

Shankar Bhika Narsale

Vs

State of Maharashtra

Criminal Appeal No. 153 of 1969

A. N. Grover, M. H. Beg, JJ)

14.03.1972

JUDGMENT

BEG, J. -

1. This is an appeal by Special Leave against the conviction of the appellant under Section 302, Indian Penal Code and a sentence of life imprisonment imposed upon him.
2. According to the prosecution, the appellant was aggrieved by the action of Smt. Kondabai, the widow of the appellant's uncle named Bapu. She had taken steps to obtain a revocation of a gift deed executed by her on September 9, 1958, in favour of Bhika, the father of the appellant. It appears that Bhika had induced his sister-in-law Kondabai, after the death of his brother Bapu, to make the gift by executing an annuity bond to pay maintenance to her in lieu of it. It was alleged that, as the undertaking was not carried out by Bhika, Kondabai had taken steps for the revocation of the gift deed on the ground that it was not voluntary. It appears that, due to this and other causes of friction and disputes, Kondabai had gone to live with her sister Laxmibai.
3. On October 24, 1965, at about 5 a.m., when Kondabai had gone to afield to answer the call of nature, the appellant was said to have been lying in wait for her and to have attacked her with an axe. A First Information Report showing that the appellant was suspected of the attack which resulted in her death had been lodged at 10 a.m. on October 24, 1965 by the Police Patel of Kusegaon. Tanhubai, P.W. 4, an alleged eye-witness of the occurrence, is said to have given information of the murder to Bhausahab P.W. 2, the son of Laxmibai, so that the First Information Report was lodged. But, this was not mentioned in the First Information Report. She admitted in her evidence that there was some darkness at that time and that she could not make out the implement with which Kondabai was struck. But, she heard the deceased cry out : 'Ho mother'. She also alleged to have risen from where she was sitting nearby and to have seen the deceased fall with her face upwards. She also deposed that there was enough light for her to recognise the appellant, who was wearing a Gandhi cap and a dhoti. She stated that she had seen Shankar running towards his house and that she even shouted at him.
4. If Tanhubai's evidence was the only evidence in the case the fact that her name and version are not mentioned in the First Information Report may have been of greater use to the appellant. We, however, find that, in addition to her statement, there is evidence to satisfactorily connect the appellant with the alleged offence of murder of his aunt. If her version, which we see no reason to discard, required corroboration, the corroborative evidence is there.
5. Firstly, there is the evidence of the recovery of an axe next morning as a result of the statement

made by the appellant to the police. The courts below had carefully excluded those parts of the statement which could be inadmissible. The axe appeared to be stained with blood, but, as the blood was disintegrated, it could not be determined whether it was human blood. This recovery was made in front of Panchas after the appellant had taken the police to the place where it was buried. We are satisfied that nothing more than what was admissible under Section 27 of the Evidence Act was used against the appellant by the Courts below although the appellant may have said more.

6. Secondly, there were stains of blood on the clothes the appellant was wearing when he was arrested by the police. The appellant admitted the presence of these stains on his clothes but tried to explain them away by stating that they were due to either scratches on his body or the lifting of the body of his aunt for placing it in a cart. The High Court had rejected these explanations. It pointed out that stains of blood on the dhoti and the shirt of the appellant could not have resulted from any attempt to lift the body of the aunt when it was placed on a cart because, when this was done, the blood had dried up. The Chemical Examiner had found that the stains were of human blood of the same group as that of the deceased. As the High Court had rightly observed, this was not a conclusive piece of evidence, but it was certainly a corroborative circumstance which could not be ignored.

7. Thirdly, there was ample evidence of motive disclosed by the prosecution evidence and put to the accused.

8. Fourthly, there were minor circumstances disclosed by the prosecution evidence such as that the appellant was seen moving around the field where the occurrence took place even before the murder was committed. The suggestion was that the appellant must have done so because he was planning to murder his aunt and surveying the scene of some action he contemplated.

9. Fifthly, the blade of the axe, which was actually dug out by the appellant, was of such a nature that, according to the Medical evidence, the blow with a sharp edged weapon on the neck of the deceased Kondabai, which caused her death, could have been given by it.

10. It was contended that the appellant's father Bhika was more likely to have the animus to kill Kondabai than the appellant would have. Such a suggestion is not acceptable on purely speculative grounds. We are satisfied that the cumulative effect of the evidence led by the prosecution against the appellant was to establish his guilt beyond reasonable doubt. We are unable to find any ground for interference under Article 136 of the Constitution with the findings of fact on which the conviction and the sentence of the appellant rest.

11. Consequently, this appeal is dismissed.

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