

The State Government, Madhya Pradesh

Vs.

Ramkrishna Ganpatrao Limsey & Ors.

Criminal Appeal No. 40 of 1952

(Mahajan, S.R. Das and Bhagwati, J.J.)

19.11.1952

Mahajan, J.

This appeal by special leave is directed against an acquittal order of the High Court of Nagpur in Criminal Appeals Nos. 121, 122 and 123 of 1950, preferred to that Court by the three respondents. Respondent 1, R. G. Limsey, is an advocate of the High Court of Nagpur, respondent 2, Kisanrao, is related to Limsey in that his cousin is married to Limsey, and respondent 3 Shaligram, is his friend and client. All the three respondents were tried for the murder of one Dattu Patel and were charged in these terms :

"That you on or about the 8th day of October 1949 at Nagpur did commit murder by intentionally causing the death of Dattu Patel and thereby committed an offence punishable under Sec. 302 read with Sec. 34, IPC and within the cognizance of the Court of Session."

They were convicted by the Sessions Judge, Limsey was sentenced to death, and Kishanrao and Shaligram were sentenced to transportation for life. All of them appealed to the High Court and were acquitted. A petition for enhancement of sentence of Kishanrao and Shaligram preferred by the State was dismissed.

2. The deceased Dattu Patel, was a resident of Taroda, district Wardha and at the time of the incident he was residing in the house of Virendra Malviya, P.W. 27, at Ganjapeth, Nagpur. It is alleged that he was a friend of Limsey and used to visit him from time to time and consult him regarding his domestic troubles, that he and a few others were in the habit of smoking ganja and drinking liquor at the hosue of Limsey and that for some time prior to the date of the occurrence relations between him and Limsey had beocme very strained. Dattu had complained to Virendra Malviya that Limsey had swallowed thousands of rupees from him and that he was an associate of thieves, and gets thefts committed by others and shares the booty with them. Limsey in his turn had accused Dattu of defaming him and had threatened that if Dattu did not stop his defamatory propaganda he may go to the length of killing him. On 8-10-1949 Limsey wrote of Dattu to come and meet him that day. The letter is in these terms:

"Salutation of Dattu Patel.....You should see me today at once. Intimate time."

Dattu sent no reply, but it is alleged that he left Malviya's house at 3 p.m. On cycle and arrived at the house of Limsey at about 5 p.m. and was closeted with him in his sitting room on the third storey and never came out, that accused Kisanrao and Sahligram were also there in Limsey's office room in the second storey, that at about 8 p.m., Ganpat, a lad of 15, who was in te service of Limsey and was working in the kitchen, heard a cry "Ohh, father, I am dead", from the room upstairs and he went up to see what the matter was, he found the door of the upper room closed but from a crack in the door he saw that Dattu was lying on the floor on his back, accused Kishanrao holding him by his hair accused Shaligram holding his legs and accused Limsey bending over him with a sword raised to strike Dattu, that some neighbors also came at the cry and made enquiries and they were sent back by the mother of Limsey saying that nothing had happened.

On a search of Limsey's house on the third storey on 12.10.1948, a freshly constructed tomb of brick and cement from which foul smell was coming, was discovered. The tomb was opened up and the body identified as that of Dattu was taken out. Limsey was not found in the house at that time. He surrendered himself to the police at Benaras on the 16th. Kishanrao was arrested on the 14th. He led the police to the well from which parts of the cycle ridden by the deceased were discovered. On the same day, Shaligram, accused 3, was also arrested and he produced other cycle parts.

3. Limsey, when called upon to enter his defence, stated:

"I was not present and I do not know how Dattu Patel died or his body came to be buried in my house. The incident appears to be deliberate case of accidental death and deliberate concealment of the body by some other person during my absence."

Kisanrao, respondent 2, supported Limsey's plea of alibi. He further stated that Dattu Patel came to Limsey's house in his absence in the evening in the company of Virendra. P.W. 27, Gadi Patel, Jaikishan and Dilwar, tha t Dattu Patel smoked Ganja and drank liquor and suddenly died and that the body was thereupon left in the loft. When called upon to state his plea of defence, he said:

"Gadi Patel, Ganpat and other found Dattu Patel drinking and dying of heart failure. I scolded them and it seems they and others deliberately wanted dispose of the body in the manner they have done. I am innocent."

Accused 3, Shaligram, denied having had anything to do with the incident. His plea in defence was:

"I am innocent. I do not know how Dattu Patel came to die or how his body came to be buried. Ganpat had laid this charge against me falsely as he knew that I knew what he had done with the cycle parts."

In support of his plea of alibi Limsey made a detailed statement according to which he left Nagpur on the afternoon of the 8th for Amarvati and before Dattu had come to

his house and did not return to Nagpur till after his surrender at Benares on the 16th. The pleas of alibi was not accepted in the two courts below and was not seriously pressed before us and it must, therefore, be held that it was untrue. There is evidence on the record that up to the evening of the 11th and before a search warrant was issued on the 12th Limsey was at his house where the dead body of Dattu Patel had been entombed. In the absence of any evidence that Limsey had left his house, It has, in the ordinary course of events, to be presumed that he was residing at his ordinary place of residence on the 8th October. He admittedly invited Dattu Patel by means of the letter above referred to meet him on that date and it is highly unlikely that any person or person could have ventured to entomb a dead person on the third storey of his house in his absence and without his permission.

His presence in the house is also established by the application that he sent to the Court of the Additional Deputy Commissioner, Nagpur, on 11.10.1949 in which he stated as follows:

"I appear for the respondent in Revenue Appeal No. 601/33-7 of 1948-49.-'Doma v. Eknath.' Fixed for 11th October, 1949. I am mnot well since the last four days. I therefore, request your honour to adjourn the hearing of the appeal to some other date and oblige."

The statements contained in this letter are intrinsic evidence of the fact that till 11.10.1949 Limsey was at his house wherein the dead body of Dattu Patel had been entombed. We are, therefore, inclined to hold that the High Court was in error in thinking that the presence of Limsey at Nagpur at his house on 8.10.1949 had not been proved by the prosecution. This erroneous finding, however, cannot be said to have materially affected the conclusion reached by the High Court.

4. The acquittal of the respondents by that Court mainly rests on the ground that it was not in the absence of legal proof of the crime, there could be no legal criminality. Hemeon J. who wrote the principal judgment in the case expressed his conclusion in these words:

"We must hold that there is nothing whatever to indicate the cause of Dattu's death. Absence of violence was perhaps improbable but of the use or violence there was not proof; and the precaution of sending the viscera to the chemical examiner was not taken. Dattu may, for all we know, have died from fright, heart failure or poisoning; and Shri G.P. Shriastava stated that it is not impossible for a man to die of alcohol poisoning or from internally administered Ganja. Dr. De Costa also declared that while he did not consider that ganja Smoking alone would cause death, he could not be sure from the contents of the autopsy report if it was not a case of death from alcoholism and ganja smoking. In short, there is nothing to demonstrate positively the fact that Dattu did not die a natural death or the fact that his death was due to violence.....People react in different ways to situations of this kind, and so far as we can gather from the exiguous material on record, no previous preparations were made for the entombment of the corpse in the loft of Limsey's house. The decision to that effect was apparently

reached after his death and the same would apply to the plan whereby the bicycle was apparently reached after his death and the same would apply to the plan whereby the bicycle was dismembered and its parts were concealed in various places." Hidayatullah J. who also in a separate judgement concurred with the judgment delivered by the learned Acting Chief Justice, expressed his conclusion in these words:

"I am quite clear in my mind that this case falls because the result of the autopsy was inconclusive. Whether this was due to putrefaction or some other cause is little to purpose. The police did not care speculate about the cause of death and cannot, on the materials furnished, hold that the death of Dattu was from violence. Once that conclusion is not reached, the acquittal of the accused in the case must inevitably follow."

5. As above stated, this appeal is before us by special leave. Article 134 of the Constitution permits an appeal to this Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death. It does not provide for an appeal from a judgment, final order or sentence in a criminal proceeding of a High Court if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. In other words. There is no provision in the Constitution corresponding to S. 4 to S. 417, Criminal P.C., and such an order is final, subject, however, to the overriding powers vested in this Court by Art. 136 of the Constitution.

In 'Pritam Singh v. The State', AIR 1950 SC 169 (A), this Court ruled that the assumption that once an appeal has been admitted by special leave, the entire case is at large and the appellant is free to contest all the findings of fact and raise every point which could be raised in the High Court or the trial Court is entirely unwarranted, and that only those points can be urged at the final hearing of the appeal before this court which are fit to be urged at the preliminary stage when leave to appeal is asked for and that it would be illogical to adopt different standards at two different stages of the same case and that the exercise of this extraordinary jurisdiction is not justifiable in criminal cases unless exceptional or special circumstances are shown to exist or that substantial and grave injustice has been done.

In the case of an order of acquittal where the presumption of the innocence of an accused person is reinforced by that order, it seems to us that the exercise of this jurisdiction would not be justified for merely correcting errors of fact or law of the High Court. An occasion for interference with an acquittal order may arise, however, where a High Court acts perversely or otherwise improperly or has been deceived by fraud.

6. The question, therefore, that requires consideration is whether this is a case of that description. The State Government attached the judgment of the High Court on the ground of its perversity. After hearing the learned Advocate General of the State,

we are unable to reach that conclusion. All that we can possibly say is that we might have been inclined to take a view different from that taken by the High Court if we were hearing the appeal there. It cannot, however, be positively said that the conclusion reached by the High Court is, in any way, perverse or improper or that on the facts found the only conclusion that could possibly be reached in the case was that the crime had been committed by the accused. In our judgment, therefore, this appeal must fall. (After briefly examining the evidence the Supreme Court reached the conclusion that there was no direct evidence in the case of the murder of Dattu Patel, or of the participation of the respondents in it).

7. The learned Advocate General for the State contended that the High Court should have concluded from the circumstantial evidence that the death of Dattu was brought about by foul play and was not a natural one. He urged that Dattu's body could not have been entombed in Limsey's house without his consent or permission and as a matter of fact he must have been responsible for it, that in the absence of any satisfactory explanation as to why he took such an extraordinary step, it should have been concluded that he did so in order to destroy evidence of his criminal act, that if the death had been due to natural causes, his conduct would have been quite different, he would have informed the mother and wife of Dattu about this sad affair and would have given his friend a proper cremation and would not have destroyed the best evidence of the body of Dattu in proof of his innocence and that his conduct in running away from Nagpur on the 11th was not compatible with his innocence. Lastly it was contended that Limsey had a motive for putting Dattu out of the way, the relations between them being strained, that he had an opportunity of achieving his object and that his conduct after the crime led to an irresistible presumption of his guilt and that being so, it should have been held that the charge of murder was proved against him.

8. There is considerable force in these contentions. We are, however, unable to find that the High Court was necessarily in error in holding that the circumstantial evidence in the case was not wholly incompatible with the innocence of the accused and that it did not lead to an irresistible presumption that Dattu was murdered by Limsey. It is unlikely that Limsey would have invited Dattu to his own place on the 8th October by a letter with the intention of murdering him. There is no evidence of a preconceived plan to that effect. If the estrangement between the two was still continuing Dattu would not have so readily come to Limsey's house. Ganpat having been disbelieved, there is no evidence of any act or conduct on the part of Kisanrao and Shaligram indicating their participation in this affair. In such circumstances the conclusion as to the guilt of the accused cannot be reached perhaps by introducing an element of conjecture in the case.

It may well be that Dattu and Limsey had some quarrel while they were drinking and smoking together and were trying to adjust their differences and that in the heat of the moment he was struck by Limsey in a manner which brought about his end, or that Limsey administered poison to him to finish him as he was obstinate and would not desist from defamatory propaganda or even that Dattu died of heart failure. All these are, however, pure matters of speculation in the absence of any material pointing to a definite conclusion. It cannot, therefore, be said that the High Court acted improperly when it held that there was no evidence to establish that Dattu was

murdered.

The strongest weapon in the armoury of the learned Advocate-General is the existence of a freshly constructed tomb in the loft of Limsey's house wherein the dead body of Dattu was entombed. The conduct of Limsey in constructing Dattu's tomb in the third storey of the house more or less verges on lunacy and is not conclusive evidence of the fact that Dattu had been murdered by him, though it raises a very strong suspicion against him. The High Court was dealing with the case of a person whose mind was so perverted that he could not see that such conduct on his part would surely recoil on himself and be the strongest proof against his innocence. The possibility, therefore, cannot be ruled out that he may have acted in a similar way in case he wanted to conceal for reasons of his own, the death of a person brought about by natural causes in his house. It is not difficult to visualize that Dattu died a natural but sudden death and in a moment of panic and confusion Limsey conceived the idea of concealing his death by entombing him in his own house.

There are no such circumstances that militate against the theory that Dattu might have died of alcoholic poisoning or of heart failure while sitting in the company of Limsey and drinking heavily. Limsey having been flabbergasted at what had happened might well have thought of disposing of his body in the manner he did in order to conceal the fact that his death took place while he was in his company and was taking liquor and smoking ganja. His object being to avoid bad repute and his place being described as a den of drunkards and resort of ganja smokers.

9. Moreover, it is not quite clear that the strained relations between Dattu and Limsey were continuing till October, 1949. In August 1949 Dattu made efforts of reconciliation and it is not unlikely that he was successful in his effort. The informal letter that Limsey wrote to Dattu on 8th October, inviting him to come to his house and Dattu's response to his call suggest that apparently at that moment they were on good terms. There was thus no strong motive for Limsey to murder Dattu. No doubt, a very strong suspicion arises against Limsey by reason of the existence of the tomb of Dattu in his house but we are unable to hold that the High Court after taking into consideration all the circumstances in the case was wrong in not treating these circumstances as conclusive of the guilt of Limsey. As against the other two respondents, there is not the slightest evidence to hold that they are in any way responsible for the murder of Dattu.

10. For the reasons given above we think that it is not a case which calls for interference with the acquittal order of the High Court in exercise of the Court's powers under Art. 136 of the constitution and we accordingly dismiss the appeal and maintain the acquittal order.

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