

PATNA HIGH COURT

Dasrath Paswan

Vs

State of Bihar

Criminal Appeal No. 58 of 1956

(Sahai and H.K. Chaudhuri, JJ.)

14.11.1957

JUDGMENT

H.K. Chaudhuri, J.

1. Appellant Dasrath Paswan was convicted for the murder of his wife and sentenced to transportation for life by the learned Sessions Judge of Muzaffarpur. The trial was held with the aid of four assessors, all of whom found the appellant not guilty. The learned Judge disagreed with this opinion.

2. The prosecution case is that the appellant, a resident of village Etwarpur Pakri, was a student of class X. His academic record in school was unsatisfactory. He had failed at the annual examination for 3 years in succession. The deceased, his wife, was aged about 19 years. It appears that she was a literate woman. The appellant was very much upset at these failures. He took his last failure so much to heart that he left home and remained away from the village for about a week prior to the occurrence. On return home after a week he told his wife that he had decided to end his life. His wife told him in reply that he should first kill her and then kill himself. This talk took place at about 8 a.m. on 13-6-55. That morning the parents of the appellant had gone out early in the morning to work in the fields and there was nobody else in the house besides the appellant and his wife. In accordance with the pact, about an hour later, the wife spread a mat on the floor in one of the rooms in the house and lay down quietly. The appellant at first struck her with a bhala causing a minor injury on her chest. Then he took up a sharp-cutting hasuli and gave her three violent blows on the neck killing her on the spot. He then ran out of the house with his bloodstained clothes in order to end his own life when he was detected on the village chawar, at a little distance from the house, by Mathura Paswan, a boy aged 12 years (P. W. 12), who was tending his goat in the vicinity. Seeing his blood-stained clothes the boy ran to the appellant's house and saw the dead body of appellant's wife lying there in a pool of blood. He then rushed to the appellant's father and informed him of the occurrence, Paldhari Hazra (P. W. 15), the father of the boy, who also happens to be the choukidar of the village, asking Birija Sah (P. W. 13), who was working nearby, to chase his son and catch him. He ran to his house where he found his daughter-in-law lying dead with her neck cut. The blood-stained bhala and hasuli were lying by the side of the dead body, Birija Sah (P. W. 13) and Rashbehari

Paswan' (P. W. 7) had in the meantime chased the appellant and brought him under arrest to his house. Soon a large number of villagers collected there and the appellant made an extra-judicial confession admitting that he had killed his wife. Paldhari then went to Lalganj police station which was at a distance of 2 miles from the village and lodged the first information report which was recorded by Assistant Sub-Inspector Rambalak Singh at 11 a.m. in the absence of the senior Police officers. The blood-stained bhala and hasuli which had been carried to the thana by Paldhari were taken charge of by the Assistant Sub-Inspector.

3. The Assistant Sub-Inspector reached the place of occurrence at 1-30 p.m. and found the dead body lying flat on a mat on which a chadar had been spread. He held the inquest and did other preliminary works. He examined the appellant who had been kept tied there. There were bloodlike stains on his dhoti, kurta and ganji. The Assistant Sub-Inspector took charge of these clothes and prepared a seizure list in respect thereof (exhibit 5/1). He then sent the dead body to the Civil Assistant Surgeon of Hajipur for post-mortem examination. The appellant was kept at the thana lock-up at night and forwarded to the Subdivisional Officer of Hajipur next morning at 7-30 a.m. On the 16th June, 1955 he made a confession which was recorded by a Magistrate of the first class at Hajipur. In this confession also he admitted that he had killed his wife and that as he was going to end his own life he was caught by the villagers on the village Chawar.

4. The defense was a plea of innocence. The appellant denied that he had murdered his wife. He further alleged at the trial that his wife had probably been raped by someone and then killed by the miscreant. The present case was alleged to have been instituted by the police in collusion with the village people with a view to screen the real offender.

5. There is no direct evidence to connect the appellant with the crime. In order to prove the charge against the appellant the prosecution has relied upon three items of evidence, viz., (1) his extra-judicial confession before the villagers, (2) his judicial confession, and (3) the circumstance of his having been caught with bloodstained clothes while he was running away after the murder.

6. The learned Sessions Judge did not rely upon the extra-judicial confession as it was admitted by one of the witnesses before him that the dafadar and choukidars were present when this statement was made. In this Court also the learned Additional Standing Counsel has not relied upon this piece of evidence. The extra-judicial confession may, therefore, be excluded from consideration altogether.

7. As regards the judicial confession the learned Sessions Judge was satisfied that it was voluntary and true. This confession, he further found, was also corroborated by circumstantial evidence. This is what he has observed;

"The judicial confession is fairly supported by independent evidence, namely, the production of bloodstained Hasuli and bhala, and the fact that the deceased was found murdered lying on a mat, the chadar spread thereon. It is also supported by the fact that Mahendra (?) saw him in 'chawar.' The accused was arrested immediately with bloodstained clothes as murderer." The Magistrate who recorded the judicial confession is P. W. 10. He stated at the trial that the appellant was produced before him in court from the sub-jail, Hajipur, for recording his statement on 16-6-55 at about 4-30 P. M. The Magistrate removed the constable who had produced him and put the accused in charge of

his bench clerk. He told the accused that he had been produced before him for making his confession. He warned him that in case he made any confession it was likely to be used against him. The appellant was informed that he was not bound to make any confession.

After having thus warned the appellant the Magistrate gave him 30 to 45 minutes to deliberate. Thereafter he again questioned the appellant and gave him the necessary warnings, but the appellant insisted upon making a confession. The Magistrate has deposed that on being satisfied that the appellant was making a voluntary confession he recorded his statement verbatim. The witness read out the statement of the appellant and the latter also read the recorded statement. Thereafter the appellant signed the confession after making an endorsement that he had read it and found it correct, I am satisfied from the evidence of the Magistrate that the questions put by the Magistrate with a view to find out whether the confession was voluntary were appropriate and that he had made a real endeavour to ascertain whether the confession was voluntary. The Magistrate has stated that he had satisfied himself about the voluntariness of the confession. Agreeing with the learned Sessions Judge, I am, therefore, of opinion that the confession made by the appellant before the Magistrate was voluntary and true.

8. Mr. J. N. Varma appearing on behalf of the appellant has attacked the confession on two grounds. He has urged that the Magistrate who recorded it did not give appellant sufficient time for reflection. It was submitted that more time should have been given to the appellant for this purpose, especially because the appellant is stated to have insisted upon making a confession. In this connection learned counsel has referred to the following observations of the Supreme Court in *Sarwan Singh v. State of Punjab*¹, (A);

"However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded".

It has been urged that the time given by the Magistrate to the appellant for reflection in the present case was less than 24 hours. In making the aforesaid observations their Lordships, however, make it clear that it would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case. What their Lordships stressed upon was that it was of the utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. In the reported case the evidence showed that the accused person had been produced before the Magistrate directly from police custody. Further the accused in that case was in police custody for full 5 days without any ostensible explanation or justification before he was produced before the Magistrate. After he was produced he was given only half an hour to think about the statement which he was going to make. The evidence further showed that the Police Sub-Inspector who had taken the accused to the Magistrate was standing in the verandah outside in the Magistrate's office. The Magistrate further admitted that soon after the statement was finished the Sub-Inspector went to

the Magistrate's room again. In these circumstances their Lordships observed that there was no escape from the conclusion that there were material facts in the case which had introduced a serious legal infirmity in the High Court's conclusion that the confession was voluntary. None of these infirmities, however, exist in the present case. The appellant was not produced before the Magistrate from Police custody. He was in Jail custody for more than 24 hours before he was produced in court. Except that the appellant was produced in court from jail by a constable there is no suggestion that any police officer waited nearabout the court-room when the confession was recorded. In these circumstances the time given by the Magistrate to the appellant for reflection appears to me to have been adequate. I am satisfied that the appellant made the confession when he was completely freed from any possible influence of the police and that he made the statement in an atmosphere of freedom from fear.

9. Learned counsel next urged that the confession does not explain the chest injury about which the medical witness has deposed. The chest injury was a very minor injury being a punctured wound 1/2 " x 1/3 " skin deep. I do not think that the omission of the appellant to make any statement regarding this injury in his confession affects it in any way.

10. The fact that the appellant was arrested with bloodstained clothes when he was running away from his house after the occurrence points amply to the guilt of the appellant. This is a circumstance which corroborates his confession. The circumstances under which the dead body was found lying in the house are also significant. It is clear from the evidence that before the assault the deceased had spread a bed on the floor and lay there coolly with some clothes below her head used as a pillow. It was in that condition that she suffered herself to be killed. She does not appear to have made any attempt to prevent the assault. These are circumstances which point to the conclusion that she had allowed herself to be killed pursuant to a pact between herself and her husband.

11. The defense suggestion that some stranger had come to the house, had raped her and then killed her is too absurd to be believed. This suggestion is based on the evidence of Mathura, the cow-herd boy (P. W. 12), who stated in his cross-examination in the Sessions Court that he had seen a man coming out of the house of Paldhari and going ahead of the accused when the latter was in the chawar. The other circumstances relied upon by the defence is the statement of the doctor who stated that at the time of the post-mortem examination on 14-6-55 he had found whitish discharge showing spermatozoa like structure under the microscope.

So far as the evidence of Mathura (P. W. 12) is concerned I agree with the learned Sessions Judge that this was obviously made at the last moment with a view to help the appellant. The presence of spermatozoa in the vagina swab also by itself does not prove that the deceased had a sexual intercourse with a stranger on that day. It is possible that the husband and wife who appear to have been on the best of terms had such an intercourse before they were destined to part for ever. If really the assailant of the deceased had been anybody else and if any stranger was running ahead of the appellant as deposed to by Mathura the conduct of the appellant would have been altogether different. I have no doubt that the defence sought to be put up is worthless.

12. On a review of the evidence and the circumstances I, therefore, agree with the learned Sessions Judge and hold that it was the appellant who had killed his wife.

13. The question next is what section is applicable to this case. Learned counsel has urged that

the learned Sessions Judge was in error in holding that the offence of the appellant came within the purview of section 302 of the Indian Penal Code. He has submitted that it is essentially a case where the learned Sessions Judge should have held that the section applicable was the first part of section 304 of the Indian Penal Code. In support of this contention learned counsel has relied upon Exception 5 of section 300 of the Indian Penal Code which provides as follows :

"Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent." It is undisputed that the deceased was above the age of 18 years and that she had suffered death with her own consent. The learned Additional Standing Counsel, however, contended that the consent in the present case was obtained by putting pressure upon her. This pressure, learned counsel explained, was the communication by the appellant to his wife that he had decided to end his own life. It was argued that it was the prospect of widowhood and all that it meant which prompted the unfortunate woman to agree to suffer death at the hand of her husband. In my opinion the contention of the learned Additional Standing Counsel cannot be accepted. Section 90 of the Indian Penal Code lays down as follows :

"A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception....."

It cannot be reasonably urged in the present case that the deceased gave the consent under fear of injury or under a misconception of fact I am, therefore, of the view that the defense contention is well-founded. I, therefore, alter the conviction of the appellant to the first part of section 304 of the Indian Penal Code.

14. Having regard to the extraordinary nature of this case the question arises what sentence should be imposed upon the appellant. Without attempting to minimise the gravity of the offence I feel that there are circumstances in this case which should go into the scales in favor of a moderate sentence. The appellant, an immature youngman, was suffering from inferiority complex, the central idea of which was disbelief in himself. His morbid mind was equalled only by the sentimentalism of his young wife. The loss of a devoted wife has already been a great punishment to him. I, therefore, take a lenient view of the case and sentence the appellant to 5 years' rigorous imprisonment. Subject to this modification the appeal is dismissed.

Sahai, J.

15. I agree.

Appeal dismissed.

Cases Referred.

¹ AIR 1957 S.C. 637