

Sheshanna Bhumanna Yadav

Vs

State of Maharashtra

Criminal Appeal No. 225 of 1969

(A. N. Ray, I. D. Dua JJ)

08.05.1970

JUDGMENT

RAY, J. -

1. This appeal by special leave is against the judgment, dated December 18, 1968 of the High Court at Bombay dismissing the appeal and confirming the conviction of Moti alias Narayan Sheshanna Yadav and Sheshanna Bhumanna Yadav accused Nos. 2 and 3 respectively except that the conviction of accused No. 2 of the substantive offence of the murder under Section 302 was altered and accused No. 2 was convicted of an offence under Section 302, read with Section 120-B as well as offence under Section 302, read with Section 34 of the Indian Penal Code. The High Court confirmed the sentence of death passed against accused No. 3 Sheshanna Bhumanna Yadav. Accused No. 2 son of accused No. 3 was at the time of the judgment of High Court of 17 years of age. The High Court reduced the punishment of accused No. 2 to rigorous imprisonment for life. Accused No. 1 Hiralal was a domestic servant of Dr. Nanavati grandfather of the deceased Narendra. Accused No. 2 is the son of accused No. 3.

2. Accused No. 1 Hiralal Jamadas Joshi, accused No. 2 Moti alias Narayan Sheshanna Yadav and accused No. 3 Sheshanna Bhumanna Yadav were charged with having entered into criminal conspiracy with approver Dinkar Sakharam between December 19, 1967 and January 4, 1968 at Deolali Camp for the purpose of committing the murder of Narendrakumar and committed house breaking and thefts in the house of his grandfather Dr. Nanavati and disposed of the property so obtained and caused the evidence of murder to disappear with the intention of screening the offenders from lawful punishment and that these acts were done in pursuance of the said criminal conspiracy, and offence punishable under Section 120-B, read with Sections 302, 454, 380, 414 and 201 of the Indian Penal Code. Accused Nos. 1 to 3 were further charged with having committed the murder of Narendrakumar in complicity with approver Dinkar Sakharam and the said murder came to be committed in furtherance of common intention of all the accused an offence punishable under Section 302, read with Section 34 of the Indian Penal Code. They were further charged under Section 201, 454, 380 and 411 of the Indian Penal Code.

3. Dr. Dalichand Nanavati the grandfather of deceased Narendrakumar who met unnatural and unfortunate end at the hands of accused No. 2 and one Dinkar Sakharam, subsequently turned approver, resided at Deolali Camp at Dhondi Road in bungalow No. 17 for about 11 years. He was a registered medical practitioner. At the relevant time he was in pharmaceutical business for the manufacture of medicines. The head-office was at Bombay. The Branch was a Deolali. The owner of bungalow No. 17 was Narsanna Bhumanna Yadav brother of accused No. 3. Narsanna was a person of unsound mind and accused No. 3 was the holder of power of attorney. Accused No. 3

resided at the rear portion of bungalow No. 17. The bungalow was agreed to be sold to Dr. Nanavati. There were civil and criminal proceedings out of that transaction. Bungalow No. 17 was eventually sold to a third party on May 11, 1964. In the sale deed it was said that possession of the portion in the occupation of Dr. Nanavati would be handed over to the vendee when the proceedings pending against Dr. Nanavati concluded. Dr. Nanavati succeeded in those proceedings. Therefore, possession could not be given by the vendor to the vendee.

4. In the month of November, 1967, Dr. Nanavati's wife left Deolali for Jodhpur. Dr. Nanavati also left Deolali and went to his native place leaving his grandson Narendra, who was about 15 years of age in the care of his domestic servant accused No. 1.

5. The prosecution case was as follows. Accused No. 3 thought that Dr. Nanavati's departure from Deolali leaving his grandson Narendra at the bungalow in charge of the domestic servant was a good opportunity to commit theft of articles in the house of Dr. Nanavati and to murder his grandson Narendra with a view to frightening Dr. Nanavati to vacate the bungalow. Accused No. 3 called Dinkar on December 19, 1967 and suggested to Dinkar that the latter should commit the murder of Narendra after December 21, 1967, when Dr. Nanavati would leave the bungalow and his grandson Narendra would be there with the domestic servant. Accused No. 3 proposed a reward to Dinkar, namely, a motor cycle and a further sum of Rs. 100/-. Accused No. 3 told Dinkar that the said accused had committed two murders prior to that date but nothing happened to him. Dinkar at first expressed his inability to undertake the job. Accused No. 3 then said that Dinkar should take accused No. 2 who was the son of accused No. 3 for the job.

6. Accused No. 2 and Dinkar started getting familiar and friendly with Narendra. They visited his house regularly. They moved about with Narendra. On December 25, 1967 accused No. 1 the domestic servant of Dr. Nanavati left Deolali and went to Bombay. Accused No. 2 and the approver Dinkar took Narendra out with the intention of murdering him but because of certain interruptions they could not muster courage to achieve that object. On December 27, 1967 accused No. 3 called Dinkar and told him and accused No. 2 that he was going to Nasik in connection with some court work and they should murder Narendra and that he would look to everything after his return from Nasik. Nasik is about 5 or 7 miles from Deolali.

7. Accused No. 2 and Dinkar took Narendra to a lonely area beyond Barne's High School on the pretext of collecting clothes from a washerman and went to the house of the latter and collected a couple of garments. Thereafter they went to a garden where they drank water and then went to an open field. There they plucked fresh groundnuts and started eating them. Accused No. 2 and Dinkar took Narendra to a jowar field. Dinkar gave a blow with his hand on the neck of Narendra as a result of which Narendra fell down. Accused No. 2 and Dinkar held Narendra tightly. Dinkar sat upon his abdomen and started choking his throat with both his hands and accused No. 2 gagged his mouth and nose. Dinkar gave blows on Narendra's abdomen. After Narendra was choked for about 10/15 minutes, he breathed his last.

8. Accused No. 2 then asked Dinkar to take out the key of the bungalow which he had seen Narendra putting in his pocket and Dinkar removed the key and gave it to accused No. 2. Accused No. 2 scrapped some earth and dug a small pit and placed Narendra in it, face down-wards, and covered it with some loose earth. Accused No. 2 and Dinkar then returned to the house of accused No. 3 on being told that accused No. 2 and Dinkar had accomplished the murder of Narendra accused No. 3 was happy and gave them Rs. 10/- to celebrate the occasion by seeing a picture. Accused No. 3 told accused No. 2 and Dinkar that the following day they must take out all the

goods from the house of Dr. Nanavati and hand them over to him.

9. When Dinkar went to the house of accused No. 3 the following morning, Dinkar heard accused No. 2 and 3 saying that Dr. Nanavati would not be able to live in that bungalow any longer. Accused No. 2 and Dinkar then went to the bungalow of Dr. Nanavati and opened the lock with the key which had been removed from Narendra's pocket. Accused No. 2 and Dinkar locked the front door from outside and kept the back door ajar and removed a large number of articles which were in cupboards which they opened with the help of a bunch of keys which they found in the house. Accused No. 2 and Dinkar again went to the bungalow of Dr. Nanavati on the subsequent day. They removed two cycles and several articles and handed them over to accused No. 3. Accused No. 3 gave to the approver Dinkar a cycle and some of the property which had been recovered from the house of Dr. Nanavati.

10. Dr. Nanavati returned to Deolali along with his wife on January 4, 1968. They found the front door of the house locked. They made enquiries. Ultimately, they entered the house by breaking open the lock and found that Narendra was not in the house, that the whole house had been ransacked and the back door was ajar. Dr. Nanavati reported the matter to the police. Clue was furnished by a piece of cloth which had been stolen from the house of Dr. Nanavati. That piece of cloth which had been given by accused No. 3 to the approver Dinkar who gave it to a tailor named Thakur for stitching a pair of trousers for him. Dr. Nanavati happened to go to the shop of Thakur and made enquiries about the piece of cloth which was found in the tailor's shop. Accused No. 2 and Dinkar took away the cloth from the tailor's shop when they heard of the enquiries about the piece of cloth. Dinkar gave some money to the tailor. Dinkar and accused No. 2 raised some money by pledging a cycle which they had with them. The police came to the tailor's shop, made enquiries and ultimately accused No. 2 and Dinkar were arrested on January 23, 1968. Dinkar pointed out the place of the occurrence to the police on that day. On January 24, 1968 some human bones were found at that place. On January 25, 1968 accused No. 3 was arrested. Dinkar and accused No. 2 made various statements and led the police to various places. Several articles stolen from the house of Dr. Nanavati were recovered. On February 12, 1968, Dinkar made a full-fledged detailed confession.

11. In the High Court three questions were canvassed. First whether there was corroboration in regard to the crime. Secondly, whether there was corroboration in regard to accused Nos. 2 and 3 being guilty of the offence. Thirdly, whether there was corroboration in regard to the approver's story about the conspiracy and the common intention by way of pre-conceived plan to murder Narendra. The High Court found that there was corroboration of the evidence which connected accused Nos. 2 and 3 not only with the offence of theft but also with murder. The High Court also came to the conclusion that there was corroboration of the evidence of Dinkar in material particulars in regard to the connection of the accused with the crime and in regard to the conspiracy as well as the common intention.

12. The law with regard to the appreciation of approver's evidence is based on the effect of Section 133 and 114, illustration (b) of the Evidence Act, namely, that an accomplice is competent to depose but as a rule of caution it will be unsafe to convict upon his testimony alone. The warning of the danger of convicting on uncorroborated evidence is therefore given when the evidence is that of an accomplice. The primary meaning of accomplice is any party to the crime charged and some one who aids and abets the commission of crime. The nature of corroboration is that it is confirmatory evidence and it may consist of the evidence of second witness or of circumstances like the conduct of the person against whom it is required. Corroboration must connect or tend to connect the accused with the crime. When it is said that the corroborative evidence must implicate

the accused in material particulars it means that it is not enough that a piece of evidence tends to confirm the truth of a part of the testimony to be corroborated. That evidence must confirm that part of the testimony which suggest that the crime was committed by the accused. If a witness says that the accused and he stole the sheep and he put the skins in a certain place, the discovery of the skins in that place would not corroborate the evidence of the witness as against the accused. But if the skins were found in the accused's house, this would corroborate because it would tend to confirm the statement that the accused had some hand in the theft.

13. This Court stated the law of corroboration of accomplice evidence in several decisions. One of the earlier decision is *Sarwan Singh v. State of Punjab*, 1957 SCR 953 and the recent decision is *Lachi Ram v. State of Punjab*, (1967) 1 SCR 243. In *Sarwan Singh* case (supra) this Court laid down that before the court would look into the corroborative evidence it was necessary to find out whether the approver or accomplice was a reliable witness. This Court in *Lachi Ram's* case (supra) said that the first test of reliability of approver and accomplice evidence was for the court to be satisfied that there was nothing inherently impossible in evidence. After that conclusion is reached as to reliability that there must be sufficient corroborative evidence in material particulars to connect the accused with the crime.

14. In the present appeal, counsel on behalf of the appellant contended that there was no corroboration of the actual participation in the murder and secondly that accused No. 3 could be guilty of theft but not of murder. The washerman said that Dinkar was his classmate and through Dinkar he came to know accused No. 2. The washerman further said that he used to wash the clothes of accused No. 2 and on December 27, 1967 Dinkar and accused No. 2 came to the washerman's house to take out a few clothes which he had washed for them. The washerman also said that Dinkar and accused No. 2 had with them a body who was of fair skin and wore khaki shorts and white shirt.

15. Mohan Lal Boob, an agriculturist gave evidence that on December 27, 1967 he was watering the crops. Three persons turned up one of whom was accused No. 2 and the other was known to him by face and the third was a boy of 14 or 15 years of age wearing khaki short and a shirt. Mohan Lal Boob said that he saw all of them sitting down in the field, drank water and purchase radishes from a woman who was sitting nearby.

16. It may be difficult to find corroborative evidence of the actual killing. Dinkar showed the place of occurrence. Eventually, a few things were discovered there, namely, a shirt, a chain, a skull having the upper jaw with 13 teeth, a bone, bunch of hair. These things were found on January 28, 1968, the shirt and the chain were identified by Dr. Nanavati and his wife to belong to Narendra. A girl of 14 years named Garadin Bride who was classmate of Narendra said that Narendra wore a chain similar to the one that was shown. The medical evidence was that the bones were those of a human being probably a male. Beyond that the medical evidence does not assit the prosecution. The High Court found that the death of Narendra was not disputed because it was put to Dinkar in cross-examination that it was Dinkar alone who killed Narendra. Therefore, the medical evidence as to the skull and the bone is not of importance in view of the death of Narendra. Dr. Nanavati entered the house by breaking open the lock. He found the back door left ajar. The key which was produced by Dr. Nanavati was found to fit the lock though the lock could not be operated with the key in view of the fact that Dr. Nanavati had broken it open for gaining entry into the house.

17. There is also evidence of Kisan Prasad that after Christmas day in 1967 he saw a dead body which had on it khaki shorts and white shirt. If the murder of Narendra and the theft were not parts

of the same transaction, Narendra would not have been taken out to the field to be murdered there to eliminate the possibility of detection. The close proximity between murder and theft points to the inescapable conclusion that they formed part of the same transaction. Narendra was seen alive by Kewal Ram, owner of the betel shop on December 26, 1967. Hira Lal, the domestic servant of Dr. Nanavati left Deolali on December 25, 1967. The theft could not have been committed before the murder because in that case there would be complaint by Narendra and the house in that case would also have been broken open for committing the murder. All these features prove that the murder and the theft formed the same transaction and were committed by the same persons. Narendra was seen alive in the company of accused No. 2 and Dinkar. That was the evidence of the washerman as also of the agriculturist Mohan Lal Boob. These witnesses further identified the shorts and shirts of Narendra.

18. Accused No. 2 produced the piece of cloth which was identified with the cloth of the mattress cover produced by Dr. Nanavati. Both the pieces of the cloth were of the identical design. The pledging of the cycle by accused No. 2 is of significance. The cycle was identified both by Dr. Nanavati and his wife. The next piece of evidence is that accused No. 2 sold some utensils to Gadekar. One of the utensils was found to have a name thereon scraped off. There was also a piece of handwriting with the signature of accused No. 2 at the foot of it and that was the list of the articles sold to Gadekar. There were some articles found from the tailor's shop. The evidence of the tailor was that those articles were given by accused No. 2. The discovery of the chain which Narendra wore was identified by Dr. Nanavati. Accused No. 2 sold a cycle carrier to Rupvate on January 16, 1968. The sale of that article was discovered on January 23, 1968. Dr. Nanavati identified the cycle carrier. That identification was not challenged. All these pieces of evidence prove the connection of accused No. 2 with the crime.

19. With regard to accused No. 3 it is found that there were civil and criminal proceedings between him and Dr. Nanavati. Accused No. 3 had the notice not only to make it impossible for Dr. Nanavati to stay in the bungalow but also to commit theft in his house. Accused No. 3 gave several articles to a person called Takalkar. Takalkar had dealing with accused No. 3 in the past. Takalkar said that accused No. 3 gave him some pieces from silver idols and other silver articles and wanted money by disposing of the same. Takalkar purchased the entire silver material from accused No. 3 for Rs. 175/-. Takalkar also said that at the request of accused No. 3 he kept the bag of utensils in his godown and gave the key of the godown to accused No. 3 who afterwards returned the key. The police came to the shop of Takalkar and he was asked to produce the gunny bag which he did. The articles in the gunny bag were taken and the articles excepting the lump of silver were identified by Dr. Nanavati and by his wife. The identification was not challenged in cross-examination it is obvious that silver lump could not be identified. At this stage it is to be noticed as to whether there is evidence to connect accused No. 3 with murder. The transaction was one composite unit of murdering Narendra and committing theft.

20. The discovery of articles in the godown of Takalkar was a result of a statement by accused No. 2. The name of accused No. 3 was found in the note-book of Takalkar. The relationship of father and son between accused No. 3 and accused No. 2 is not to be lost sight of. Accused Nos. 2 and 3 went together for the sale of cycle carrier to Rupvate. The High Court rightly came to the conclusion that there was sufficient corroboration of the evidence of Dinkar in material particulars and that Dinkar was a reliable witness and it was proved that accused Nos. 2 and 3 were guilty of the offence. In view of the fact that there was capital sentence of accused No. 3 we went through the evidence to find out as to whether there was any infirmity in evidence. We have found none.

21. The appeal therefore fails. The accused will surrender to his bail, if any.

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