

Nanhey

Vs

State of Uttar Pradesh

Criminal Appeal No. 202 Of 1971

(J. M. Shelat, I. D. Dua, A. Alagiriswami JJ)

06.11.1972

JUDGMENT

DUA, J. -

1. Nanhey, appellant, has appealed to this Court by special leave from his conviction under Section 302, I.P.C. and sentence of death imposed by the Additional Sessions Judge, Moradabad and confirmed by the Allahabad High Court.

2. The deceased Smt. Malado, wife of Chunnu, a rickshaw puller, used to live with her husband in the out-houses in railway quarter No. T-71, Railway Colony, within police circle Kotwali, Moradabad. She was a sweeper by caste and her husband used to ply rickshaw. They had a daughter by name Km. Shanti, aged about 15 years, who also lived with them in the same quarter. Smt. Malado was in the employment of one Shri Andrews who occupied a portion of the railway Kothi T-71, Railway Colony and it was as a result of this employment that she and her husband were allowed to occupy one of the servants' quarters in that Kothi with Shri Andrew's permission. To the south of the quarter occupied by Smt. Malado was the quarter of one Babu whereas to the north of her quarter was the quarter occupied by Nanhey, appellant, also a sweeper by caste but a railway employee. Munna, P.W. 1, brother of Chunnu used to come to Malado's quarter every day at about lunch time to take his meals there. On October 26, 1967 at about 1 o'clock in the afternoon when Chunnu had gone out to ply his rickshaw both Smt. Malado and her daughter Shanti were present near their quarter. Munna came to Malado's quarter for his meal as usual. He was taking his food insider Malado's quarter. The food had been served to her by Shanti. Munna asked Shanti to bring some water for her. She went to the water tap at a distance of about 30 to 35 paces to the south-west of Malado's quarter. While Shanti was away to get water for Munna, the latter heard her sister-in-law Malado shouting outside her quarter saying that she would not enter Nanhey's quarter. Immediately thereafter Malado raised an alarm. Munna and Shanti and other persons who happened to be there rushed towards the place from where Malado's shouts came and saw Nanhey's (appellant) giving stab injuries to Malado with a knife. The appellant tried to run away but Munna who appeared as P.W. 1, and Munna who appeared as P.W. 7, along with one Riyasat, chased him, beat him up, snatched the knife from his hands and took him to the Kotwali, Munna lodged the first information report at about 1.40 p.m. The appellant was thereafter tried for the murder of Malado and there being no extenuating circumstance, was on conviction sentenced to death by the Additional Sessions Judge, Moradabad.

3. The prosecution story was supported by the testimony of Munna P.W. 1, brother of Chunnu, Munna P.W. 7, Bhagwati P.W. 9, Rajo P.W. 14, and Shanti P.W. 15. The appellant offered to appear as a witness in his own defence and did appear as D.W. 1. His plea was that he and Malado were in

love with each other and that when the Panchayat was called, Malado admitted before the Panchayat about her illicit connection with him and the Panchayat decided that if Malado wanted to live with him, he might give Rs. 1,500 to Chunnu in return for keeping Malado with himself. He wanted to keep Malado with himself but as he was not in a position to arrange for Rs. 1,500/- he felt helpless. On the day of the occurrence, according to the appellant's plea, Malado was sitting with him in his quarter when Munna by chance happened to come there and seeing the appellant and Malado together he got infuriated. Malado getting confused ran out of the appellant's quarter whereupon Munna took out a knife and started hitting Malado, who fell down in the compound. The appellant rushed to save Malado but was attacked by Munna. It was in these circumstances that Malado died at the spot. In other words the appellant's plea has been that it was Munna, and not the appellant, who murdered Malado. The appellant claims to have rushed to the police station Kotwali, Moradabad soon after Malado's murder, to make a report against Munna. But the Kotwal recorded the information lodged by Munna and not the appellant's report.

4. At this stage it is noteworthy that in the court of the Additional District Magistrate (J) Moradabad (the committing court) the appellant had made the statement to the effect that Munna had assaulted him (appellant) with churi which struck him in the abdomen when Malado came in between with the result that Munna started assaulting her saying that she should not intervene. Malado thus died at the hands of Munna.

5. Before us Shri Shivpujan Singh, the learned counsel appearing on behalf of the appellant, took us through the statement of P.W. 1, Munna, P.W. 6 Toda Singh, Sub-Inspector, P.W. 7 Munna, P.W. 15 Shanti and P.W. 17 Jaswant Singh, Inspector in charge of Police Station, Kotwali. The counsel wanted us to re-appraise the evidence for ourselves which normally this Court does not do under Article 136. It was suggested that the courts below had not correctly read the evidence on the record. However, after going through the relevant evidence on the record we are satisfied that its appreciation by the Trial Court as well as by the High Court is unexceptionable and it is not possible to hold that the conclusions of the two courts below are open to any serious challenge. It is difficult to believe that soon after the occurrence in question Munna so quickly cooked up a false story involving the appellant and by 1.40 p.m. lodged the concocted first information report at the police station. The report contains a very detailed version of the entire occurrence. These details constitute intrinsic evidence detracting from the plea of the first information report being a made up story. It is equally difficult to hold that the police officers at the police station purposely declined to entertain the appellant's version and recorded Munna's report. There is no cogent material indicative even of a suggestion that the police officer in charge of the police station was for some reason inclined to favour Munna and was inimical towards the appellant. There is neither any illegality nor irregularity of procedure vitiating the trial nor is there any violation of natural justice resulting in gross miscarriage of justice or unfair trial.

6. There being no sufficient ground for interfering with the reasoning and conclusion of the High Court this appeal fails and is dismissed.

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