

# **SUPREME COURT Of INDIA**

Rawalpenta Venkalu

Vs.

State of Hyderabad

Crl.A.No.43 and 44 of 1955

(Vivian Bose, B. Jagannadhadas and B. P. Sinha, JJ.)

07.10.1955

## **JUDGEMENT**

### **SINHA, J.:**

1. These two appeals by special leave arise out of the same judgment and order of a Division Bench of the Hyderabad High Court dated the 15th April 1954 confirming those of the Sessions Judge of Nalgonda dated the 18th January 1954, In Criminal Appeal No. 43 of 1955 Rawalpenta Venkalu is the appellants and in Criminal Appeal No. 44 of 1955, Bodla Ram Narsiah is the appellants.

Both these persons have been sentenced to death under section 302, Indian Penal Code for the murder of Md. Moinuddin, Banjardar of Mohiuddinpur within the jurisdiction of police station Penpabad, Circle Suryapet, District Nalgonda, on the 18th February 1953. They were placed on their trial along with three others who were acquitted by the learned trial Judge.

The sentence of death was the subject matter of a reference to the High Court. The two condemned persons also came up in appeal to the High Court which dismissed the appeal and accepted the reference for confirmation of the death sentence.

2. The prosecution case, shortly stated was that on the night between the 18th and 19th February 1953 the two appellants along with the three others (acquitted by the learned trial Judge) in pursuance of a conspiracy to commit the murder of Md. Moinuddin had set fire to the single room hut in which he was sleeping, after locking the door of the room from outside. P. W. 8, an old servant who was sleeping in front of the cottage outside the room occupied by the deceased, was awakened by the noise of the locking of the door from outside.

Just at that time Moinuddin also called out for him from inside and asked him to open the door. P. W. 8 replied that he could not do so as he found the door locked from outside. Three other employees of Moinuddin, viz., P. Ws. 4, 11 and 12 who were watching his harvest about fifty paces away, were also called out by him.

When they came near the cottage, they were assaulted by the culprits. Kasim Khan was beaten severely. The two appellants then set fire to the cottage and the employees of Moinuddin were kept at bay by the superior force of the accused and their associates. Those employees naturally, therefore, went towards the main habitation in the village shouting for help.

When the villagers came, the appellants and others prevented them from going to the rescue of the helpless inmate of the cottage by throwing dust in their eyes, literally speaking, and by the free use of their sticks. The first information report of the occurrence was lodged at Penpabad police station on the morning of the 19th February by Yousuf Ali, a cousin of the deceased, to the effect that some goondas of the village had set fire to the cottage occupied by Moinuddin after chaining the outer door, with the result that he was burnt alive and that the villagers who tried to extinguish the fire had been beaten away by those goondas. The villagers thus became terrified and had to retreat to the village.

This was hearsay information, as the first informant was not present at the scene of occurrence. The police inspector, after recording the first information, reached the place of occurrence in the morning that day and found the house still burning. He took along with him the doctor of that place and a photographer.

The corpse was taken out of the house and inquest and post-mortem examination were held; From the room occupied by the deceased a wrist-watch was also recovered. It had stopped at 11-40. The inference had, therefore, been drawn that the occurrence must have taken place near about that time as burning heat must have caused the watch to stop.

The police party also recovered from the outer part of the room within the compound burnt matches and one empty match box.

3. Such in short was the case which was investigated by the police. As no one had been named as accused in the first information report, the appellants were not arrested until the 22nd February 1953 and on the 23rd February the appellants are said to have made their confessional statements which are Exs. 27 and 28.

Those confessions were recorded by a munsif magistrate. The first appellant Venkalu, it was recorded in that statement, stated that there was tension between the deceased and Bodla Ram Narsiah (the 2nd appellant). After they had been served with toddy and wine they went to the house of the deceased and locked the house with his lock and the second appellant set fire to the house with a match stick.

The fire was extinguished by wind. Then the second appellant beat Kasim Khan (one of the employees of the deceased) who was approaching the cottage and again set fire to the house. It is noteworthy that in the second incident of setting fire to the house he gives a part to himself, as also to the second appellant. He also admits having thrown dust in the eyes of people who were rushing from the village side for putting out the fire.

4. The second appellant Bodla Ram Narsiah also speaks about himself and the first appellant drinking wine and after that the first appellant locking the door of the house of the deceased. But he assigns the part of setting fire to the house to the first appellant, whereupon the occupant of the cottage Moinuddin is said to have started shouting for his servants.

As the servants were coming near the cottage he admits having dealt a blow to Kasim. He also supports the first appellant in the statement that when the villagers came to the place he began to beat the villagers with a stick and the first appellant began to throw dust in their eyes, with the result that half of the cottage was burnt.

It will thus be seen that except for the single difference between the two statements as to who

lighted the match stick, on other points the two statements agree. The first appellant includes both of them as having lighted the match stick and set fire to the cottage, whereas the second appellant gives that part to the first appellant alone. But both of them agree in stating that whatever was done was done in pursuance of the common intention of both of them.

5. But the case against the appellant does not depend upon those confessional statements. The prosecution has examined as many as 19 witnesses, of whom P. Ws. 4, 7 and 8 saw the occurrence from the beginning to the end and P. Ws. 11 to 14 also saw the occurrence, though they do not bring the charge directly home to the appellants. P. W. 8 also does not directly incriminate them.

The witnesses who saw the main occurrence of burning agreed in stating that they were frightened by the miscreants and were too afraid to disclose the names of the culprits until the police party arrived along with the servants and relations of the deceased.

6. It has been found by the courts below that there was longstanding dispute between the deceased and the family of the second appellant over land which belonged to the deceased but which was in cultivating possession of the second appellant's family.

This dispute has been testified to not only by some of the prosecution witnesses; e.g., P. Ws. 17 and 19, but was proved by documentary evidence also. As the motive for the crime, as found by the courts below, has not been challenged before us, we need not say anything more on that question.

7. The appellant in appeal No. 43 of 1955 was represented before us by Mr. Dadachanji and the appellant in Appeal No. 44 of 1955 was represented by Mr. Naunit Lal. Both of them have argued in the first place that the confessional statement made by both the accused was not admissible in evidence, firstly, because it had not been voluntarily made and secondly, because the one contradicts the other.

It has also been argued that having retracted at the sessions stage, the confessions are wholly unreliable. In this connection it is enough to point out that the learned Judges of the High Court have in the first instance discussed the positive evidence led by the prosecution to bring the charge home to the accused. They have relied upon the evidence of the two eye-witnesses, namely, P. Ws. 4 and 7.

That direct evidence clearly implicating the two appellants has been supported by a large volume of oral evidence of persons who reached the spot while the cottage was still burning. We do not find any good reasons for reopening the findings of the courts below that the oral testimony adduced in this case was by itself sufficient to prove the guilt of the appellants. After discussing and accepting the testimony of the witnesses the High Court observed as follows at the end of its judgment :-

"In addition to the testimony of these two eye-witnesses there are confessions. The confessions of both the accused are fairly detailed and the learned Magistrate who recorded them had certified that it was voluntarily given. The only objection taken to the confession of A-2 before us was that he was suffering from fever and, therefore, was not in full possession of his senses. A perusal of the confession has, however, shown that he was in full possession of his mind and even if he suffered from fever, it did not prevent him from giving a detailed confession.

We, therefore, hold that the guilt of the accused is proved beyond reasonable doubt".

8. It is to be remarked that these confessional statements were not retracted until the accused were

examined by the learned Sessions Judge under S. 342, Criminal Procedure Code. The first appellant, when questioned about the confession, answered that he gave the statement "under police pressure". He said he was beaten by the police for three days.

But that is clearly a lie because he was, as already indicated, arrested on the 22nd February and the very next day his confessional statement was recorded. The second appellant, when similarly questioned, answered as follows:-

"I do not know whether I had given any statement, because I was severely beaten and then I had fever".

It is clear that neither of these two appellants has been able to point to any circumstance which could lead to the conclusion that these confessional Statements had been extorted from them. But it is not necessary further to examine the force and effect of these confessional statements because, as pointed out by the High Court in the passage quoted above, the direct testimony against the appellants is clear and cogent enough to bring the charge home to them.

9. It was also argued that no offence under S. 302, Indian Penal Code had been proved against the appellants, firstly, because they only set fire to the cottage and secondly because there was no charge against either of them under section 302 read with section 34, Indian Penal Code. In our opinion, there is no substance in any of these contentions.

The intention to kill Moinuddin is clear from the fact deposed to by the prosecution witnesses that the accused took care to lock the door from outside so that his servant P. W. 8 sleeping outside could be of no help to the deceased who had thus been trapped in his own cottage. Furthermore, when the villagers were roused from their sleep and were proceeding towards the cottage which was on fire, they were prevented from rendering any effective help to the helpless man, by the use of force against them by the accused.

It may be that Moinuddin being the village Patel might not have been very popular with the villagers who were, therefore, not very keen on saving his life. Be that as it may, the appellants took active steps to prevent the villagers from bringing any succour to the man who was being burnt alive.

10. As regards the frame of the charge, it is clear from the evidence that each one of the two appellants, if not also other persons, actively contributed to the burning of the cottage while the man had been trapped inside. According to the evidence of one of the five witnesses, namely, P. W. 7, both these appellants lighted a match and set fire to the house.

Each one of them therefore severally and in pursuance of the common intention brought about the same results by his own act. It is also noteworthy that to both the appellants the learned Sessions Judge explained the charge against them in these words:-

"You are charged of the offence that you with the assistance of other present accused, with common intention, on 18-2-53 at Mohiuddinpur village, committed murder, by causing the death of Md. Moinuddin

.....".

It is clear, therefore, that though section 34 is not added to section 302, the accused had clear notice

that they were being charged with the offence of committing murder in pursuance of their common intention to put an end to the life of Moinuddin. Hence the omission to mention section 34 in the charge has only an academic significance, and has not in any way misled the accused. As already indicated, there is clear evidence that both the accused lighted a match stick and set fire to the cottage and each one of them therefore is clearly liable for the offence of murder. Their subsequent acts in repelling all attempts at bringing succor to the trapped person clearly show their common intention of bringing about the same result, namely, the death of Moinuddin.

The circumstances disclosed in the evidence further point to the conclusion that the offence was committed after a preconcerted plan to set fire to the cottage after the man had as usual occupied the room and had gone to sleep. There is no doubt therefore that on the evidence led by the prosecution in this case the charge of murder has been brought home against both the appellants and that in the circumstances there is no question but that they deserve the extreme penalty of the law.

11. For the reasons given above we do not find any reasons for differing from the conclusions arrived at by the courts below. The appeals are accordingly dismissed.

Appeals dismissed.

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