SUPREME COURT OF INDIA

Kutuhal Yadav

Vs.

State of Bihar

Crl.A.No.93 of 1953

(S. R. Das and N. H. Bhagwati, JJ.)

13.01.1954

JUDGEMENT

BHAGWATI, J.:

1. This is an appeal by special leave from the judgment of the High Court of Judicature at Patna dismissing the appeal of the Appellant and confirming the death sentence passed upon him by the learned Sessions Judge of Monghyr.

2. The charge against the Appellant was that he on or about the night between the 10th and 11th December 1952, in a village called Dariapur Tetaria, District Monghyr, Police Station Kharagpur, committed murder by intentionally or knowingly causing the death of Musammat Sobha and thereby committed an offence punishable under Section 302 of the Indian Penal Code. He was also charged under Section 201 read with Section 511 of the Indian Penal Code.

The trial was held with the aid of four assessors who were unanimously of the opinion that he was guilty of murder and also guilty of the other charge brought against him. The learned Sessions Judge agreed with the opinion of the assessors and convicted him of the offence of murder and sentenced him to death subject to confirmation by the High Court. The Appellant preferred an appeal from jail and both the appeal as well as the reference made by the learned Session Judge were heard by the High Court with the result mentioned above.

3. The case of the prosecution was that Musammat Sobha an old woman aged about 70 resided with her son-in-law Sattan Jadav and grandson Jugeshwar. She possessed about 3 1/2 to 4 bighas of land and she had given Jugeshwar on the occasion of his marriage about 1 1/2 bighas of land. The remaining lands were cultivated by Sattan on her behalf. The Appellant was not directly related to the old woman, but his wife was related to her, the latter being a sister of the maternal grandmother of the Appellant's wife. Though Musammat Sobha lived with her son-in-law and grandson, she had occasional differences with them and on such occasions she stayed in the house of the Appellant.

Some eight or ten days before the night of occurrence, she had been taken to the house of the Appellant on the invitation to partake of some sweets prepared from fresh milk of a she-buffalo, which had recently given birth to a calf. She stayed in the house of the Appellant for some days and on the 8th December 1952 she was taken to the office of the Sub-Registrar at Kharagpur where she executed and got registered a deed of sale in favour of the son of the Appellant, in respect of some 2 bighas and 19 dhurs of land.

When Sattan came to know of the execution of the sale deed he went to the house of the Appellant and made an enquiry. On learning that such a sale deed had been executed Sattan gave an information at the police station and filed an application in the name of his son in the office of the Sub-Registrar. In the application made to the Sub-Registrar it was alleged that the old woman was of poor understanding and no consideration had been paid for the sale and a prayer was made that an enquiry be made from the people of the village as to the mental capacity of the old woman. In the information which was given at the police station it was alleged that the sale deed had been executed as a result of undue influence and pressure.

This application and the information were given on the morning of the 10th December 1952. Early on the 11th December 1952 it was discovered that the old woman was dead. The prosecution case was that early in the morning of the 11th, the Appellant went to a neighbouring village to purchase 'coffin' cloth. He brought the coffin cloth and was anxious to cremate the dead body. Sattan and other villagers came to know of it and suspecting some foul play, they informed the chowkidar and the deffadar, both of whom came and stopped the Appellant from taking away the dead body for cremation. One Jagdish Jadav (P.W. 1) was then sent to police station which was at a distance of about 8 miles from the village and he gave an information at about 11 a.m. on the 11th December 1952.

An inquest was held on the dead body of the old woman and the dead body was sent to the Civil Surgeon of Monghyr for post mortem examination. The post mortem examination was held on the 12th December 1952 at 9 a.m. On dissection of the body the Civil Surgeon found a patch of echymosis, 3" in diameter on the left side of the chest over the second and third intercostal space along the mammary line. The injury had caused a fracture of the third rib and the chest bone near it (sternum) attached to the third rib. In the opinion of Civil Surgeon the injuries on the chest resulting in the fractures were ante mortem injuries and were caused either by blows with a hard and blunt substance or by applying heavy pressure on the chest.

The doctor explained that the injuries on the chest could be caused by putting the weight of one's body on to the chest of the deceased woman while the latter was lying down, either through the hands or by using one knee, thereby leaving no external marks of injury on the chest. The doctor was definitely of the opinion that the old woman died as a result of shock caused by the injuries on her chest. On receipt of the post mortem report, the earlier information as to the unnatural death of the old woman was treated as the first information of a murder case. As a result of further investigation the Appellant was challaned before the Magistrate who after a preliminary enquiry committed him to the Sessions.

4. The defence of the Appellant was that the old woman died a natural death and the Appellant was falsely implicated. In this statement in the court of Sessions the Appellant said that the old woman was ill of dysentery for about two months and that on the morning of the 11th December 1952 the Appellant found her dead.

5. The learned Sessions Judge found first that Musammat Sobha had not died a natural death but had died as a result of the injuries caused on the chest resulting in the fracture of the third rib and the stemum. He further found that the circumstances proved against the Appellant were such that the only reasonable inference was that the Appellant had caused the injuries on the chest of the old woman on the night of the 10th December 1952 which injuries had caused her death. He held the circumstances proved against the Appellant were incompatible with his innocence, and found the Appellant guilty of murdering the old woman and of attempting to cremate her dead body in order

to cause disappearance of the evidence of the offence committed by him.

6. On the hearing of the Appeal before the High Court the Counsel for the Appellant took the High Court through the entire evidence on the record. He argued that the evidence in the case did not convincingly establish that the old woman had been done to death and that the hypothesis that the old woman had died a natural death could not be completely ruled out. He contended that the circumstances which the prosecution had been able to prove against Appellant were not such as to exclude other hypotheses and therefore the chain of circumstances was not so far complete as to establish the guilty of the Appellant. The case of the prosecution rested entirely on circumstantial evidence and it was submitted that the evidence should be scrutinised carefully and with reference to the rules regarding the probative value of such evidence.

7. The High Court came to the conclusion that the suggestion of the Appellant that the old woman died a natural death as a result of dysentery was false and that it was established on the evidence that the old woman died an unnatural death in the manner suggested by the doctor.

As regards the question as to who caused the injuries to the old woman which resulted in her death the High Court adverted to the circumstances which it grouped under four heads as under :

"First, there is the circumstance that the old woman was found dead in the house of the appellnat where she was residing for some days previous to the night of the 10th of December, 1952. The second circumstance related to the purchase of the 'coffin' cloth by the appellant early in the morning of the 11th December, and his attempt to take away the dead body for cremation. The third circumstance arises out of the execution of the sale deed on the 8th December 1952 and the petition and information filed against the sale deed on the 10th of December 1952. The fourth and the last circumstance is the false explanation which the appellant gave as to the death of the old woman."

On a scrutiny of all these circumstances and the arguments advanced by the learned Counsel for the Appellant it came to the conclusion that the tests laid down by this Court in ---'Hanumant Govind Nargundkar v. State of Madhya Pradesh' , AIR 1952 SC 343 at p. 345 (A,) were satisfied and that the only reasonable hypothesis was that the appellant killed the old woman on the night of the 10th December by putting pressure on her chest.

It accordingly dismissed the appeal and confirmed the sentence of death passed upon Appellant by the learned Sessions Judge.

8. The learned Counsel for the Appellant appearing before us laid special stress on the fact that there was no evidence to show that the old woman was sleeping in the room and the possibility of her sleeping in the verandah was not eliminated with the result that it was possible for some person other than the Appellant to have inflicted the injuries on the old woman resulting in her death. He contended that the son-in-law and the grandson both had a motive to do away with the old woman, because they were apprehensive that if she continued to be alive there was a possibility of her siding with the Appellant when he took proceedings to obtain possession of the lands which were the subject-matter of the deed of sale and also there was a possibility that she might create further complications by transferring the remaining properties in the manner she had done. He also contended that the conduct of the Appellant was consistent with his innocence inasmuch as he informed everybody he came across on the morning of the 11th December 1952 that the old woman was dead and actually went to purchase the coffin cloth in order to cremate her dead body.

9. The house in which the Appellant lived consisted of only one small room and a verandah in front surrounded by a courtyard which was open on all sides. The Appellant lived there with his wife and a young son of 10 years of age and it was suggested that there was nothing on the evidence to show that the old woman had been sleeping in the room along with the Appellant, his wife and young son on the night in question. It was also suggested that there was no warrant for the inference that on the night in question, which was a December night she could not be sleeping in the verandah outside the room and was sleeping in the room along with the Appellant and his family.

The old women was 70 years of age and it is therefore reasonable to expect that on that December night she would not be sleeping in the verandah but was sleeping in the room along with the Appellant and his family particularly having regard to the fact that she had executed the deed of sale in favour of the Appellant's son only two days before and had obliged the Appellant in that manner. If that was so the only person who would be responsible for the injury inflicted on the person of the old woman could be the Appellant himself and nobody else. There was ample opportunity for the Appellant to do so.

It was however suggested that the son-in-law and the grandson had a better opportunity of doing the old woman to death because their house was near enough and they would be in a better position to inflict the injury on the person of the old woman if she had been sleeping in the verandah as suggested by the Appellant. The house of the son-in-law and the grandson however was at a distance of 250 yards from the house of the Appellant and it is reasonable to infer that even if the old women was sleeping in the verandah there was a greater opportunity to the Appellant himself to commit the offence than the son-in-law and the grandson of the old women.

If the old women had been done to death in the manner suggested by the doctor and the son-in-law or the grandson was responsible for the commission of the offence the Appellant would certainly have come to know about the occurrence, because the old women would certainly have struggled and cried out and the Appellant would certainly have come out of his room and have been in a position to catch hold of the culprit who was doing the old women to death in that manner. There was no suggestion however of any such thing having taken place in the whole of the record and we must therefore discard this suggestion made by the Counsel for the Appellant before us.

10. As regard the motive also the Appellant had greater motive to commit the offence than the son-in-law and the grandson. In the deed of sale which was executed the old woman had stated that she was exclusively entitled to the lands which were the subject matter of the deed of sale and that she constituted the Appellant's son thereby the absolute owner of the said lands. The transfer of the lands was thus made by her in her capacity as an absolute owner thereof and if the matters had rested there there was no question of the grandson of the old woman, who would be her stridhan heir, taking any effective steps to set aside the deed of sale in the event of her death. If any steps had to be adopted to set aside the deed of sale which had been executed by her the old woman herself was the proper party to take such proceedings and it would therefore be stupid on the part of the grandson to do the old woman to death.

On the other hand the Appellant had a greater motive for doing the old woman to death. If she continued to live there was a high probability of the son-in-law and the grandson of the old woman winning her over to their side and making her adopt proceedings to set aside the deed of sale in which event having regard to the circumstances attendant upon the transaction of the deed of sale the Appellant would had no defence at all. The recital as to the necessity for the sale as also the consideration for the same were all false and the Appellant would have found it almost impossible

to defend any action brought by the old woman to set aside the deed of sale. It was therefore more to his interests to see that the old woman was silenced for ever and was not in a position to give any evidence to set aside the deed of sale. The Appellant had therefore a greater motive for doing away with the old woman than the son-in-law or the grandson who were the only other persons suggested as the assailants of the old woman.

11. The High Court analysed the whole of the evidence and rightly came to the conclusion that no stranger could ever have had any motive to do away with the old woman, that the son-in-law and the grandson also had no such motive, but that the Appellant had not only the motive but also the opportunity of doing the old woman to death in the manner the prosecution alleged he had done.

12. The conduct of the Appellant also was not free from blame. It is no doubt true that when he was accosted by the neighbours when he had gone to purchase the conffin cloth he reported to them that the old woman had died. That however did not establish the innocence of the Appellant. If the old woman had died a natural death as suggested by the Appellant the first thing which one would have expected to him was to have informed the son-in-law and the grandson of the old woman about her death and asked them to arrange for the cremation of the dead body. This he certainly did not do and it was only when a hulla was made in the morning that the old woman was dead that the son-in-law and the grandson came to know about her death and hastened to the house of the Appellant where they found the old woman lying dead on the charpoy in the Angan.

The further conduct of the Appellant was far more prejudicial. The daffadar and the chowkidar both prevented him from taking the dead body for cremation because they suspected foul play. The Appellant was very insistent and wanted to take the dead body of the old woman for cremation as early as possible and he was only prevented by these officials from carrying into execution his intention in that behalf. The conduct of the Appellant therefore far from establishing his innocence certainly showed that he was aware of the manner in which the old woman had met with her death and was most anxious to dispose of the body so as to avert any suspicion or proof of her having met with an unnatural death as it was finally found by the Civil Surgeon on a post mortem examination of the dead body.

13. We have therefore come to the conclusion that both the Sessions Judge as well as the High Court were right in holding that the prosecution had succeeded in establishing the guilt of the Appellant. The conviction of the Appellant and the sentence of death passed upon him were therefore correct and we accordingly dismiss the appeal.

Appeal dismissed.

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