

Dattu Genu Gaikwad

Vs

The State of Maharashtra

Criminal Appeal No. 157 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

23.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. The appellant admitted before the learned Sessions Judge, Sholapur, that he assaulted Nagnath with the handle of a hunter which led to Nagnath's death. He, however, pleaded that Nagnath and the eye-witness Ramesh had rushed on him with an axe driving him to retaliate in self-defence. The learned Sessions Judge accepted the testimony of Ramesh, disbelieved the defence, convicted the appellant under Section 302, Penal Code, and sentenced him to suffer imprisonment for life. The High Court, Bombay, dismissed the appeal against that Judgment summarily without recording any reasons. This appeal by special leave is directed against that order.

2. This Court has held in more than one case that though the High Courts possess the power to dismiss criminal appeals summarily, appeals involving serious or substantial questions which are prima facie arguable should not be dismissed summarily without recording brief reasons in support of the order of dismissal. (See *Shyam Deo Pandey & Others v. State of Bihar*, ((1971) 1 SCC 855 : 1971 SCC (Cri 353) and the cases referred to therein). Having considered the facts and circumstances of this case we do not think that it is possible to bring this case within the rule.

3. The evidence of Ramesh (P.W. 8) and Machhindra (P.W. 9) establishes beyond the measure of a doubt that on the evening of April 2, 1969, the appellant beat Nagnath mercilessly with the handle of a hunter. There is not one circumstance which even charitably can be construed to confer the right of the self-defence on the appellant. Nagnath asked the appellant a rustic question inquiring whether the appellant had kept buffaloes for drinking milk and this was enough excuse for the appellant to beat Nagnath to death. The true reason for the assault seems to be that a month or so before the incident Nagnath had attempted to outrage the modesty of the appellants wife, Hirakani. The interval between that incident and the assault on Nagnath is too long to afford to the appellant the benefit of the plea of grave and sudden provocation.

4. The evidence of Dr. Shivappa Shanker Hingmire shows that Nagnath had as many as 12 injuries on his person and that injury No. 11 on the scrotum was sufficient in the ordinary course of nature to cause death.

5. There is therefore no substance in the appeal and the same must be dismissed.

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