

Jhamman

Vs

State of U. P.

Criminal Appeal No. 270 of 1973

(Y. V. Chndrachud, A . C. Gupta, M. H. Beg JJ)

04.12.1974

JUDGMENT

GUPTA, J. -

1. The appellant has been convicted under Section 302 of the Indian Penal Code for the murder of his sister's husband and sentenced to death by the Sessions Judge, Shahjahanpur. He has been further convicted under Section 449 of the Indian Penal Code and sentenced to rigorous imprisonment for five years; the sentence under Section 449 of the Indian Penal Code, as the Sessions Judge directed, was not to be carried out in case the death sentence was confirmed. The accused appealed to the High Court at Allahabad and the High Court heard the appeal along with the reference made by the Sessions Judge for confirmation of the death sentence. On a consideration of the material on record the High Court dismissed the appeal and accepted the reference. In the instant appeal by special leave the accused appellant questions the correctness of the judgment of the High Court.

2. The appellant's sister Tej Kumari was married to one Joti of village Gopalpur. The prosecution case is that the appellant was a frequent visitor to the house of his brother-in-law Joti from whom he quite often used to demand financial assistance. A case under Section 326 of the Indian Penal Code had been started against the appellant for causing injury to his own wife. A few weeks before the murder he asked his brother-in-law Joti for money which he needed to defend that case, but Joti refused to oblige him on this occasion. This infuriated the appellant who threatened to kill Joti. On the night of January 21/22, 1972 Joti was sleeping inside his house and his wife Tej Kumari was also asleep a few feet away from her husband. There were a few kuthiyas (grain bils) in the intervening space between them. At about midnight Tej Kumari work up hearing a gurgling sound coming from the direction of where her husband was sleeping and saw through the space between the kuthiyas that somebody was sitting on her husband's chest. She ran out to the courtyard and recognised the assailant as her brother Jhamman, the appellant, who was striking Joti with a knife. The appellant threatened her asking her to keep quiet, Joti with a knife. The appellant threatened her asking her to keep quite, but she raised an alarm on hearing which her father-in-law Jhabbu who was sleeping outside under a khaprail came hurrying inside the house just in time to see the appellant running away with a knife in hand. Her shrieks also brought several neighbours including Ram Bilas and Moola to the place of occurrence. Both Ram Bilas and Moola saw the appellant running away with knife in hand in the light of the torch that each was carrying. Coming to the place of occurrence they found Joti lying dead. Ram Bilas who was a cousin of Jhabbu went to Police Station Tilhar about eight miles away and lodged the first information of the occurrence next day at 7.50 a.m.; out of fear none of them was willing to go and lodge the report on the night of the occurrence.

3. The autopsy on the body of Joti was conducted by Dr. S. P. Srivastava, Surgeon-in-charge, District Hospital, Shahjahanpur at 12.30 p.m. on January 23, 1972. According to the post-mortem report, Ex. Ka-1, the following ante-mortem injuries were found on the person of the deceased.

1. Oblique incised wound 5 cm. x 1 cm. directed outwards from left angle of mouth x muscle deep.
2. Four linear incised wounds each about 4 cm. in front middle of neck.
3. Swelling with contusion and abrasion on both sides of front of neck. On cutting laceration of the muscles and compression of blood vessels on both sides were marked. The larynx was broken into pieces.
4. Incised wound transverse 1 1/2 cm. x 1/2 cm. x muscle deep 2 cm. below mid of left collar bone.
5. Abrasion in an area of 6 cm. x 4 cm. mid of chest.
6. Vertical incised wound 2 cm. x 1/3 cm. x skin on the dorsum of left mid-finger.
7. Vertical incised wound 3 cm. x 1/2 cm. x muscle deep (tendon) on the outer aspect of left forefinger.
8. Vertical incised wound 1 cm. x 1/4 cm. x skin on whole of left ear.

4. In the opinion of the doctor, death was due to asphyxia as a result of strangulation. The statement of Dr. Srivastava recorded before the committing Court is Ex. Ka-13.

5. The prosecution case, apart from the medical evidence, rests on four witnesses : PW 6 Tej Kumari, who is the only witness who had seen the assault on her husband, PW 1 Ram Bilas, an uncle of the deceased and a neighbour, PW 4 Jhabbu, father of the deceased, and PW 5 Moola also a neighbour. The narration of the occurrence given above is a summary of the evidence of these witnesses in Court.

6. The High Court on a consideration of the material on record found that this was a case of cold-blooded, calculated and brutal murder and was of opinion that the accused had been rightly convicted. The High Court also considered the statement made by the accused under Section 342 of the code of Criminal Procedure that he had been falsely implicated by his sister Tej Kumari. This was also suggested to her in cross-examination but she denied the suggestion. The High Court found that the suggestion was entirely false and there was nothing on record to lend any support to it.

7. Before us the learned Counsel for the appellant submitted that the medical evidence did not support the prosecution case. Referring to the evidence of Tej Kumari, PW 6, it was argued that she claimed to have seen the appellant striking her husband with a knife but in the opinion of the medical officer death was due to strangulation. This argument does not appear to have any substance. It is clear from the post-mortem report that there were a number of incised wounds on the person of the deceased in addition to marks of strangulation. Injury No. 3 in the post-mortem report shows clearly that death was due to strangulation. Tej Kumari's evidence is that she work up from sleep on hearing a gurgling sound which evidently came from her husband when he was being strangulated. It is apparent from her evidence that she saw the latter part of the occurrence when the

appellant was dealing knife injuries to the victim. There is therefore no question of the medical evidence being inconsistent with the prosecution case.

8. The learned Counsel for the appellant also commented on the fact that though the incident took place at midnight, first information was lodged several hours later on the morning of the next day. The reason given is that no one dared to move out of the house on the night of occurrence. We do not find any reason to hold that this is not a sound or convincing explanation. The High Court found the evidence of the prosecution witnesses to be true and came to the conclusion that the case against the accused had been proved. We do not find any error or infirmity in the judgment of the High Court to induce us to hold that the case against the appellant has not been proved beyond reasonable doubt.

9. The appeal is accordingly dismissed.

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