

SUPREME COURT OF INDIA

Atley

Vs.

State of U.P.

Crl.A.No.59 of 1954

(Vivian Bose, T. L. Venkatarama Ayyar and B. P. Sinha, JJ.)

16.09.1955

JUDGEMENT

SINHA, J. :-

1. This is an appeal by special leave from a judgment and order of a Division Bench of the Allahabad High Court dated the 31-3-1953 allowing the appeal of the State of Uttar Pradesh against the order of acquittal passed by the Additional Sessions Judge of Meerut dated the 25-5-1951, so far as the appellant was concerned. The appellant and another person named Hoshiara had both been placed on trial for an offence under S. 302, Penal Code read with S. 34, Penal Code. Both had been acquitted by the learned trial Judge.

But the State of Uttar Pradesh preferred an appeal only as against the appellant. The appellant has been convicted under that section and sentenced to transportation for life.

2. The charge against the appellant, as also against the co-accused was that on the night between the 3rd and 4th June 1950 in village Tavela Garhi, P. O. Binauli. sub-district Sardhana, district Meerut, he had murdered Smt. Shivdevi in the latter's 'gher' and thereby committed an offence punishable under S. 302, Indian Penal Code. The first information report had been lodged by Sub-Inspector Bishram Singh to the effect that he along with head constable Ram Bahadur Singh and constable Bhagat Singh of the Provincial, Armed Constabulary who were with a platoon, camping outside with a view to prevention of serious crimes, while on their round stopped in front of the appellant's 'gher' (which may freely be translated as a farmhouse) on hearing a sound which raised their suspicion.

Soon after that Asaram Kahar (P. W. 1) came running from the direction of the police camp which was just outside the village. He informed the police party that he and his wife had heard from the roof of their house the shrieks of a woman from inside the appellant's 'gher' and that he had gone to the police camp to report the matter. The first informant called out the name of Atley repeatedly from outside as the main door had been bolted from inside. As there was no response, he called Sajawal, chowkidar and sent him along with constable Bhagat Singh and Asaram aforesaid inside the 'gher' by scaling over the low wall to see what the matter was.

Guards were posted all round the house. They found the appellant lying on a bed with his face covered with a cloth. The appellant was brought out of the house and on being questioned by the Sub-Inspector, began to tremble and with folded hands begged pardon. The suspicion of the police

party was further roused by the conduct of the appellant. They were inside the 'gher' and on search being made of the premises, made the gruesome discovery of a corpse, which was later identified to be that of the appellant's wife, stuffed in a sack. The appellant is said to have made a self-incriminating statement as a result of which he was taken into custody and information sent to the police station.

P. W. 15, the second officer of the police station Binauli, left for the spot eight or nine miles distant from the police station and reaching there about 10 A.M. started the investigation. He found the dead body of Shivdevi in a gunny bag in the 'kotha' inside the appellant's 'gher'. He noticed a piece of cloth (orhna) in the mouth of the dead body. He found the petticoat of a female inside the 'kotha'. He also found marks of strangulation on the neck of the deceased. The dead body was naked. That day and on the following day, i.e., 5-6-1950, he examined the persons who figured later as P. Ws. 1 to 9 and 11 to 14.

The Civil Surgeon of Meerut held the post-mortem examination of the dead body on the 5th June at 6-15 P.M. The body was bloated all over, in a highly advanced state of decomposition with the skin peeling off, both eyes were bulging and there was bloody discharge from both nostrils and the tongue was protruding out. No external mark of injury could be located due to the bloating and the advanced state of decomposition. On opening up the body, it was found that on the right side the second to fifth ribs and on the left side the second to sixth ribs, had been broken and the sternum was also fractured.

Death in the opinion of the doctor was due to "compression of the chest which resulted in the fracture of the sternum and ribs and shock and haemorrhage." After completion of the investigation and the preliminary enquiry by the committing magistrate the appellant along with Hoshiara was placed on trial with the result indicated above.

3. At the trial a number of witnesses, namely, P. Ws. 1, 3, 4, 5 and 6 were examined to prove that these next door neighbours at dead of night heard the shrieks of Shivdevi and they inferred that she was being severely beaten. On hearing her cry, P. W. 1, Asaram, as indicated above, hurried to the P. A. C. camp to inform the police party. P. W. 2, Bishram Singh, Sub-Inspector, happened to reach the same spot from the opposite direction on his round and he also suspected that something nefarious was happening inside the appellant's 'gher'.

The other P. Ws. then described how they entered the 'gher' and discovered the dead body of Shivdevi in circumstances leading them to infer that it was the appellant who was the perpetrator of the crime.

4. The defence of the appellant as disclosed in his examination under S. 342 Criminal Procedure Code, in the Sessions Court was that he had not taken Shivdevi from his residential house to the 'gher' that fateful night between the 3rd and 4th June, 1950. To further questions by the court he answered as follows :

"I did not kill her nor was Hoshiara with me. I was not at the 'gher' and was not lying on the cot as alleged . I was not at all at my 'gher' till that time. Asa and Mangat sepoy had come to my Persian wheel in the field and they took me with them to the military officer that night. When I was brought to him from the jungle no recovery of the dead body took place in my presence. It would thus appear that the appellant completely denied his presence at any time of that night at the 'gher'. If it were true that he was nowhere near his 'gher' that night and that as, alleged by him he had, been

working with his Persian wheel in his field and that he was brought to his 'gher' from his field by the police officers, all the evidence led on behalf of the prosecution has undoubtedly failed to connect him with the crime. The learned Additional Sessions Judge appears to have accepted the defence of the appellant as would appear from the following significant passage in his judgment :

"The fact of murder is not disputed but it is seriously disputed that Atley was present in the gher when people entered the 'gher' where after the dead body was recovered from the 'kotha'. I am referred to the statement of P.W. Raja Ram, the Mukhia and sarpanch of the village who pays Rs. 100 as land revenue. He was sent for to Atley's 'gher' by the military police. According to him when he reached at 'gher' Atley was under the custody of the military police and standing in the public path in front of the door of the 'gher'.

It is clear from his statement that Atley was arrested first and the entry into his 'gher' was effected thereafter".

The learned trial Judge jumped to this conclusion relying upon the following statement in the cross-examination of Raja Ram, P.W. 11, who was a sarpanch and had been called by Sajawal, chowkidar, to the appellant's 'gher':

"Atley accused was in custody and standing in the public path in front of the door of the 'gher'. Nobody talked to Atley in my presence".

These are the opening sentences in the short cross-examination of Raja Ram, P.W. 11. It is clear that the cross-examination lawyer obtained those statements in that bald form without any reference to sequence of events. It is also clear from the statements in examination-in-chief of this witness that he was making those statements without any regard to the sequence of time in which the events deposed to by him occurred. The learned trial Judge appears to have been misled by his reading too much into the statements of that witness made in cross-examination.

Once that crucial mistake had been made and the substantive defence of the accused accepted, the learned Judge did not find much difficulty in brushing aside the other evidence in the case. The judgment of the learned trial Judge is a recital seriatim of the evidence of each witness in separate paragraphs and at the very threshold of his observations on that evidence he makes the blunder of attributing a sequence to the statements of P.W. 11, Raja Ram, which his evidence, if read properly, does not justify.

The learned Judges of the High Court therefore were right in pointing out that the learned trial Judge had misdirected himself in holding that the evidence led by the prosecution, particularly of Asaram and Sub-Inspector Bishram Singh, had in any way been shaken by the aforesaid statements of P.W. 11. The High Court also points out that the examination-in-chief itself by the prosecuting lawyer had not been properly done inasmuch as no attempt had been made to bring out statements in their chronological sequence.

The High Court after a very thorough and exhaustive examination of the evidence in the case came to the conclusion that the appellant was found inside the 'gher' as alleged by the prosecution and that the circumstances disclosed in the evidence pointed to the conclusion that the appellant was responsible for the murder, probably aided by another person. The High Court did not examine closely the part said to have been played by Hoshiara as the State Government had not filed any appeal against him. But the learned Judges of the High Court had no doubt that so far as the

appellant was concerned, the guilt for the crime had been brought home to him.

5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on a mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under S. 417, Criminal P. C. came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated (See in this connection the very cases cited at the Bar, namely, 'Surajpal Singh v. The State AIR 1952 SC 52 (A) Wilayat Khan v. State of Uttar Pradesh AIR 1953 SC 122 (B), In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

6. The other contentions raised on behalf of the appellant need no serious consideration because they relate to mere appreciation of evidence and do not raise any question of principle. For example, it was said that the evidence led on behalf of the prosecution did not clearly establish the motive for the crime. It was said that it was true that the deceased was the discarded wife of the appellant who had taken a second wife but that there was no clear evidence of any serious quarrels between the husband and the wife.

That is true and where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty but the absence of clear proof of motive does not necessarily lead to the contrary conclusion. If the prosecution had proved by clear evidence that the appellant had reasons of his own for getting his first wife out of the way, that would have lent additional assurance to the circumstantial evidence pointing to his guilt. But the fact that the prosecution has failed to lead such evidence has this effect only, that the other evidence bearing on the guilt of the accused has to be very closely examined.

In this case the learned Judges of the High Court have very carefully examined the evidence led on behalf of the prosecution and come to the conclusion that the circumstances proved beyond any doubt that the appellant was responsible for the murder that night. It may be that he was aided by Hoshiara but that was a matter on which the court was not called upon to finally pronounce its opinion. If the conclusion was right, there is no doubt that the appellant deserved the only sentence that under the law could be imposed upon him apart from the extreme penalty which the High Court

in this case did not think fit to impose.

7. In our opinion, no ground has been made out for interference. The appeal is accordingly dismissed.

Appeal dismissed.

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