

SUPREME COURT OF INDIA

Sunderlal

Vs.

State of M.P.

Crl.A.No. 77 of 1952

(Mehr Chand Mahajan and N. H. Bhagwati, JJ.)

13.11.1952

JUDGEMENT

BHAGWATI, J.:

1,. The accused was charged that he on or about 25-7-1951 that village Biharihar committed murder of Behra and committed an offence punishable under S. 302, Penal Code and that on the same day and the same place he committed robbery of the property of Behra and as such voluntarily caused hurt to the same Behra and committed an offence punishable under S. 394, Penal Code. The learned Sessions Judge tried the accused with the aid of assessors for the offence under S. 302 and with the aid of jury of offence under S. 394. The jury returned a unanimous verdict of guilty in regard to the offence under S. 394 but the assessors by a majority opined that the accused was guilty of an offence under S. 323 and not under S. 302 with which he had been charged.

The learned Judge accepted the verdict of the jury and also agreed with the majority opinion of the assessors and convicted the accused of the offences under S. 394 and S. 323 but acquitted him of the offence under S. 302. The accused appealed against this conviction of his by the learned Sessions Judge and the Government appealed against his acquittal under S. 302. The High Court confirmed the conviction of the accused under S. 394 but set aside the conviction under S. 323, held that the accused was guilty of the offence under S. 302 and sentenced him to death. This appeal was thereupon filed by the accused as of right under the Constitution against that conviction of his by the High Court under S. 302 and the sentence of death passed upon him.

2. The case of the prosecution was that the accused was a friend of Behra who was of a licentious character and on 25-7-1951 the accused took Behra towards Bidhari under the inducement that there was a woman available at Bidhari. The accused then took the deceased towards Bidhari and from there they went towards the river. In the afternoon of 26-7-1951 the dead body of Behra was discovered lying in a lonely spot on the way to the river and information of the same was given to the police. The police then entered upon the investigation. The body of Behra was identified on 27-7-1951 and a postmortem was held on the body by Dr. Dube.

The accused was arrested the very same day and he took the police to a goldsmith by name Bhagwandas from whom a gold bar melted out of a half gold mohur sold by the accused to him was recovered. He also took the police to one Bishandas Tularam with whom two silver churas had been pledged by him and these silver churas were also recovered from Bishandas. This half gold mohur and the two silver churas were identified by certain witnesses as having been habitually worn by the

deceased. A final postmortem report was made by Dr. Dube on 3-8-1951 and the accused was challenged before the Magistrate who committed him to the Sessions.

3. The evidence which was led by the prosecution consisted of two witnesses P. W. 1 Bhairon and P. W. 2 Latoos who saw the accused and the deceased together at about 2 P. M. on 25-7-1951, P. W. 13 Bhagwandas the goldsmith who produced the gold bar into which the half gold mohur had been melted having been sold by the accused to him the next morning after the alleged murder of Behra. P. W. 13 (sic) Bishandas Tularam who was approached by the accused on the evening of the day of the alleged murder at about sunset and who on being asked to purchase the half gold mohur declined to do so as he had no money at the time but accepted a pledge of the silver churas and P. W. 4 Iswariprasad, P. W. 6 Buddhu, P. W. 9 Mathuraprasad and P. W. 16 Chiddi who deposed that the half gold mohur and the silver churas were habitually worn by the deceased and three of whom P. W. 4, P. W. 9 and P. W. 16 actually identified the silver churas produced by Bishandas Tularam as those which used to be worn by the deceased.

Relying upon this evidence the learned Sessions Judge came to the conclusion that the accused and the deceased were seen together on 25-7-1951, that the accused was responsible for causing hurt to the deceased and robbing him of the half gold mohur and the silver churas thus convicting him of the offences under S. 394 and S. 323. The lower part of the body of the deceased had been eaten away by wild animals and the only portion of the body which was available was the upper part from which the body could be identified as that of Behra and it was difficult for Dr. Dube to come to a definite conclusion that death was due to strangulation. That was the reason why the learned Sessions Judge acquitted the accused of the offence under S. 302. The High Court on the other hand considered the evidence of Dr. Dube quite sufficient to enable it to come to the conclusion that the death of the deceased Behra was due to strangulation and on the strength of that evidence convicted the accused of the offence under S. 302.

4. It was argued by Mr. Lobo appearing for the accused that the High Court should not have lightly interfered with the conclusion reached by the learned Sessions Judge and when the accused had been acquitted of the charge under S. 302 the presumption of innocence worked with added force in favour of the accused. Mr. Lobo also contended that the evidence of Dr. Dube was not quite satisfactory and his opinion was that the death was due probably to strangulation. The conviction of the accused by the High Court was mainly based on passages from the text book of Modi on Medical Jurisprudence and Toxicology and these passages had not been put to Dr. Dube when he was in the witness box with the result that the High Court was not right in coming to the conclusion adverse to the accused by merely relying upon these passages.

5. If the conviction of the accused rested merely upon these passages from Modi's Medical Jurisprudence and Toxicology there would be something to say in favour of the accused. There was sufficient evidence, however, on the record to show that the accused and the deceased only was responsible for the death of the deceased. Both the accused and the deceased were seen together at about 2 p. m. on 25-7-1951 by witnesses P. W. 1 and P. W. 2. It was established that immediately after the alleged murder the accused went to Bishandas Tularam with the gold half mohur and the silver churas and offered to sell them to Bishandas Tularam, who did not purchase the half gold mohur but accepted the pledge of the silver churas. The accused went the next morning to Bhagwandas the goldsmith and sold to him the half gold mohur which was melted by Bhagwandas into a gold bar.

The accused was arrested on 27-7-1951 and he himself took the police to Bishandas Tularam and to

Bhagwandas the goldsmith from whom the silver churas and the gold bar were recovered along with the relative documents showing the pledge and the sale by the accused to these respective parties. These silver churas were identified by the witnesses P. W. 4, P. W. 9, and P. W. 16 as those which were habitually worn by the deceased. P. W. 4, P. W. 6, P. W. 9, P. W. 16 deposed that the deceased habitually wore silver churas as well as half gold mohur. Before the committing Magistrate the accused stated on being questioned in that behalf that if P. W. 18 and P. W. 16 were saying that Behra used to wear silver churas, a gold tabiz and one ring and that the silver churas which were produced were the same which he used to wear that was but alright, though he denied having said anything of the type when he was similarly questioned by the learned Sessions Judge.

The accused no doubt maintained that the half gold mohur and the silver churas belonged to him and he had pledged the silver churas and gold the half gold mohur himself as his own and realised moneys out of the same. This allegation of his rested, however, on his mere ipse dixit whereas the evidence of the witnesses P. W. 4, P. W. 9 and P. W. 16 was definite that the silver churas which were produced from the custody of Bishandas Tularam were the same silver churas which used to be worn habitually by the deceased.

6. These ornaments were, therefore, established to be the ornaments worn by the deceased and the accused was not in a position to give any satisfactory explanation as to how he came to be in possession of the same on the very same day on which the alleged murder was committed. The circumstantial evidence, therefore, was sufficient to hold the accused responsible for the murder of the deceased and even apart from the medical evidence in regard to strangulation there is not the slightest doubt that it was the accused and the accused alone who was responsible for bringing about the death of the deceased.

7. Under these circumstances we are of the opinion that the conclusion reached by the High Court in regard to the accused having committed the offence under S. 302 was correct and the accused was rightly convicted of the same.

8. The conviction of the accused under S. 394 could not be challenged in this Court and the challenge of the same was moreover futile in view of the fact that the accused had been rightly convicted of the offence under S. 302 and sentenced to death by the High Court.

9. The result, therefore, is that this appeal fails and stands dismissed.

Appeal dismissed.

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