Chatru And Ors. vs The State on 15 December, 1952

Equivalent citations: 1953CRILJ708

JUDGMENT

Chowdhry, J.C.

1. Chatru, Bhandaru, Biru, Dittu and Mehta were tried by the learned Sessions Judge of Bilaspur under Section 302, Penal Code, for the murder of one Bhangi, and the said five person and Bhangi's son Maru under Section 201, Penal Code, for causing disappearance of evidence of the said offence by burying the dead body. He acquitted them of the offence under Section 302 but convicted them of that under Section 201, Penal Code, sentencing each to 7 years' R.I. and Maru to a fine of us. 1000 or six months' R.I. in default and the remaining five to a fine of its. 500 each or three, months' E.I. in default of payment of fine. An the six have appealed to this Court.

2. The deceased Bhangi, aged about 55, had illicit connection with Mt. Prabhi (P. W. 1), aged 25, wife of Pillu (P. W. 4). Mehta accused is a first cousin of Pillu. The prosecution case is that in the absence of Pillu, who had gone to Bhakra, Bhangi went to his house on 19.7.1951 to have sexual intercourse with Mt. Prabhi, but the latter refused to comply with his wishes. He went back saying that he would come to her again the following evening. Mehta asked Mt. Prabhi as to the cause of Bhangi's visit, and she told him what had transpired. The following night, i.e., on the night between 20th and 2.7.1951, Bhangi again visited Mt. Prabhi, and as he was making overtures to her, Mehta and the other appellants except Mara rushed in, pinned him down, struck him on the neck with a stone, gagged and strangled him and crushed his testicles. As a result of these injuries, Bhangi died then and there.

Thereafter the culprits wrapped the dead body with two nots and a tarpaulin, bound it with a rope and hanging it on a bamboo pole carried it to the house of Maru. From there Maru as well as the remaining five took the dead body to a forest and buried it along with its wrappings. The motive for the crime is said to be ill-will between the appellants and the deceased. It is alleged that the five appellants other than Maru were his tenants, and that ho had ejected them from their holdings. As regards Maru, it is alleged that the deceased used to treat him harshly, and that Maru resented his father's illicit connection with Mt Prabhi.

3. Achhru (P. W. 9) filed an application before the Superintendent of Police on 1.8.1951 that Bhangi was not traceable. More than a fortnight later, H.C. Rup Lal (P. W. 12) with constable Behari Lal (P. W. 11) went to the deceased's village in order to make a search for him. The following morning the head-constable suddenly examined Mt. Prabhi (P. W. 1) and Mehta appellant and this led to the discovery of the dead body the same day at the instance of Mehta. Mehta was arrested on that very day and the remaining five appellants on 23.8.1951. The confessions of four of the appellants were recorded on 26.8.1951 and of the other two on 27.8.1951 by Sri Sant Earn Magistrate, first class (P. W. 14).

4 All the six accused were challaned and pro. diced before the committing; Magistrate along with prosecution witnesses on 3.9.1951. The hearing was adjourned to 10.9.1951 and the prosecution witnesses were bound down accordingly. On 4.9.1951 S.I. Gokul Ram (P. W. 18), who was in charge of the investigation in its later stages, got the statements of Mt. Eonku (P. W. 2), Mansa Ram (P. W. 5) and one Mt. Santi, who was produced as a prosecution witness in the committing Magistrate's Court but not in the Court of Session, recorded under Section 164, Cr.P.C. Sri Sant Earn, Magistrate, first class, (P. W. 14), who recorded these statements, deposed that the police officer did not inform him that a charge-sheet had already been submitted. The S.I. acted illegally in getting the statements of these witnesses recorded under Section 164 of the Code after the investigation had ended and the inquiry before the committing Magistrate had commenced.

From the said statement of the Magistrate, it further appears that the police officer did so with the ulterior object of binding the witnesses down to certain prearranged statements. (His Lordship referred to the evidence and proceeded) : It is manifest therefore, that it wag not merely an illegality that was committed by S.I. Gokul Ram in getting the statements of some of the prosecution witnesses recorded under Section 164, Criminal P.C. after the commencement of the inquiry, but that he was trying to produce suborned witnesses, including the most important witness Mt. Prabhi (P. W. 1), who was the only eye-witness to the occurrence of murder. The entire prosecution evidence must, therefore, be viewed with suspicion.

5. Before considering whether the essential ingredients of the offence under Section 201, Penal Code, have been established, it must be seen as to what is the material on the record to be drawn upon. In acquitting the appellants of the offence under Section 302, Penal Code, the learned Sessions Judge has totally discarded the testimony of the only eye-witness Mt. Prabhi (P. W. 1), and also those portions of the confessions of the appellants which relate to that offence.

He has, however, found the appellants guilty of the offence under Section 201, Penal Code, because he was of the opinion that the confessions were Worthy of credence so far as they related to this latter offence since they stood corroborated by the circumstantial evidence of the discovery of the dead body of Bhangi at the instance of Mehta appellant and of identification of the nets, tarpaulin, etc., with which the dead body was wrapped immediately after the murder and which were recovered with the dead body when it was exhumed.

6. One of the grounds on which the testimony of Mt. Prabhi (P. W. 1) was disbelieved by the learned Sessions Judge was that she was no better than an accomplice so far as the offence of murder was concerned. The learned Government Advocate did not challenge that finding, but he argued that as she was not found an accomplice in connection with the offence under Section 201, Penal Code, her testimony is worthy of belief so far as that offence is concerned. I do not think that the testimony of an accomplice witness can be split up in that manner.

The testimony of an accomplice witness is a tainted one, and that taint is not removed in respect of a particular offence simply because he had no art or part in the commission of that offence although his complicity is clear in respect of another offence, the two offences having been committed in one series of acts so connected together as to form the same transaction. The learned Government

Advocate cited in this connection Chhotelal v. Emperor A.I.R. 1933 oudh 269, and Emperor v. Husaini A.I.R. 1934 oudh 506. Neither of these two rulings, however, dealt with the case of an accomplice witness. Mt. Prabhi's evidence being no better than that of an accomplice, it does not really take us further because it stands in need of corroboration. The rest of the evidence is, therefore, to be looked into in order to find whether any such corroboration exists.

7. Coming to the confessions, the learned Sessions Judge was of the opinion that as they had been retracted it. the earliest opportunity in the committing Magistrates Court, their credibility even against the makers thereof depended upon whether they had been corroborated in essential particulars by other independent evidence on the record. He found no such corroboration so far is the offence under Section 302, Penal Code, was concerned, but, as adverted to above, ho did find those portions of the confessions as related to the offence under Section 201, Penal Code, corroborated by the circumstantial evidence of discovery of the dead body at the instance of Mehta appellant, and of the said articles. In other words, he has accepted parts of the confessions and rejected the rest.

The learned Sessions fudge has not, come to a finding in so many words as to whether the confessions were voluntary, but he has recorded a finding that they had been recorded in a faulty manner by Sri Sant Ram Magistrate first class (P W. 14). He did not express any specific opinion as to what the effect of that faulty manner of recording the confession was. In fact, he has passed over the matter by simply remarking that it was due to the inexperience of the Magistrate.

The defects pointed out by the learned Sessions Judge were that the appellants were produced before the Magistrate from police custody, that they were in handcuffs while their confessions were being recorded, that after their confessions they were again sent back to the police custody, that only 15 to 20 minutes were given to the appellants to compose themselves, that even with regard to the giving of this time the Magistrate made no record, that the Magistrate put no questions to the accused as to why they were making the confessions, and that although he explained to them the difference between a Magistrate and a police officer he did not expect them to understand the difference.

Such being the facts and circumstances attending the recording of the confessions, the statement of the Magistrate that he had satisfied himself that the confessions were being made voluntarily cannot be accepted. It may be that the learned Magistrate was really so satisfied, but the only reasonable inference deducible by a Judge from those facts and circumstances is that the confessions were not made voluntarily. And this was the conclusion which the learned Sessions Judge should also have drawn after noting down in extenso the said facts and circumstances. The fact of the confessions not being voluntary in the present case is, however, not merely a matter of inference from the circumstances attending the recording of those confessions.

As adverted to above (evidence omitted), it has been established positively from the testimony of the prosecution witness Mt. Ronku (P. W. 2) her. self that the accused were beaten and maltreated in order to induce them to make the confession. It is a little interesting to note that for more than a month after the commission of the crimes none of the appellants was impelled to make a confession,

but that they should all have been seized with an epidemic of remorse within a week of their arrest and whilst they were in the custody of the police. I am clearly of the opinion that the confessions in the present case were brought about by torture, and that they were anything but voluntary. That being so, the confessions came under the mischief of Section 24, Evidence Act, and were, therefore, wholly inadmissible in evidence. The learned Sessions Judge was, therefore, not justified in accepting any portions of the confessions.

8. As regards the discovery of the dead body on 18.8.1951, the utmost that can be said in favour of the prosecution is that it was discovered on being pointed out by Mehta appellant, although from the manner in which the police have been tampering with the prosecution evidence and forcing confessions I am not inclined to place much reliance upon the testimony of the prosecution witnesses of recovery on that point. Mehta is said to have made a certain statement before discovering the dead body, and it was argued by the learned Government. Advocate that that statement established the fact of the dead body having been buried by Mehta and the other appellants.

This alleged statement of Mehta has been sought to be established by the prosecution from the testimony of two witnesses of recovery, Santokh Singh (P. W. 6) and Ranjit Singh (P. W. 7), and from a written record of that statement made by H.C. Rup Lal (P. W. 12). Now, it was incumbent upon the prosecution to prove the exact statement made by Mehta. This it has failed to do because the said two witnesses have given materially different versions of that statement. According to Santokh Singh (P. W. 6), Mehta stated that he could point out the spot where Bhangi deceased's body was buried. According to Ranjit Singh (P. W. 7), Mehta stated that he could discover the dead body of Bhangi deceased since he along with four others, i.e. with Dittu, Maru, Bhandaru and Chatru, had buried the dead body. The former witness says nothing as to Mehta having stated that he or anybody else had buried the dead body.

There is no reason why the testimony of Ranjit Singh (P. W. 7) should be believed in preference to that of Santokh Singh (P. W. 6), And if the testimony of only the latter witness is believed, nothing more can be imputed to Mehta appellant than a knowledge of the spot where the dead body was buried. In point of fact, even if there were no such two discrepant statements on the record, but only the testimony of Ranjit Singh (P. W. 7), the portion of his statement where he says that he and four of the other appellants had buried the dead body would not be strictly admissible under Section 27, Evidence Act. It was laid down by their Lordships of the Privy Council in Pulukuri Eottaya v. Emperor A.I.R. 1947 P.C. 67, as follows:

> It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced. The fact discovered embraces the place from which the object is produced, and the knowledge of the accused as to this, and the information given, must relate distinctly to this fact. Information as to past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of ft knife, knives were discovered many years ago. It leads to the discovery of the fact that a knife is

concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

The only portion of the statement of Mehta, as related by Ranjit Singh (P. W. 7), which relates distinctly to the discovery of the place from which the dead body was produced, and even the know ledge of that accused as to that fact, was to the effect that he could point out the spot where the dead body of Bhangi deceased was. The reason which Mehta is said to have given further for possessing that knowledge could not be said to have had anything to do with the discovery of the dead body It is noteworthy that in giving this reason Mehta is not said to have named the exact spot where the dead body was buried. That spot was subsequently disclosed by him by leading the police party there and exhuming the dead body.

As adverted to above, however, in view of the materially different statements given by the said two prosecution witnesses, and in the absence of any reason for preferring the statement of Ranjit Singh (P. W. 7), I must accept the statement most favourable to the defence, i.e., the statement of Santokh Singh (P. W. 6), and, as stated above, that statement does nothing more than show that Mehta appellant only know where the dead body was buried.

9. As regards the written record, Ex. P-C./1 of the statement of Mehta, it is admitted by H.C. Rup Lal (P. W. 12), who committed it to writing, that he had already recorded a statement of Mehta, in which the accused had disclosed everything, and that the said previous written statement of Mehta was not on the record. That being as, the subsequently recorded statement Ex. P-C./1 could not be said to be the statement which led to the discovery of the dead body, and, therefore, it is not admissible in evidence, Chenna Reddi In re, A.I.R. 1940 Mad. 710.

10. As regards the recovery of the nets, tarpaulin etc., their evidentiary value will depend upon the prosecution being able to establish two facts : firstly, that the dead body was wrapped with those articles immediately after the murder and, secondly, that it was still so wrapped when the dead body was exhumed. The latter fact may be said to have been established by the testimony of the said witnesses of recovery, but not the former. The evidence on the first point consists of the testimony of Mt. Prabhi (P. W. 1), but that evidence has already been discarded and is not corroborated. There is also the testimony of Mt. Prabhi's husband Pillu (P. W. 4), who identified the said articles as belonging to him. The evidence on this witness is again unworthy of credence since admittedly these articles had already been shown to him by the police.

S.I. Gokul Ram (P. W. 4) adopted the unique procedure of himself holding an identification parade of these articles. An identification parade, if it has to have any value, must be held by a Magistrate, and, in the absence of the police. The learned Government Advocate referred to two rulings in this connection, viz. Mor. Mahomud v. Emperor A.I.R. 1940 sind 168 and Samjiah In re, A.I.R. 1948

Mad. 113, but neither of these two rulings countenances the holding of an identification parade by the police. If then the articles in question had already been shown by the police to Pillu (P. W. 4), his identification of these articles in Court loses oil value since he will be deemed to have identified those articles in Court by reason of the police having already pointed them out to him.

11. To sum up, therefore, all that the prosecution will be deemed to have established in the present case is that a dead body was discovered at the instance of Mehta appellant. The prosecution has even failed to establish that the dead body in question was that of Bhangi. (His Lordship referred to the evidence and proceeded :) All that can be said therefore is that Mehta appellant discovered a certain dead body, but not that it was the dead body of Bhangi. There is nothing to show as to how deep the dead body was buried. It may be that it was not buried deep, and that, attracted by the foul smell, Mehta appellant came to know where it was buried.

12. From all that has been stated above, it is clear that the prosecution totally failed to establish the essential ingredients of the offence under Section 201, Penal Code. The prosecution has failed to establish that an offence had been committed since it has failed to prove that Bhangi had been murdered, that any of the appellants knew or had reason to believe that any such offence had been committed, or that any of them caused evidence thereof to disappear.

The utmost that can be said to have been established is that one of the appellants Mehta know where a certain dead body was buried. The conviction of the appellants for an offence punishable under Section 201, Penal Code, is therefore wholly unsustainable. The appeal is allowed, their conviction is set aside and they are acquitted of the offence under Section 201, Penal Code, as well. All the appellants are on bail; they need not surrender, and their bail bonds are discharged.