wife of the appellant and the deceased as a motive for the offence. Of these the confession recorded under S, 164, Criminal P.C., and the extra judicial confessions have been discarded by the learned Sessions Judge, and, although the learned Government Advocate sought again to rely upon them, I am of the opinion that the judicial and extra judicial confessions have been rightly discarded. It appears that the appellant was twice produced for a remand before the same Magistrate who recorded the confession once on 12.8.1951 and again on 17.8.1951. The Magistrate says that he gathered from the police that Lala was willing since 12.8.1951 to make a confession. There is no explanation forthcoming why then he was produced before the Magistrate for confession six days later. The confession was retracted before the committing Magistrate, and the appellant stated that he had been tortured into making it. Admittedly, the appellant was produced for his confession from police custody and sent back again to police custody after his confession. The Magistrate says that in spite of the fact that he was given to understand that Lala was willing to make a confession ever since 12.8.1951, and that he was produced for the confession only on 18.8.1951, after he had been produced twice before for a remand, no suspicion was aroused in his mind and he did not think it necessary to take any steps to satisfy himself that the confession was being made voluntarily. He further admitted that although it struck him that some time should be given to Lala to compose himself and so to get rid of the fear of the police, he gave him no time whatsoever before proceeding to record his confession. He professes to have asked the accused as to why he was making a confession, but he admits that he did not record either ,the question or the answer given by the accused. Strangely enough, the Magistrate also stated that he committed to writing every question put by him to the accused. In fact, the Magistrate made a mess of the whole thing and does not appear to have been aware of the elementary precautions which a Magistrate should take, and the questions he must put, at the time of recording a confession in order to satisfy himself that the confession was being made voluntarily. The Magistrate in question is a Tehsildar invested with first class magisterial powers. It is essential that he and other Magistrates empowered like him to perform the important task of recording confessions possess the requisite knowledge of how confessions ought to be recorded. The relevant provisions of the High Court Rules and Orders and of the Criminal Procedure Code should be brought to their notice, and even practical Training imparted to them in the art of recording confessions properly.

Another important duty which Magistrates have to perform in the course of police investigation Is that of identification. It may be identification of the accused by prosecution witnesses who profess to have seen him commit an offence at a time When, or in circumstances in which, the power of observation of the witnesses might be questioned, like the offence of dacoit at night, or it may b9 identification of some incriminating articles, e.g. stolen property, by witnesses likely to know who

the owner of the articles is. I have seldom, if ever, come across any such identification having been held by a Magistrate here. Not uneaten the investigating police officer arrogates to himself the performance of this function. These identifications are, of course, not substantive evidence by themselves, but they afford good corroborative evidence to give authenticity to prosecution witnesses. This is another branch of their duty in which Magistrates here might well be given a practical training. So far as the contention of the appellant in the present case is concerned, I agree with the learned Sessions Judge in holding that the confession did not appear to be voluntary and was therefore inadmissible in evidence. The learned Government Advocate referred to the questions put to the appellant by the Magistrate before recording his confession and contended that those questions and the answers given to them by the appellant were sufficient to show the voluntary nature of the confession. These questions were whether the appellant knew that he was not bound to make the confession and that if he made a confession it may be used as evidence against him, and whether after understanding both these facts he was giving his statement, voluntarily, to each of which the appellant purports to have replied in the affirmative. The' learned Government Advocate cited - Jhiktu. Bhogta v. Emperor AIR 1942 Pat 427 (A), where also the questions and answers were in effect the same and it was held that the accused having made his statement after telling the Magistrate that he was making it voluntarily, it was not necessary to put any further questions to him. This was held in answer to the argument put forward in that case that the Magistrate had not put a sufficient number of questions in order-to find out whether the confession was being made voluntarily. If that were the only objection here it might have been possible to hold that the confession was voluntary. I have, however, shown above that even the elementary precautions for satisfying himself that the confession was being. made voluntarily were not taken by the Magistrate in the present case, and that there were other circumstances immediately preceding the production of the appellant before the Magistrate for fits; confession which militated considerably again it the confession being a voluntary one. In such circumstances, the mere putting of the said stereo' typed questions cannot be held to render the confession voluntary, and therefore the ruling relied upon by the learned Government Advocate has no application.

4. The extra-judicial confessions have been-discarded by the learned Sessions Judge on the ground that the statements of the prosecution witnesses who speak about those confessions do not tally with each other. The learned Government Advocate contended that all the witnesses agree at. least so far as the most material part of the confession goes, namely, that the appellant had murdered Prabh Dayal. And in support of his argument he cited - Nur Ali v. Emperor AIR 1924 Lah 493 (B). It was held to that case that where a witness reproduces the substance of the admission and the evidence of that witness is reliable, it should not be discarded merely because actual words of the confession had not been reproduced. That was a case where only one prosecution witness had related the extra-Judicial confession. In the present case a number of witnesses have spoken about the extra-judicial confessions which the appellant is said to have made on both the said occasions, and although, no doubt according to each witness the appellant admitted having murdered Prabh Dayal there appear discrepancies in their statements in regard to a material particular, i.e. whether the appellant had used a hatchet in committing the murder. Each witness describes the confessions in different words, and one of them, Kanshi Ram (P. W. 12) put into the month of the appellant a statement which does not find place in any of the versions of the confessions given by the other witnesses, i.e. "whatever is done is done". It appears therefore that in speaking of the extra-judicial

confessions the witnesses were drawing upon their imagination. I would, therefore, on the whole, agree with the learned Sessions Judge in discarding the prosecution evidence regarding extra-judicial confessions.

5. To the category of evidence worthy of being discarded I would also add that relating to the recovery of a blood-stained shirt from the person of the appellant. (After criticizing the unexplained delay caused in detecting the blood-stains on the shirt and its recovery on the morning D/- 11.8.1951 his Lordship proceeded:) The prosecution in this case does not, however, suffer by the rejection of the judicial and extra-judicial confessions and the evidence relating to the recovery of a blood-stained shirt from the person of the appellant. The rest of the evidence is, in my opinion, well founded and it brings the guilt home to the appellant. I shall take up the evidence of the eye-witnesses Chaudhari (P. W. 15) and Mangtu (P. W. 16) first. The most detailed version of the occurrence appears in the statement of the former. A reference to the sketch Ex. P.R. shows that his house is between 16 and 17 yards from the house of the appellant, the said thoroughfare running in between the two houses. Chaudhari describes the incident as follows. It was between 9 and 10 p.m. when Frabh Dayal arrived and called him, lie had a torch in his hand and told the witness that he was going to Lohkti to ask for his help for pouching his fields. Prabh Dayal asked the witness also for that, help. The witness then requested Prabh Dayal to give his cock. Prabh Dayal refused and said that the witness's neighbour beat the cock. While referring to the neighbour Prabh Dayal used abusive language involving the neighbours mother. Lala (the appellant), who was at that time smoking at his house, retorted, addressing Prabh Dayal and abusing in the same terms: "Stop there, who can beat the cock". Thereupon there was an altercation and an exchange of abuses between the two. The witness came out of his house and saw Lain coming out of his house with a hatchet and running after Prabh Dayal. Prabh Dayal was at that time proceeding towards Lohku's house. Lala challenged Prabh Dayal to stop. Prabh Dayal accepted the challenge by asking the appellant to come on and by retracing his steps. Prabh Dayal was flashing his torch light and it was a moonlit night. Lala continued to proceed towards Prabh Dayal and, when he met behind the house of Narainu. Lala gave a blow with the hatchet on the right side of Prabh Dayal's neck. Immediately on receiving the blow Prabh Dayal fell down, and thereupon Lala returned towards his house with the hatchet in his hand abusing Prabh Dayal and muttering the while that he had cut him down. (Then his Lordship considered in detail the evidence of two more eyewitnesses namely Mangtu (P. W. 16) and Gonju (P. W, 18) and the criticisms levelled against their testimony and held (1) that the testimony of these three witnesses fully established the not that after an altercation and exchange of abuses between the appellant and the deceased the former ran after the latter with a hatchet and gave him a blow on the right side of the neck as a result of which Prabh Daval died almost, instantaneously and further (2) that the prosecution evidence regarding recovery of a blood stained hatchet at ,the t house of the appellant at the time of his arrest soon after the commission of the crime was worthy of credence, and that the recovery was a piece of strong circumstantial evidence against the appellant).

6. The immediate cause of the murder was the altercation and exchange of abuses between the deceased and the appellant, but, according to the prosecution, the predisposing cause was ill-will between the two due to the deceased's actual or suspected illicit connection with the wife of the appellant. Two prosecution witnesses were produced for proving this motive, i.e. Kanshi Ram (P. W. 12) and Tota Ram (P. w. 13), both residents of Pantehra. They have both stated that some time

before the occurrence they had warned the deceased at the instance of the appellant not to molest the latter's wife. The deceased's widow Mt. Ajudhya (P. W. 12) stated in cross-examination that she never heard of illicit connection between her husband and the appellant's wife. But she stated in the Court of committing Magistrate that they were not on speaking terms with the appellant, and that they were not on speaking terms with the members of the family of the appellant since even before people made false accusations. It was the learned Counsel for the appellant himself who in the Sessions Court drew the attention of the witness to this statement of hers in the Court of the committing Magistrate and elicited the further answer from height that statement was correct, she further stated that her statement in the Sessions Court about her having never heard of any illicit connection between her husband and the appellant's wife, was also correct. There is, however, no con. tradition between the two statements so that whilst she may have never heard of actual existence of illicit connection between her late husband and the appellant's wife, it may yet be a fact that the members of the two families were not on speaking terms and that people accused the deceased of having had illicit connection with the appellant's wife, which accusation the witness did not believe to be true. The statement of the deceased's wife in the committing Magistrate's Court elicited in her cross-examination in the Sessions Court by the learned Counsel for the appellant himself therefore lends support to the testimony of the aforesaid prosecution witnesses Kanshi Ram and Tota. The learned Counsel for the appellant contended that this motive was not mentioned in the first information report, and that none of the prosecution witnesses who assembled at the scene of occurrence immediately after the murder stated that the said two witnesses disclosed this motive at that time. That was, however, a time when people must have been excited on account of the murder which had been committed only a short time previously, and on account of the arrest of the appellant and the recovery of a blood stained hatchet from his house. It was. therefore, scarcely a time when Kanshi Ram and Tota could be expected to have sat down in a reminiscent story-telling mood in order to relate the incident of their having been once requested by the appellant to convey to the deceased the message of not molesting his wife. And this non-disclosure of the actual or suspected illicit connection prior to Didu lam-bardar's departure to the police station was responsible for the omission of its mention in the first information report. Moreover, first information report is not a document in which each and every relevant fact connected with the prosecution should find mention. As its name implies, it is only the first information given to the police with regard to the commission of the crime. That being so, motive for the airier is not, a necessary part of the first information report. I am of the opinion that actual or suspected illicit connection between the deceased and the appellant's wife as a motive for the crime has been sufficiently established by the prosecution. At the same time, I must say that in view of the direct eye-witness evidence relating to the murder in the present east the prosecution need not have proved any motive. Whether there did, or did not, exist any predisposing motive, the fact remains that commission of the offence has Incontrovertibly been established by direct evidence.

7. Lastly, a word about the actual offence committed by the appellant, which will dispose of the argument of the learned Counsel for the appellant that the sentence imposed in this case is excessive. As adverted to above, the learned Sessions Judge has acquitted the appellant of the offence punishable under Section 302, I.P.C., and convicted and sentenced him of the offence under the second paragraph of Section 304, I.P.C. giving appellant the benefit of Exception 1 to Section 300, I.P.C. The learned Sessions Judge has interpreted the reference to a cook in the talk between

Chaudhari (P. W. 15) and the deceased as a reference to the wife of the appellant. The learned Sessions Judge was, therefore, of the opinion that the appellant was cut to the quick by the taunting reference to his wife in the talk between the deceased and the aforesaid prosecution witness. The reference to a cock in the said conversation is unintelligible, and from the fact that it provoked the appellant it is possible that the interpretation of the learned Sessions Judge was correct. But that interpretation was at best merely a matter of conjecture. The best thing would have been to ask Chaudhari (P. W. 15) to explain the true import of the said enigmatic conversation between him and the deceased, but no question was put to him on the point. The said enigmatic conversation must, therefore, be held to have remained unexplained. This much, however, is certain that in the course of the said conversation with Chaudhari (P. W. 15) the deceased referred to the neighbour of the witness in an extremely foul and abusive language involving his mother. The appellant, who was then having a smoke at his house, and being a neighbour of Chaudhari witness, took the abusive language as applying to himself with the result that he paid the appellant in his own coins. Chaudhuri stated that this led to an altercation and to further exchange of abuses between the deceased and the appellant. When the witness came out of his house hearing the altercation and exchange of abuses, he saw the appellant take a hatchet from his house and run after the deceased. The deceased was evidently at some distance from the appellant at that time, for the witness has stated that the former was proceeding towards the house of Lohku and that the appellant challenged the deceased to stop. Prabh Dayal accepted the challenge and, bidding the appellant to come forward, he retraced his steps. Thereafter the two met at the spot on the thoroughfare at a distance of about 45 yards from the appellant's house where the latter inflicted the fatal blow on the right side of the neck of the deceased with a hatchet. Whether the provocation in any case is grave and sudden enough to prevent the offence from amounting to murder is under the Explanation to Exception 1 to Section 300, I.P.C. a question of fact, and, therefore, to be determined on a correct interpretation of the facts and circumstances of each case. Prom the aforesaid detailed description of the circumstances attending the commission of the murder in the present case it is manifest that the appellant deliberately armed himself with a hatchet and traversed a sufficiently long distance before he inflicted the fatal blow. It is also manifest that if the deceased abused the appellant in a foul manner, the latter paid him back by abusing him in the same terms, and that exchange of abuse between the two continued for some time before the appellant took out a hatchet from His house and ran after the deceased. The provocation was, therefore, neither grave nor sudden, and it cannot be said to have deprived the appellant of the power of self-control. On the contrary, it is clear that the attack was a prolonged and deliberate act actuated by malice pretense due to actual or supposed illicit connection between the deceased and the appellant's wife. The atrocity of the offence of murder was not, therefore, mitigated in the present case under the aforesaid Exception, and the learned Sessions Judge was in error in holding that the appellant was not guilty of the offence punishable under Section 302, I.P.C. There is, however, no Government appeal against the appellant's acquittal of that offence, and he must thank his stars that he has escaped the legal consequences of his act. No question of reduction of sentence, therefore, arises. For the same reason, the rulings cited by the learned Counsel for the appellant, i.e. - Ghauns v. Emperor AIR 1931 Lah 523 (2)(C), and - Parida v. Emperor AIR 1933 Lah 851 (2)(D), have no - application since they were clear cases of an offence under Section 304, I.P.C.

8. The appeal is dismissed and the conviction and sentence pf the appellant are maintained.