

ALLAHABAD HIGH COURT

Balku

Vs

Emperor

(Bennet, J.)

13.06.1938

JUDGMENT

Bennet, J.

1. This is a reference by the learned Sessions Judge of Farrukhabad of a sentence of death which he has passed on one Balku, aged 25 years, a Teli of the town of Kanauj in Farrukhabad district. The learned Sessions Judge states that he finds no extenuating circumstances in this case. Now the first complaint was made by Manni of Singhri in Thatia Thana on 19th September 1937 after 7 A.M., and he sets out that on Monday, that is on 13th September, the accused Balku, who is his son-in-law, came to him to take his wife home, Mt. Nanhi, daughter of Manni, and that on the same day the deceased Budhu Teli, who is the husband of the sister of Manni, also arrived. Balku, accused, asked that his wife should be sent with him and Manni stated that if he returned after ten days she would be sent. The accused still insisted and Budhu said : " Shut up, who are you to take her? I will not send her." On this, words were exchanged between Budhu and Balku. After taking food Budhu and Balku, accused, slept on one charpai and Manni slept on another outside the door. Budhu and Balku continued to exchange words. At midnight Budhu suddenly cried out "Balku is killing me." Manni got up and his wife, his daughter Nanhi and Khiali and Rupan who are witnesses, and one Bhoora Teli who is not, came up and saw Balku inflicting injuries on Budhu with a knife. Manni wanted to catch hold of Balku but he rushed at them with a knife and they stood aside and he escaped. People of the village then came up but they could not find Balku. Budhu was dead. Now when the Sub-Inspector arrived at the village about 7 A.M. he found that Balku had been caught and the knife, Mx. 1 was handed up by Bupan Kachi who stated he had recovered it from Balku. The evidence of witnesses shows that in the morning Balku was found in the fields and ten or twenty villagers went to him and persuaded him to come to the door of Manni and the witness Bupan snatched the knife from him. There is evidence called of Manni Lal and Rupan and Khiali Bam who say that they saw Balku striking Budhu that night with a knife. The reason for this assault is given by the witnesses as the refusal of Manni and Budhu to allow Mt. Nanhi to go back with her husband to his home and this has been accepted by the learned Sessions Judge, Mr. G.P. Verma. The accused was placed before a

Magistrate as early as 24th September and he made a statement in great detail as to how he killed the deceased which agrees with the version given by the prosecution witnesses. He also states: Then Budhu got up and went inside and closed the door. I at once got up and peeped through the chink of the door and saw that Budhu was committing adultery with my wife Mt. Nanhi. I returned to my oharpai and lay down on it. I could not do anything there as the door was closed. When he (Budhu) returned after committing the act, he lay down on my charpai and the door loaves were chained from inside. I could not do anything to my wife then. I remained lying for a short time and when Budhu began dozing, I stabbed him with a knife as I had seen him depriving me of my honour. Budhu was 4.0 years of age and my wife is 16 or 17 years of age.

2. In the Court of the committing Magistrate he again stated : "I killed him by stabbing him with a knife as I had seen him committing adultery with my wife." He admitted he was wearing the clothes which were found to be stained with blood. When the case came to the Sessions Court he pleaded guilty but the Court heard the evidence. The Court observes : "Who pleads guilty, but the accused is to be tried as murder is a technical offence." Possibly what the Court meant was that the accused said he had killed the deceased and it was necessary to hear the evidence to come to a determination as to what would be the offence. To the Sessions Court the accused again admitted that he made the confession and stated that Budhu committed sexual intercourse and so he killed him, and again in his petition to this Court the accused has stated: I saw with my own eyes from a hole in the door that Budhu was committing the bad act with Mt. Nanhi. I could not tolerate it. I killed him and made a confession, but my statement was recorded incorrectly in the Court. No man can bear to see his wife having sexual intercourse with another man.

3. Now the Judge has gone into the question of this plea of the accused about sexual intercourse and the Judge has come to the conclusion that no sexual intercourse took place between Mt. Nanhi and the deceased Budhu. (After examining evidence on this point their Lordships proceeded further.) The sequence of this story is perfectly natural and we consider that the admissions of the witnesses in regard to the conduct of Budhu and the circumstances of the two women inside the house is quite sufficient confirmation of the story told by the accused. It is not likely in our opinion that the mere refusal to allow his wife to return which had been made on several occasions would have been sufficient reason for accused to have suddenly taken the action which he did take on that night. Some other and more powerful reason must have operated on his mind to make him attack the deceased in the way in which he did. The medical evidence shows that there were a number of incised wounds on the deceased. One was on the left temple, four wounds were on the arms and five wounds were on the chest. Death was due to shock and bleeding from these incised wounds of the heart and lungs caused by a sharp edged weapon such as the knife produced. It is not stated there in the evidence but it appears that this knife belonged to the accused and was with him. So therefore no period of time was required for the accused to search for the weapon. A point that gave us some doubt is whether the fact that the accused, after having seen the adultery being committed, waited until Budhu had come out and had laid down and begun to doze on the charpoy before he made an attack on him, would have an effect on this

case. The question before us is whether the case comes within Excep. 1 of Section 300, I.P.C., which states as follows:

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation.

4. Now for this Exception the accused must be deprived of the power of self-control by provocation which is not only grave but also sudden. No doubt the accused had to wait some interval before Budhu came out before he could do anything at all, and after Budhu came out the accused who was lying on the charpoy naturally waited a short time before he made a move. He might have sprung up at once and attacked Budhu. But, in practice persons, of this class are somewhat slow movers. When Budhu came into intimate contact with the accused by lying beside him on the charpoy, this must have worked further on the mind of the accused and he must have reflected that "this man now lying beside me had been dishonouring me a few minutes ago." Under these circumstances we think that the provocation would be both grave and sudden. We have been referred to *Abalu Das v. Emperor* (1901) 28 Cal. 571, where there was a case in which it was held that when certain accused persons had the provocation of seeing adultery being committed by the deceased with the wife of one of them, the provocation would be considered to be grave and sudden after an interval during which the deceased man was taken to a certain distance before being assaulted. We think that in the present case Excep. 1 will apply and accordingly we reduce the conviction from one under Section 302, I.P.C., to one under Section 304, I.P.C. We sentence the accused to five years' rigorous imprisonment and we acquit him of the offence under Section 302, I.P.C., and we allow the appeal to this extent. We consider that Mr. G.P. Verma has not tried this case with the care and capacity which we expect in a Sessions Judge and we trust that he will display more care in future.

