

1953

Jan. 19.

KALAWATI AND ANOTHER

v.

THE STATE OF HIMACHAL PRADESH.

[PATANJALI SASTRI C.J., MUKHERJEA, CHANDRA-
SEKHARA AIYAR, VIVIAN BOSE and GHULAM
HASAN JJ.]

Indian Penal Code (XLV of 1860), ss. 114, 201, 302—Charges under ss. 302 and 114, and s. 201—Conviction under s. 201 and acquittal on other charge in Sessions Court—Conviction under ss. 114 and 302 and acquittal under s. 201 in High Court—Appeal to Supreme Court—Power to restore conviction under s. 201, when State has not appealed—Constitution of India, 1950, Art. 134 (1) (c)—Leave to appeal—Certificate of fitness—Death sentence passed by Judicial Commissioner.

The accused was charged under ss. 114 and 302, Penal Code, with abetment of murder. The Sessions Judge acquitted her of this charge and convicted her under s. 201, Penal Code, for suppressing evidence of murder and giving false information. On appeal by the accused as well as the State, the Judicial Commissioner set aside the conviction under s. 201 and convicted the accused under ss. 114 and 302:

Held, that it was open to the Supreme Court, in an appeal preferred by the accused, to restore the conviction under s. 201 on setting aside the conviction under ss. 114 and 302, even though the State had not appealed, as the acquittal under s. 201 was intimately connected with the conviction under ss. 114 and 302, and took place only because the accused was convicted of the main charge under ss. 114 and 302.

Begu v. King Emperor (52 I.A. 191) applied.

The fact that in a particular State there is only one Judicial Commissioner as the ultimate appellate authority and there is no Bench of two Judges as in the High Courts to confirm death sentences is not an adequate ground for granting a certificate that a case where the death sentence has been awarded is a fit one for appeal to the Supreme Court under article 134 (1) (c) of the Constitution.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 73 and 74 of 1952. Appeals under article 134 (1) (c) of the Constitution of India from the Judgment and Order dated the 16th June, 1952, of the Judicial Commissioner's Court, Himachal Pradesh at Simla, in Murder Reference No. 2 of 1951 and

Criminal Appeals Nos. 10 of 1951 and 2 of 1952 arising out of the Judgment dated the 5th December, 1951, of the Court of the Sessions Judge, Mahasu, and Sirmur Districts, Simla-1, in Sessions Trial No. 7 of 1951.

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Tara Chand Mathur for the appellant Kalawati.

Bawa Shiv Charan Singh for the appellant Ranjit Singh.

G. C. Mathur for the respondent in both the appeals, the State of Himachal Pradesh.

1953. January 19. The Judgment of the Court was delivered by

CHANDRASEKHARA AIYAR J. —One Kanwar Bikram Singh was a relation of the Rana of Kuthar. He was a jamindar with some properties. Bishanpura within the police station, Solan, was his summer resort. Manimajra in the Ambala District was his place of residence on the plains. He had married in 1938 Kalawati, one of the two appellants. She was herself a daughter of the late Raja of Nalagarh through a mistress.

Kanwar Bikram Singh was murdered during the early morning hours of 16th July, 1951, as he lay asleep on the roof of his *haveli* or mansion at Bishanpura. He had several incised injuries on his person. The case for the prosecution is that Ranjit Singh, the other appellant, who was a distant cousin of the deceased, committed the murder with the help and connivance of Kalawati. It is stated for the prosecution that the two appellants developed an illicit intimacy with each other, and that they got rid of Kanwar Bikram Singh, as he was cruel in his behaviour to Kalawati. The last act of ill-treatment is said to have been on the 6th July, when Kanwar Bikram slapped his wife. Unable to endure the continued humiliation at the hands of her husband, and in the hope that her intrigue with Ranjit Singh would be facilitated, Kalawati is said to have conspired with Ranjit Singh to do away with her husband,

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Ranjit Singh was charged with murder under section 302, Indian Penal Code, and Kalawati was charged under sections 114 and 302, Indian Penal Code, with abetment of murder, which was committed in consequence. The Sessions Judge of Mahasu and Sirmur found Ranjit Singh guilty of the offence and sentenced him to the extreme penalty of the law. He acquitted Kalawati of the offence of abetment under section 302 read with section 114, but found her guilty under section 201, Indian Penal Code, as she suppressed the evidence, screened Ranjit Singh, and gave false information in respect of the murder; and he sentenced her to five years' rigorous imprisonment.

The two appellants preferred appeals to the Court of the Judicial Commissioner, Himachal Pradesh, and the State preferred an appeal against the acquittal of Kalawati on the charge of murder. The Judicial Commissioner allowed Kalawati's appeal, and set aside her conviction and sentence under section 201. At the same time, he allowed the State appeal against her and convicted her of an offence under section 302 read with section 114, Indian Penal Code, and sentenced her to transportation for life. Ranjit Singh's appeal was dismissed.

An application was made to the Judicial Commissioner under article 132 (1) of the Constitution for a certificate that the case involved substantial questions of law as to the interpretation of the Constitution. He granted the certificate, but he also added that the case was otherwise also a fit one for appeal to the Supreme Court under article 134 (1) (c). He thought that as the confirmation of sentence of death as a matter of practice prevailing in the High Courts was generally made by a Bench of two Judges at least, it was not fit and proper that the matter should rest with his own decision sitting singly.

We feel bound to state that the reason he has given for certifying the case as a fit one for appeal under article 134 (1) (c) is not sound. If in any

particular State there is only one Judicial Commissioner as the ultimate appellate authority, and if the confirmation of sentence of death has to be made by him, the procedure laid down must be followed. The fact that there is not a Bench of two Judges as in the High Courts to deal with death sentences is not an adequate ground for converting the Supreme Court into an ordinary court of appeal and confirmation in such matters. It is unnecessary, however, to pursue this subject further, as we have heard the two appeals on their merits as well.

There is no substance in the constitutional points sought to be raised on behalf of the appellants. Both the appellants have made confessions of their guilt which were recorded under section 164, Criminal Procedure Code, but they retracted them in the Committing Magistrate's court. The confessions were used against them at the sessions trial and in their examination under section 342, Criminal Procedure Code. Each was asked about certain details of the confession made by the other.

It was contended that if an accused person retracted his or her confession, it should not be used against him or her at all, as it would contravene article 20 (3) of the Constitution, which provides that no person accused of any offence shall be compelled to be a witness against himself. It is difficult to see the force of this point. A confession has to be voluntary before it can be used against a person making it, and a magistrate is bound to satisfy himself that it is being made without any inducement, threat or promise. No person accused of a crime is bound to make a confession, and if there is any compulsion or threat, it has to be ruled out as irrelevant and inadmissible. Sub-section (3) of article 20 does not apply at all to a case where the confession is made without any inducement, threat or promise. It is true that a retracted confession has only little value as the basis for a conviction, and that the confession of one accused is not evidence against a co-accused tried jointly for the same offence, but can only be taken

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into consideration against him. This deals with its probative value and has nothing to do with any repugnancy to the Constitution.

It was also urged that as sub-clause (2) of article 20 of the Constitution provides that no person shall be prosecuted and punished for the same offence more than once, the Government cannot have any right of appeal against an acquittal. If there is no punishment for the offence as a result of the prosecution, the sub-section has no application; and secondly, an appeal against an acquittal wherever such is provided by the procedure is in substance a continuation of the prosecution. Mr. Tarachand, who appeared for Kalawati, ultimately desisted from pursuing these constitutional objections and addressed himself to the merits.

A few facts and dates may be set out here as relevant to the proper appreciation of the arguments addressed on behalf of the appellants. The murder took place, as already stated, on the open roof of Bikram Singh's haveli about 4 a. m. on 16th July, 1951. Mst. Shibbi (P.W.3) who was a cook in the family and who was sleeping on the same roof at a little distance was the first to wake up on hearing some strange noise, and she saw a man going away from near her bed and getting down the ladder at the back of the house. She raised a hue and cry and found Bikram Singh fallen down from his bed with his face downwards. The other servants in the house, namely, Jora and Dayaram and P.W.3's husband, Nathu, who were all sleeping downstairs, came on to the roof. One Laik Ram also arrived with a gas light. Kalawati who was sleeping by the side of her husband was not in her bed; she was standing in the room near the steps. It was discovered that Bikram Singh had been the victim of a fatal attack. The commotion reached the ears of P.W.7, who lived at some distance, and he shouted to the police station near by. His cries brought on the scene, at about 4-40 a.m. the head constable (P.W. 24) to whom Kalawati made a statement to the

effect that some unknown dacoits had invaded her house, killed her husband and robbed her of her jewels. As he was proceeding with the investigation, the station-house officer, Solan, (P.W. 38) arrived and took it up.

Various articles were recovered in the course of the investigation. A scabbard was discovered on 16th July, 1951, itself by P.W. 19 at a distance of one furlong from the house of the deceased. Two days later, *i.e.*, on 18th July, 1951, a shirt and a *kachha* were discovered by P.W. 22 from underneath a stone in a water channel about a mile further away. On 24th July, 1951, Ranjit Singh was arrested, and it is stated that he took the police and took out a sword from a bush to the west of the place of occurrence at a distance of 100 yards. Some bushes had to be cut at the instance of the accused before the sword was discovered. Certain ornaments, thirty-five in number, and said to belong to Kalawati were unearthed by the accused himself on 27th October, 1951, from a room of his house in Basdhera. They were all in a metal box, and the box was in an earthen pot which lay buried in the earth.

Kalawati made a confession on 28th July, 1951, before the Magistrate, Sri Antani (P.W. 31). The confession of Ranjit Singh was recorded by the same Magistrate on 3rd August, 1951.

The material evidence in the case consists of these two confessions and the evidence given by the maid-servant, Shibbi (P.W. 3). The other evidence adduced relates to motive and the several discoveries, on which the prosecution relies as corroborative circumstances to support the substantial truth of the confessions, which were retracted even before the Committing Magistrate by both the appellants.

It is abundantly clear that the relationship between Kalawati and her deceased husband, Bikram Singh, was strained. As early as 1946, she had complained against him of violence and threat to kill, and his arms licence was cancelled. He was addicted to drink,

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and often used to quarrel with her and ill-treated her. Since 1948 or thereabouts, Ranjit Singh, a fairly close relation, entered into the picture as a frequent visitor at Manimajra or Bishanpura. He developed intimate relations with Kalawati, which led to suspicion of her misconduct with him. The evidence of Balbir Singh, brother of the deceased, Baldev Singh, the manager of the estate, and Dropadi, mistress of the father of the deceased, examined as P.Ws. 1, 2 and 5 respectively, establishes this. In her confession marked Exhibit P.A.A., Kalawati points out how and why her relations with her husband became strained, and refers to her liaison with Ranjit Singh, the conspiracy between them to get rid of Bikram Singh, the plan laid out for this purpose, and the fatal assault early in the morning of the 16th July. She throws the entire blame on Ranjit Singh, to whose scheme she agreed, out of sheer disgust for her husband. She tells us that she made a confession so as to remove the load of sinfulness from her soul.

The confession of Ranjit Singh, Exhibit P.A.C., which was also retracted, is more or less on the same lines, but he says that Kalawati was primarily responsible for the scheme, and he concludes it thus:

"Had Kalawati not asked me, I would not have thought of murdering Kanwar.

The fault of worsening the relations between Kalawati and Kanwar lies on the Kanwar. He had illicit connections with his father's keep."

He admits that he inflicted the injuries found on Bikram Singh with a sword. Before the Committing Magistrate, he did not impeach this confession in any manner when he was examined under section 342. But in the Sessions Court he went back on it as regards every material detail almost, and stated that it was entirely dictated to the Magistrate by two police Sub-Inspectors, and that he was a passive listener to what they said. He signed the document out of fear as the police had beaten him.

Shibbi, who on the fatal night was sleeping at some distance on the same terrace with Bikram Singh and Kalawati, woke up on hearing a slashy noise, and found Ranjit Singh pass near her bed and going down the ladder at the back of the house. She raised shouts, and the servants who were sleeping in the courtyard downstairs came up. Kalawati was standing near the steps of an adjoining room. When she told her that Ranjit Singh was running away Kalawati denied that it was Ranjit Singh, and stated that some dacoits had come and robbed her of her ornaments. Her evidence was accepted by the courts below, and there is a ring of truth about it. If she was a false witness, there was nothing to prevent her from saying that she saw Ranjit Singh attacking Bikram Singh with a sword. But she tells us that she did not see the commission of the murder, and saw only the back of Ranjit Singh when he was hurrying down at a distance of a yard or so from her bed. She could not identify the weapon in his hand, except to the extent of stating that he was holding something shining. It is true that she did not mention the name of Ranjit Singh at any time earlier than in the Committing Magistrate's court, but this was because Kalawati had scolded her and asked her to keep quiet. The suggestion that her husband, Nathu, was probably responsible for the murder, as his hands were admittedly bloodstained when people had gathered there, is unlikely. He had no motive whatever to kill his master. It might well be that when he came up along with the servants and the crowd had gathered, he came into touch with the body in ascertaining what had happened or for giving water to the injured man in his last gasp, about which there is some evidence. Kalawati had given the police a story of an attack by dacoits, and till the investigation advanced, it is only natural that suspicion should have fastened itself on several people. Laik Ram, a shopkeeper, who carries on his business opposite the place of occurrence, who was examined as P.W. 23, told the police that he suspected many sets of people

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—namely, Shibbi and Nathu, Kalawati, a Sikh servant of the deceased, Balbir Singh, the brother of the deceased himself, and the driver, who was formerly a Sub-Inspector, and two Sikhs who were seen in the jungle at 8 p.m. the previous night.

Apart from the confessions, there are definite circumstances which indicate beyond reasonable doubt the guilt of Ranjit Singh. He is a resident of Bashdera, but his sword and scabbard were found near the place of occurrence, and it was he who recovered the sword from a bush. His kacha (underwear) remained concealed under a stone in a channel near the place of occurrence. Kalawati herself stated in her confession that the *kachha* seemed to belong to Ranjit Singh, as she knew he had purchased the cloth, and it was sewn on her own sewing machine and in her presence at Manimajra.

More important is the discovery of the ornaments of Kalawati on 29th July, 1951, in the presence of Ranjit Singh and with his assistance. They were buried underneath the earth in a room of his house in Bashdera. It was urged that as the room was an open one with no doors and no roof, it was probable they were planted there. According to Kalawati's confession, she had left them at Manimajra, and she says that Baldev Singh, the manager, had the keys, suggesting thereby that he might have handed over the jewels to the police for implantation. Ranjit tells us that as he was being taken to Bishanpura in a jeep, Baldev handed them to the Sub-Inspector, Prithiram. We are not prepared to differ from the Judicial Commissioner on this point. Baldev was not asked a single question in cross-examination about his enmity with Kalawati and there was no suggestion why he should have colluded with the police in the manner alleged. The Sub-Inspector was not asked either about Ranjit Singh's allegation. Much argument was addressed to the effect that it was not at all likely that Ranjit Singh would have buried the ornaments in his own house and in an open room, and that if he

wanted to conceal traces of the crime, he would have concealed them elsewhere. The ornaments had to be returned in all probability, and he might have thought that their careful preservation was his duty. Had he concealed them in a locked room or box, it would have been much more damaging to him if they were discovered by the police who would inevitably search his house. It was not till the evening of the 27th that Kalawati made a confession to the police, and there was hardly any time for them to take hold of the ornaments from Manimajra, proceed to Basdhera, implant them in the house of Ranjit Singh, return to Bishanpura, and take Ranjit to his house on the 29th so that he could show the place of concealment. We are not prepared to differ from the learned Judicial Commissioner, who rejected the criticisms of the Sessions Judge about this recovery and accepted the prosecution story as true.

As regards Kalawati the case is suspicious, no doubt. It is possible that she aided and abetted Ranjit Singh in the criminal deed. But we think it is possible also that though she was aware of the intentions of Ranjit Singh expressed from time to time for the sake of protecting her from ill-treatment and cruelty at the hands of her husband, she might not have believed that he was going to put his threat into actual execution. As pointed out already in more than one place, each of the accused charges the other with the active formulation of the scheme to get rid of an inconvenient obstacle and a cruel brute. There is one defect in Kalawati's confession which might be noticed here. A careful scrutiny of it leads to the conclusion that the final hatching of the plot was on the afternoon of the 8th July, and that the entrustment of the ornaments into Ranjit Singh's hands was on the morning of the 9th. This is in apparent conflict with the diary of Bikram Singh marked P. W. 38/3, where there is this entry under the date of 8th July: "Ranjit Singh gone to Simla for his personal work to enquire about his application. Then he will proceed Manimajra." If this is correct, the story of

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the plot on the 8th and the entrustment on the 9th is somewhat damaged, unless it was possible for Ranjit Singh to go to Simla on the afternoon of the 8th and return to Bishanpura on the morning of the 9th, on which aspect, however, there is no evidence one way or the other. We have to assume that the 8th of July was the date of the secret talk between Kalawati and Ranjit Singh from the fact that Balbir Singh (P. W. 1) says that he left Bishanpura for Manimajra with the children on the 7th of July, and she says that the arrangement was on the day after the children left. There may be some mistake about the dates.

Apart from this infirmative circumstance, there is yet another, which renders it unsafe to take Kalawati's confession at its face value. She was prepared to make a confession on the 27th evening, and she was actually taken to the Magistrate. Not only was she prepared, but she insisted on making it, and there was no particular reason why the recording was postponed to the next day. She alleges that the Sub-Inspector asked for time stating that her condition was bad, and she should be given 12 hours to think over it. The confession contains minute details which would not normally find a place in such a document. For instance, she says :

" We had become so close that I can claim to have seen all his clothes, because he used to keep his boxes usually with me and his room was also next to mine. He may not have seen all my clothes, but those that I wore must have been seen by him. Normally he would have seen only the jewellery which I wore. He had not known of my jewellery box."

The conversation between Kalawati and Ranjit Singh in the presence of a maid-servant near the well where she had gone to wash her clothes is rather incredible. For these reasons, we hesitate to act upon the confession of Kalawati and find her guilty of aiding and abetting the offence of murder.

But there can scarcely be any doubt that she must have witnessed the murder of her husband lying next

to her on a *charpai*. Shibbi who was at a distance of 18 feet was roused by the sound of a sword attack. Kalawati must have woke up also at least during the course of the assault if not at its commencement, several injuries having been inflicted in succession. When Shibbi woke up, Kalawati's bed was empty, and she was found in a room nearby and not at the place of occurrence. She trotted out an elaborate story of dacoity, which cannot be accepted as true. Even if in terror she ran away from her bed and stood at a distance, she is almost sure to have known who was the offender, unless he had his face muffled. The first version she gave to the police head constable when he appeared on the scene immediately after the occurrence is, we think, false, and we are of opinion that she knew or believed it to be false. The border line between abetment of the offence and giving false information to screen the offender is rather thin in her case, but it is prudent to err on the safe side, and hold her guilty only of an offence under section 201, Indian Penal Code as the learned Sessions Judge did.

It was urged for her by Mr. Mathur that as she was acquitted of this offence by the Judicial Commissioner, and as there has been no appeal by the Government against the acquittal, she cannot now be convicted of the same by this Court. This argument proceeds on a fallacy. Section 201 is not restricted to the case of a person who screens the actual offender; it can be applied even to a person guilty of the main offence, though as a matter of practice a Court will not convict a person both of the main offence and under section 201. The Judicial Commissioner acquitted Kalawati of the offence under section 201 for which she was convicted by the Sessions Judge, only because he thought that the main offence itself, namely, murder, was brought home to her. But if we think for the reasons given above that it would not be safe to convict her of the main offence, the acquittal is no legal impediment to her conviction under section 201. It was held by the Privy Council

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in *Begu v. King-Emperor* ⁽¹⁾ that in a charge of murder under section 302 a conviction under section 201 without a further charge being made was warranted by the provisions of section 237, Criminal Procedure Code. If Kalawati had been acquitted of an offence under section 201 independently of the charge of murder against her, it would have been a different matter. But as her acquittal is so intimately related to the charge of the main offence, and as it took place only for the reason that she was held guilty of murder, there is no bar to the restoration of the conviction under section 201.

The result is that Ranjit Singh's Appeal No. 74 of 1952 is dismissed, but we substitute for the sentence of death the sentence of transportation for life, having regard to the time that has now elapsed since the occurrence and the probable motive of prevention of cruelty to a helpless woman. Kalawati's Appeal No. 73 of 1952 is allowed, and her conviction and sentence under section 302 discharged, but we convict her of an offence under section 201, Indian Penal Code, and sentence her to three years' rigorous imprisonment.

Appeal No. 73 allowed.

Appeal No. 74 dismissed. Sentence reduced.

Agent for the appellant in Appeal No. 73:
B. R. Anand.

Agent for the respondent: *G. H. Rajadhyaksha.*