

Kashinath Krishna Jadhav

Vs

State of Maharashtra

Criminal Appeal No. 204 of 1969

(J. M. Shelat, H. R. Khanna JJ )

25.05.1972

JUDGMENT

KHANNA J. -

1. Kashinath (22) was tried in the court of learned Additional Sessions Judge, Bombay under Section 302, Indian Penal Code for causing the death of Anusuya (20) and was acquitted. On appeal filed by the State of Maharashtra, the Bombay High Court reversed the judgment of the Trial Court, convicted the accused under Section 302, Indian Penal Code and sentenced him to undergo imprisonment for life. Kashinath, thereupon filed this appeal through jail by special leave.

2. The case of the prosecution is that the accused and Bapu (P.W. 10) were friends and used to take their meals as boarders with Hansabai, mother of Anusuya deceased, in Dhanji Street Bombay. During their visits to the place of Hansabai, the accused and Bapu came in contact with her daughter Anusuya. Anusuya, who was already married, then started a love affair with Bapu. About three months before the present occurrence, Bapu ran away with Anusuya to Billimoria. The husband of Anusuya died soon thereafter. Bapu then brought back Anusuya to Hansabai's place. Shortly thereafter Bapu and Anusuya were married. They then started living in a room in Ulpi Uraj Chawl at Vakola, Santa Cruz, Bombay. The said room was taken on rent for them by the accused. He also used to visit Bapu and Anusuya there on Sunday and Saturday. A few days before the present occurrence, the accused took Anusuya along with him for a pilgrimage to Molhapur and other places.

3. At a short distance from Ulpi Uraj Chawl wherein Anusuya deceased used to live with Bapu, is another Chawl named Dattu Seth Chawl. Radhabai (P.W. 2) used to live in a room in that Chawl with her husband's brother wife and sister. P.W. 7 Ganpat (24) who is a cousin of Radhabai, also stayed with Radhabai. Ganpat was employed in a small factory of wooden boxes. The said factory was located in a room Ulpi Uraj Chawl. There were three rooms in that Chawl, one of which was occupied by Anusuya and Bapu. The adjoining room was occupied by Mrs. Mary Fernandez (P.W. 3) and her other family members, while the above mentioned factory was worked in the third room. Ganpat, who earlier had been taking his meals with Radhabai, started taking meals with Anusuya about the eight days before the occurrence. The accused, it appears, did not feel happy over that.

4. On the morning of March 30 1969, it is stated, Ganpat P.W. went to the room of Anusuya. Bapu and the accused were present in that room. Ganpat then asked Bapu if he and his wife could be accommodated in the in which Bapu was living with Anusuya. Bapu, however, expressed his inability to do so. Later on that day at about 4 p.m. Ganpat P.W. was sleeping near the entrance door of the factory room in Ulpi Uraj Chawl. The accused then came there and awakened Ganpat. The

accused also gave two slaps to Ganpat. Ganpat then saw that the accused was holding a knife in his hand. Ganpat immediately jumped into the factory room and through the rear door ran out and concealed himself in a nearby hut. The accused went after Ganpat but on not finding him, the accused went to the room of Radhabai P.W. and banged the door. The door was then opened and the accused asked Radhabai as to where her brother Ganpat was. The accused, who had a Knife in his hand, also told Radhabai that he had murdered "that woman" and that he would also murder Radhabai unless she told the accused regarding the whereabouts of Ganpat. Radhabai made a hasty retreat into her room and the accused went away.

5. Pandurang (P.W. 5) and Shankar (P.W. 6), according to the prosecution case, also worked in the wooden box factory. They were at that time present near the factory room. The accused then came there and asked Pandurang regarding the whereabouts of Ganpat. The accused had a knife in his hand. Pandurang told the accused that he did not know regarding the whereabouts of Ganpat. Shankar P.W. then asked the accused as to what the matter was. The accused thereupon replied that he had murdered one woman. He also told Shanker to move aside, otherwise he (the accused) would kill Shanker also. Accompanied by one Namdev, Pandurang then went to Kalina police post and met there Head Constable Ganu Narayan Parab (P.W. 11). Pandurang told the Head Constable that a person had murdered a woman. Accompanied by Pandurang and Namdev, the head constable went to Ulpi Chawl. He found the accused sitting on a wooden box in front of one room. The accused was holding a blood stained knife at that time. At the asking of the Head Constable, the accused placed the knife on the ground. The Head Constable then took the accused inside the room in front of which he was sitting. The dead body of Anusuya deceased was found lying in that room in a pool of blood. The Head Constable then took the accused along with witness Pandurang and others to the police post. From there the Head Constable sent telephonic message to Santa Cruz Police Station. On the basis of the telephonic message a first information report was recorded at the police station. Inspector Deshpande (P.W. 15), accompanied by Sub-Inspector Raval (P.W. 16), then went to the police post. From there the police party went to the spot where the dead body of the deceased was lying. The dead body was thereafter sent to the mortuary where post-mortem examination was performed on the following morning by Dr. Saksena (P.W. 4) at 9.20 a.m. Inspector Deshpande also took into possession the clothes which the accused was wearing as they were found to be stained with blood.

6. According to the report of the Chemical Analyser, blood was found on the clothes of the accused as well as the knife which was in his hand.

7. At the trial the accused in his statement under Section 342 of the Code of Criminal Procedure, stated that he had loved Anusuya as a sister. Anusuya, according to the accused, used to come and meet him in his room against the wishes of her mother. She also ran away with Bapu and it was suspected that the accused had a hand in that elopement. The accused claimed that the marriage of Anusuya with Bapu had taken place at his instance. According further to the accused, he used to pay a visit to Anusuya on Sunday and other holidays. Once Anusuya told him that Ganpat P.W., who was taking meals with Anusuya, had misbehaved with her. The accused then told Ganpat to stop that misbehavior. About eight days before the present occurrence, according to the accused, he and Anusuya went to Kolhapur and other places. They returned on March 29. On March 30, the accused was present with Anusuya and her husband when Ganpat P.W. came there and asked Bapu to accommodate Ganpat and his wife in the room occupied by Anusuya and Bapu. Anusuya then told Ganpat that it was not possible to accommodate him. When Ganpat told Anusuya not to intervene in the matter, the accused told Ganpat not to misbehave. Ganpat then went away. The version of the accused of what happened later may be given in his own words :

"Then I and Anusuya took our meals at 12 noon. I asked Anusuya to put some Prasad brought from Kolhapur in a piece of paper. I told her that I would go and give that Prasad to one Sarsabai, who stayed at Kurla. I went to Kurla at about 12.30 noon. I took tea at the place of Sarsabai and I left Kurla at 3.30 p.m. Then I returned to the room of Anusuyabai at 4 p.m.

When I entered the room I found that Anusuyabai was lying injured in a pool of blood. I tried to wake her up in a disturbed mental condition. I touched her body with my hand and tried to wake her up. I suspected Ganpat in the matter, because he had given threats in the morning. I suspected that he had a hand in the murder. I found that there was a blood-stained knife lying near the dead body of Anusuya.

Having seen the Knife, I was very much enraged. I immediately got out of the room. When I came out of my room, I saw Ganpat coming from the side of Radhabai's room and going towards the room of wooden factory in Ulpi Uraj Chawl. I saw him running away. Therefore, I went back to the room of Anusuya and I took the knife which was blood-stained, which was lying there. With that knife I came out of the room and I ran in the direction in which Ganpat had run, to follow him. I could not see Ganpat. I returned to the room.

Then I was sitting on a wooden box in front of the room of Anusuya. I was just thinking of going to police, but in the meanwhile a police constable came there. I threw down the knife, but I told that constable that my sister was lying injured and dead in the room. I also told him that I suspected Ganpat as the assailant of Anusuya. I asked him to enquire into the matter. The police constable took that knife and told me to accompany him."

As regards the blood-stains on his clothes, the accused stated that he got those stains when he went near the dead of the deceased. The accused denied having made any extra-judicial confession in the presence of Radhabai, Pandurang and Shankar, P.W. No evidence was produced in defence.

8. The Trial Court held that the prosecution had failed to prove any motive on the part of the accused to murder the deceased. Evidence regarding the extra-judicial confession, in the opinion of the Trial Court, was unnatural and artificial. In the result the accused was acquitted.

9. In appeal the learned Judges of the High Court accepted the evidence regarding extra-judicial confession. The same was found to have been corroborated by the presence of blood-stained knife from him. As regards the motive, the High Court was of the view that though there was no direct evidence, the evidence on record made it apparent that the murder had been committed by the accused either due to passion which was repulsed or due to a sense of jealousy. In the result the accused was convicted and sentenced as above.

10. It has been argued by Mr. Nambiyar on behalf of the appellant that the High Court was not justified in reversing the judgment of acquittal of the Trial Court. According to Mr. Nambiyar, the prosecution has not been able to establish the charge against the accused. The above contention has been controverted by Mr., Wad on behalf of the respondent and, in our opinion, is without merit.

11. It cannot be disputed that Anusuya died as a result of a murderous assault. Dr. Saksena, who performed post-mortem examination on the dead body of Anusuya, found as many as 15 stab

incised wounds on the body. The wounds were in the chest, subcostal border, mid-clavicular line, hypochondrium, lumber region, loin, back and gluteal region. Cuts were found in the intercostal space, pleura, lung, pericardium, right ventricle, abdominal wall, stomach, intestines, ascending colon and kidney. Death, in the opinion of the doctor, was due to shock and haemorrhage as a result of multiple stab incised wounds. According to the prosecution case, the above injuries were caused to Anusuya deceased by the accused. The accused has, however, denied this allegation.

12. In order to show that it was the accused who caused injuries to Anusuya as a result of which she died, the prosecution has relied upon extra-judicial confession made by the accused to Radhabai (P.W. 2), Pandurang (P.W. 5) and Shankar (P.W. 6). The evidence of these witnesses was accepted by the High Court and we see no cogent ground to take a view different from that of the High Court. Radhabai lives very close to the place of occurrence, while the other two witnesses work in the factory which is located in one of the rooms of the Chawl wherein the occurrence took place. According to these witnesses, the accused with a knife in his hand came and enquired regarding the whereabouts of Ganpat. The accused also told them that he had murdered that woman. There is nothing unnatural or improbable in the above statement of the accused which was made immediately after the murder of the deceased. The three witnesses had no particular animus against the accused and after having been taken through their evidence, we find a ring of truth in it.

13. In addition to the evidence of the above mentioned three witnesses, we have the statement of Ganpat P.W. that the accused came armed with a knife to the witness. The witness on seeing the accused in a threatening mood ran away. The fact that the accused after arming himself with a knife ran after Ganpat is also admitted by the accused. This circumstance lends further assurance to the testimony of Radhabai, Pandurang and Shankar.

14. Apart from the above, we find that the clothes of the accused, who was arrested by the police soon after the occurrence, were found to be stained with blood. The accused was also soon after the occurrence seen sitting in front of the room in which the dead body of the deceased was laying with a blood stained knife in his hand. These facts, which are not disputed by the accused, furnish additional corroboration to the evidence relating to the extra-judicial confession made by the accused. The explanation furnished by the accused regarding the blood-stains on his clothes and the blood-stained knife in his hand is not at all convincing and has been rightly rejected by the High Court.

15. The view taken by the Trial Court in acquitting the accused in the face of the above evidence was, in our opinion, clearly unreasonable and the High Court was fully justified in reversing the judgment of the Trial Court.

16. We find no force in the appeal and the same is dismissed.

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