

Vasant Laxman More

Vs

State of Maharashtra

Criminal Appeal No. 240 of 1973

(H. R. Khanna, Y. V. Chandrachud JJ)

19.07.1974

JUDGMENT

CHANDRACHUD, J. -

1. The appellant, who has many aliases, was charged before the learned Additional Sessions Judge, Greater Bombay, with offences under Sections 302 and 309 of the Penal Code for committing the murder of one Indira Joshi and then taking a poisonous insecticide in a bid to commit suicide. The trial Court convicted the appellant of both the offences and sentenced him to death for the offence of murder. The High Court having confirmed that judgment, the appellant has filed this appeal by special leave of this Court.

2. The circumstantial evidence in support of the charges for which the appellant has been convicted is of the clearest kind. The deceased Indira, a young widow, developed friendship with the appellant after the death of her husband. They lived together for a months and later the appellant shifted to another room for securing which the deceased pledged her ornaments with a moneylender. Separate residence meant separate interests and the appellant feared that he was being jilted. He resented that the deceased should go to the cinema houses in the company of others in preference to him.

3. At about 11 a.m. on May 3, 1971 the deceased went to the appellant's room in the company of her 13-year old son. Shashikant, who had some difficulty in getting admission to one of the better known schools in Bombay. The appellant was taking his bath and he was apparently so saturated with his grievances against the deceased that when she asked him if he could help secure admission for the boy in the particular school, he hurled a bath-room pot at her. The deceased then asked the appellant to return her moneys. He finished his bath, had a change of clothes and asked her as to why she liked to go to picture-houses with others. The deceased challenged his right to complain, when he slapped her in the face. He then sent away Shashikant to a tailor on some pretended errand. The boy returned within a short time and on pushing the door of the room he saw that his mother was lying dead in a pool of blood with a gaping wound on her neck.

4. Immediately thereafter Shashikant lodged the information of the incident at the Bhoiwada Police Station. A constable on patrol duty who had in the meanwhile reached the spot found the appellant lying in an unconscious state with blood-stained clothes on his body and smelling of insecticide. P.S.I. Talpade took a search of the appellant and found in the pocket of his pant a blood-stained razor. The appellant was taken for anti- poison treatment to the K.E.M. Hospital from where he was discharged on May 6.

5. The post-mortem examination on the dead body of India was performed by Dr. Franklin who

found a deep cut on her neck and a defensive incised injury on her left index finger.

6. The evidence, as earlier stated, is of an unimpeachable character. It is undisputed that Indira met with her death in the appellant's room where she had gone in response to a word sent by him. The evidence of Shashikant which has been accepted by both the Sessions Court and the High Court, shows that the appellant was in great anger and a simple request for routine help by the deceased was enough provocation for him, first to throw a pot at her and then to slap her. It is plain that he sent away the boy on a false pretext in order to leave no witness to his display of manly authority. When the boy left, there was none in the room except his mother and the appellant; and when he returned within a few minutes, his mother was lying dead with a gash on her neck and the appellant was nowhere near the place.

7. The F.I.R. was lodged by Shashikant promptly and the story he then told the is in material conformity with what he later told the Court. The appellant was found lying in an unconscious state a few furlongs away. The blood on his clothes and the blood on the razor which was found on his person belonged to the same group as the blood of the deceased.

8. The main plank of the defence was that the deceased committed suicide. That is in incredible plea. If, as suggested by the appellant, the deceased committed suicide in his presence it is strange that he should have run away with the razor rather than help his beloved and benefactor in an hour of crisis. He raised no alarm, sent for no aid and instead tried to wash off the blood stains from his clothes as is evident from the presence of human blood stains on a mug and bottles in the room. The position and the nature of the injury on the neck of the deceased also militates against the possibility of suicide. As stated by Taylor in his "Principles and practice of Medical Jurisprudence", 12th Edn. P. 213, suicidal injuries on the throat are generally marked by tentative cuts at the beginning of the main wound. The injury in the instant case was found at the lower level of the neck and far from there being any tentative cuts what the doctor found was a single long injury caused by one sweep of a sharp-edged weapon. The injury was from left to right and the maximum depth was significantly on the left side. The presence of the 'protective' cut near the knuckle of the left index finger would also tend to exclude the hypothesis of suicide.

9. The circumstances thus conclusively establish that Indira was murdered by the appellant. But there is something to say on the sentence of death. Were the High Court right that the murder was "preplanned", we would have hesitated to interfere with the discretion exercised by it in confirming the death sentence. But, on the evidence we see no warrant for the conclusion that the murder was pre-planned. The morning message sent by the appellant to the deceased calling her to his room cannot be treated as a ruse to waylay her. Lovers frequently exchange such messages and it is unrealistic to elevate this circumstance into a first step towards the commission of the crime. Rightly or wrongly, the appellant laboured under the belief that the deceased had transferred her attentions and he had lost his monopoly. That explains his high-pitched inquiry as to why she visited picture-houses in the company of others. The rebuff given by the deceased that it was none of his business sparked a serious quarrel leading to her murder. The provocation not being grave enough to justify the killing, the act of the appellant plainly murder. But the sudden quarrel which preceded the murder and the mental distress under which the appellant was smarting would justify the award of a lesser penalty. The crime was evidently committed in a state of mental imbalance. Besides, in genuine contrition the appellant took a dose of poison and nearly killed himself.

10. The High Court confirmed the death sentence partly on the ground that the appellant had a previous conviction for murder for which he had undergone the sentence of life imprisonment. The

circumstances relating to the previous conviction are not on the record and the bare fact of a previous conviction for murder cannot by itself justify the imposition of death sentence.

11. We therefore confirm the conviction of the appellant under Section 302 and 309 of the Penal Code as also the sentence of six months under Section 309 but we set aside the sentence of death and instead sentence the appellant to imprisonment for life for the offence under Section 302. The sentences shall run concurrently.

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