Chhotey Lal vs State Of Uttar Pradesh on 14 December, 1953

Equivalent citations: 1954CRILJ1445

JUDGMENT

Mukerji, J.

1. This is an appeal by Chhotey Lal who has been convicted under Section 19(f) of the Arms Act and has been sentenced to 18 months' rigorous imprisonment.

2. Chhotey Lal stood his trial before the learned Sessions Judge of Pilibhit along with three other persons, Bam Bharosey Lal, Rajendra Kumar and Avadh Behari Lal for offences punishable under Sections 304/34 and Section 394, I.P.C. The facts on which the aforementioned charges were made against the four accused who stood a joint trial, before the Sessions Judge of Pilibhit were that they killed one Lala Nanhey Mal on 3-7-1950, when he was going to the railway station in the small hours of the morning to catch a train for Bareilly. Lala Nanhey Mal had on his person a large sum of money and with him there was another man named Ramesh Chandra who also carried a part of the money of Lala Nanhey Mal. These two people were surprised by some persons, according to the prosecution by the four accused, and thereafter Nanhey Mal was stabbed and Ramesh Chandra was robbed.

The prosecution tried to prove the charges against all the accused, taut they were unable to satisfy the trial Judge with regard to any of the charges save the one under Section 19(f) of the Arms Act against the appellant before me. As a consequence of the findings arrived at by the trial Judge all the four accused were acquitted of the charges under Sections 302/34 & Section 394, I.P.C. The learned Judge, however, has as already mentioned, convicted the appellant under Section 19 (f) of the Arms Act because in his view the evidence in the case established the fact that the appellant possessed a country made pistol.

3. After the outrage on Nanhey Mal the police got busy tracing the culprits and it appears that Chhotey Lal, the appellant, was one of the suspects in the crime. Chhotey Lal was taken into police custody, though not actually arrested, and he was subjected to an examination by the investigating officer. It appears that the investigating officer expected Chhotey Lal to make some startling revelations and he, therefore, had a Tahsildar. Magistrate called to hear these. The accused made a statement before the Tahsildar Magistrate, namely, Sri Kailash Chandra and the police officer to the effect that he had dropped a pistol in a ditch and that he was going to take the party to the ditch so that the pistol may be discovered therefrom. The pistol was as a consequence of the statement actually discovered before the Tahsildar Magistrate and a few other witnesses as also in the presence of the investigating Officer in whose custody the accused apparently was at that time.

4. At the trial witnesses deposed to the statement having been made by the accused and to the discovery having been made as a direct consequence of that statement.

5. It was argued by Sri Roop Kishore Srivastava that the statement of the accused that he threw the pistol into the ditch could not be proved under. Section 27 of the Evidence Act for, according to learned Counsel, only the statement that the pistol was in the ditch could be proved. I am unable to accept this contention because of the view expressed by a Bench of this Court in Emperor v. Chokhey AIR 1937 All 497 (A). That was a case in which the facts were almost similar to the facts of the present case and it was there held that the whole of the statement of an accused which occasions the discovery can be proved. In the reported case the statement of the accused that was permitted to be proved was this : "I have buried a gun at such and such a place." In the present case the statement of the accused is similar, namely, that he had thrown a pistol in such and such a ditch.

If the statement of the accused in the former case could have been proved under Section 27 of the Evidence Act then I do not see why the statement of the accused in the present case cannot be so proved. A similar view was taken by their Lordships of the Privy Council in the case of Pulukuri Kottaya v. Emperor', reported in AIR 1947 PC 67 (B).

6. Learned Counsel raised another argument in regard to the applicability of Section 27 of the Evidence Act to the statement of the accused, namely that Section 27 applied only where it was proved that the accused was in the custody of a police officer and not otherwise. There is no doubt that Section 27 of the Evidence Act is applicable only where a statement is made by an accused in police custody and not otherwise. What learned Counsel tried to argue thereafter was that in this case the accused was not proved to have been in police custody. He relied on the statement of the Tahsildar Magistrate when he said that "the accused was not in police custody taut they kept a watch over him". It must be pointed out that there is distinction between an accused being "under arrest" and an accused being in "custody". It has been pointed out by a Bench of this Court in the case of Maharani v. Emperor', reported in AIR 1948 All 7 (C), that the word 'custody' in Section 26 or 27, Evidence Act, does not mean formal custody, but includes such state of affairs in which the accused can be said to have come into the hands of a police officer or can be said to have been under some sort of surveillance or restriction.

I am in respectful agreement with the view expressed by the Bench in Maharani's case, (C)'. On the facts as proved in this case it is clear to me that Chhotey Lal was under surveillance of the police. He was in a state in which he could not break away from the company of the police officer and get away. I have no doubt that he was in police custody within the meaning of Section 27 of the Evidence Act.

7. On the evidence I am satisfied that the accused did make the statement ascribed to him and that a country made pistol was actually recovered from the pond which was pointed out by the accused. A question was further argued as to whether under these conditions it could be said that the accused had 'control' or 'possession' of the fire-arm. A similar question arose in the case of Chokhey Lal, (A)', which has already been noticed by me and the Bench had no hesitation in answering the question against the accused. It was held that under circumstances where an accused conceals an incriminating object although such concealment is in a place which may be accessible to others then

"the accused is to be deemed in the eye of the law to be in possession and control...."

In this case Chhotey Lal had thrown the pistol inside a pond and the pistol lay there without arousing the suspicion of anybody. Nobody could get at the pistol without Chhotey Lal telling him that the pistol was inside the pond, indeed it took some time before the pistol was actually recovered from the pond. Under these circumstances I must hold that Chhotey Lal would be deemed to have the necessary possession of the pistol as contemplated by Section 19((f) of the Arms Act.

8. In the result this appeal must fail and is hereby dismissed. The conviction and the sentence of the appellant, is affirmed. The appellant is on bail. He must forthwith surrender to his bail and serve out the rest of his sentence.