

Sita Ram Son of Durga Prasad

Vs

The State of Madhya Pradesh

Criminal Appeal No. 4 of 1971

(Khanna, J. )

13.03.1974

JUDGMENT

KHANNA, J. –

1. Sita Ram (40) was tried in the court of learned Additional Sessions Judge, Sagar for an offence under Section 302, India Penal Code for causing the death of his wife Savitribai (21) and was acquitted. On appeal filed by the State the Madhya Pradesh High Court reversed the judgment of the trial Court, convicted the accused under Section 302, India Penal Code and sentenced him to undergo imprisonment for life. Sita Ram has now come up in appeal to this Court by special leave.

2. The prosecution case is that Savitri deceased during the days of the present occurrence was staying at the quarter of her brother-in-law Gourishankar in Police Lines, Sagar. Gourishankar is a police diver. The sister of Savitri, who had been married to Gourishankar, died a few years back. Gourishankar then married another girl. The second wife of Gourishankar was away to her parents' house when the present occurrence took place. Shantibai, aged 12 or 13 years, daughter of Gourishankar from his previous wife, was also living with Gourishankar, The accused, who was unemployed, came to the quarter of Gourishankar about 15 days before the present occurrence with a view to seek some job.

3. On February 13, 1966 which was a Sunday, it is stated, Gourishankar went to police kotwali at about 10 a.m. About an hour thereafter at about 11 a.m. Savitri asked Shantibai to go out and look for a vehicle as Savitri wanted to go to her brother's house. Shantibai could not find a vehicle and, after playing a little, proceeded towards the quarter at about 11.30 a.m. When Shantibai was near the quarter she heard the cries of Savitri that she was being killed. Shantibai then found the door of the quarter to be closed. Shantibai consequently knocked at the door., The accused, who alone was present with Savitri inside the quarter, then opened the door. Shantibai found Savitri lying injured in a pool of blood. The accused then gave on further dagger blow in the chest of Savitri. Shantibai rushed out of the quarter and shouted while running that 'Mousiya has liked mousi'. Jankibai, her husband Hari Narayan, Shardabai, Hiralal, Har Prasad and Lajjashankar PWs. who all live in the neighbourhood, then came there. The accused also came out of the quarter. His clothes were at that time stained with came out of the quarter. His clothes were at that time stained with blood. Those present enquired from the accused as to what had happened. The accused at first gave no reply. In the meantime, Kalu alias Munna, son of the accused, who was aged about 4 or 5 years, came there. The accused, addressing Kalu stated : 'I have killed your mother. You are now motherless'. Those present then secured the accused. The accused then remarked that he had killed the deceased as he could not tolerate the situation. Savitri was then carried in a vehicle to the hospital. Gourshankar met the party on the way and went with them to the hospital. When they arrived in the hospital, the

doctor declared that Savitri was dead.

4. Gourishankar lodged report about the occurrence at police station Gopalganj, at a distance of 6 furlongs from the place of occurrence at 1 p.m. Sub-Inspector Sharma then came to the place of occurrence. He found the accused having been secured by others. The accused was put under arrest. Injuries were found on the person of the accused and he was got examined from Dr. Khare. Dr. Khare found five injuries on the palmer aspect of the hand of the accused. Those injuries, in the opinion of the doctor, could have been received by the accused while inflicting dagger blows.

5. Sub-Inspector Sharma, after preparing the inquest report, sent the dead body of Savitri to the mortuary. Post-mortem examination of the dead body was performed by Dr. H. P. Dutta at 11.15 a.m. on February 14, 1966.

6. At the trial the accused denied the prosecution allegation about his having given dagger blows to Savitri deceased. According to the accused, he was away to the market at the time of the assault. On coming back to the quarter of Gourishankar, he found that Savitri had been murdered. He then fell down and in the process his clothes became stained with blood. Regarding the injuries on his hand, the accused stated that they had been received when he was lifting kanchas of bidis. The accused denied having told his son that he had killed Savitri. The version of the accused further was that it was Gourishankar who had killed Savitri because Savitri wanted to leave Gourishankar's house and go away with the accused on the day of occurrence. No evidence was produced in defence.

7. Learned Additional Sessions Judge did not place much reliance on the evidence of Shantibai. He also did not accept the evidence regarding the extra-judicial confession of the accused. Regarding the injuries on the hand of the accused, the Additional Sessions Judge found the explanation of the accused that they had been caused by kanchas of bidis to be satisfactory. In the result the accused was acquitted.

8. On appeal the learned Judge of the High Court found the evidence of Shantibai to be convincing. Reliance was also placed by the High Court upon the evidence regarding extra-judicial confession of the accused and the other circumstances of the case. In the result the accused was convicted and sentenced as above.

9. We have heard Mr. Khanduja on behalf of the accused-appellant and are of the view that no case has been made for interference with the judgment of the High Court. There can be no manner of doubt that Savitri deceased was the victim of a murderous assault and died as a result of that assault. Dr. Dutta, who performed post-mortem examination on the body of Savitri, found 8 incised wounds on the body. Out of them, two incised wounds, which were on the upper and outer part of the left chest and the right lateral chest wall, were individually sufficient to cause the death of the deceased. The injuries had resulted in causing rupture of heart, stomach, liver, right kidney and large intestine.

10. The case of the prosecution is that it was Sita Ram accused who had caused the above injuries to Savitri deceased. The prosecution in support of its case examined Shantibai (PW 1). The evidence of this witness shows that when she told by Savitri deceased to go out and look for a vehicle, the accused and Savitri deceased alone were present in the quarter of Gourishankar. When Shantibai could not find any vehicle and was returning to the quarter she heard the cries of Savitri that she was being killed. Shantibai who found door of the quarter too be closed, knocked at the door. The door was then opened by the accused. Shantibai on entering the quarter found Savitri lying injured in a pool of blood. In the presence of Shantibai also, the accused gave one dagger blow to the

deceased. The High Court accepted Shantibai's evidence. After having been taken through the evidence of Shantibai we see no cogent ground to take a view different from that of the High Court.

11. Reference has been made by Mr. Kahanduja to slight discrepancies in the evidence of Shantibai as given at the trial and her statement made fore the police. These discrepancies are of a minor character and in view of the fact that Shantibai is aged only 12 or 13, no significance, in our opinion, should be attached to these discrepancies. The conduct of Shantibai in rushing out of the quarter and shouting while running away that 'Mousiya has killed mousi' lends considerable corroboration to her oral testimony. The fact that Shantibai gave those shouts is proved by the testimony of Jankibai (PW 2), Hari Narayan (PW 3), Shardabai (PW 5), Hiralal (PW 6), Har Prasad (PW 7) and Lajjashankar (PW 8). All these witnesses live in the immediate neighbour-hood and we see no particular reason as to why they should all make a false statement on that point. It is further in the testimony of these witnesses that when they came out, the accused whose clothes were stained with blood also came out of the quarter and set there. According to the witnesses, the accused then told his son Kalu that he had killed Kalu's mother and that Kalu had become motherless. The above witnesses had no animus to depose falsely against the accused and there is, as stated above, no sufficient ground to disbelieve their testimony.

12. Mr. Khanduja has submitted that it is not likely that the accused would give another blow to the deceased after the arrival of Shantibai. This submission, even if correct, would not exculpate the accused. The accused and his wife alone were present in the quarter when the cries of the wife that she was being killed were heard from inside the quarter. The accused then opened the door and his hand and clothes were blood stained. The wife had a number of injuries caused with a dagger. The dagger too was found at the spot. All these circumstances, in the absence of any cogent explanation, point to the inference that it was the accused who had given dagger blows to the deceased.

13. Reference has been made by Mr. Khanduja to the fact that there is discrepancy in the evidence of the witnesses with regard to the words which the accused spoke when he addressed his son after the occurrence. This discrepancy is not very material because the substance of the words attributed to the accused was that he had killed the deceased and his son had consequently become motherless.

14. The conduct of the accused after the occurrence also goes to show that it was he and none else who was responsible for the murder of Savitri. Had it been someone else, who had committed the murder of Savitri, the accused would have raised hue and cry instead of sitting quietly outside the quarter. The accused would have also in that event rushed to the police station and made a report about the occurrence. The accused, however, did nothing of the kind.

15. The fact that the clothes of the accused were blood-stained and that injuries of a kind which are received while one is inflicting dagger blows were found on the hand of the accused also lends further assurance to the prosecution case. In view of all these facts, the High Court in our view correctly came to the conclusion that the accused was guilty of the offence of murder of his wife.

16. It is well established that the High Court in an appeal under Section 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon the power unless it be found expressly stated in the Code but, inn exercising the proper conferred by the Code and before reaching its conclusion upon fact, the High Court should give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of

the accused, a presumption certainly not weakened by the fact that he had been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellant Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. The learned Judges of the High Court in the present case, while reversing the judgment of acquittal, have not in any way departed from the principles enunciated above. Perusal of the judgment of the trial Court shows that it took a manifestly unreasonable view of the evidence adduced before it. The High Court, in the circumstances, rightly reversed the judgment of acquittal. We find no force in the appeal which fails and is dismissed.

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