

Lajar Masih

Vs

State of U. P.

Criminal Appeal No. 435 of 1974

(R.S. Sarkaria, P.N. Shinghal JJ)

03.02.1976

JUDGMENT

SARKARIA, J. -

1. The appellant was tried and convicted by the Additional Session Judge, Kamaon, under Section 302, Penal Code, for the murder of Smt. Nikki and sentenced to death. He was further convicted under Section 302, Penal Code for the attempted murder of Mehlu, PW 3 and sentenced to three year's rigorous imprisonment. He was also convicted on two counts under Section 324, Penal Code for causing hurt to David PW 2 and Smt. Siraji and sentenced to one year's rigorous imprisonment. The High Court of Allahabad dismissed his appeal and confirmed the death sentence.

2. Hence this appeal by special leave limited to the question of sentence.

3. The prosecution story ran as follows :

3A. Hansa, PW 1, and David, PW 2, are brothers and the deceased was their sister. Mehlu, PW 3, is the husband of the deceased. He is the son of the brother of the appellant. PWs 1 and 2 used to reside in Nausar Catholic Farm, while PW 3 was living at the Daah Farm, both within the territorial jurisdiction of P. S. Khatema.

4. For about two years preceding the occurrence, the appellant had illicit connection with the deceased. The appellant was anxious to marry her. But her parents did not agree to this matrimonial proposal on the ground that there was a disparity in age. The appellant however persuaded Mehlu's father to marry Mehlu to the deceased. Mehlu and her father were aware of the illicit intimacy of the deceased with the appellant. They agreed to the matrimonial proposal on the understanding that the appellant would thenceforth discontinue his illicit intimacy and visits to Daah Farm.

5. About one and half months before the occurrence, however, the appellant in violation of that understanding, went to Mehlu's house and insisted on going to bed with the deceased. Thereupon a sharp quarrel took place between the appellant and Mehlu. Mehlu's father also warned the appellant not to misbehave in future.

6. About 15 days before this occurrence, the appellant again visited Mehlu's house and attempted to molest the deceased. Again, a jhagra took place between the appellant and the deceased's husband.

7. On the night between October 2 and 3, 1971, David and Mehlu were sleeping on one charpoy in the house of David in Nausar Farm, while Hansa was asleep on a separate cot in the courtyard at a

distance of about 10 or 12 paces from them. The deceased was asleep on another charpoy about 10 or 12 paces away from them. Her mother, Smt. Siraji, was also lying on a charpoy four or five paces away from her.

8. At midnight, David woke up on receiving a stab and saw that his assailant was the appellant. At the same time he saw Mehlu crying out on account of a stab wound. The appellant then immediately went to Nikki's charpoy and stabbed her. Hearing the hue and cry of the victims, Smt. Siraji work up. The appellant gave her two blows with the knife and ran away into the sugarcane field. The injured were taken to Dr. Cheema at Majhola. On reaching Majhola, Nikki succumbed to her injury. Her deadbody and the other injured persons were then taken to Pilibhit. Hansa, PW 1, went and lodged the report at P. S. Khatema.

9. Shri R. K. Maheshwari, appearing as amicus curiae has pointed out two circumstances which according to him, justify a compassionate view in the matter of sentence. The first is the background of the case. The second is the long interval between his conviction by the trial Court and the hearing of this appeal.

10. As regards the first, Counsel has tried to conjure up a whole history from some fragmentary facts appearing in the cross-examination of PWs David and Mehlu. The story put forth in that PWs 1, 2, 3 and the father-in-law of Mehlu all knew about the illicit intimacy of the appellant with the deceased. Therefore, they should not have objected to the validation of this relationship by a marriage between the lovers. It is pointed out that there was not such a great disparity in age as would have made their marriage unacceptable to the community. Nikki was 22 while the appellant was 33. On the other hand, Mehlu was at the time of marriage a minor in his teens while the bride was 21-22 years old. It is further submitted that Nikki's father and these witnesses conceived a sinister scheme with the object of depriving the appellant both of his land and the beloved. According to Counsel, the persons appear to have given the appellant to understand that if he gave his land admeasuring 9 acres to Nikki's father, he would be allowed to continue his liaison with Nikki even after her ostensible marriage to the appellant's nephew. The imagination proceeds further that pursuant to this immoral arrangement, the appellant gave all his land to Mehlu and his father-in-law for cultivation, but after the marriage, these persons did not keep their pledged word. They not only banned his entry into Mehlu's house, but also ousted him from the enjoyment of his land. It was the loss of both the mistress and the land, it is urged, that had driven the appellant to near madness. The point sought to be made out is that at the time of committing the crimes in question the appellant was in a fit of frenzy being the culmination of the acute mental torment and torture inflicted on him by the victims.

11. The story is sought to be built on three partially assumed facts : Firstly, there was some dispute between Mehlu and Nikki's father on one side and the appellant on the other regarding cultivation of the appellants' land. Secondly, PWs 1, 2, 3 and Mehlu's father-in-law were fully aware of the pre-marital illicit connection of the appellant with the deceased and the former's desire to cover it with a matrimonial alliance. Thirdly, the appellant and Mehlu's father-in-law as well as PWs 1 and 2, all by their joint efforts forced this marriage on Mehlu, although the latter was younger than the deceased.

12. The story expounded by Mr. Maheshwari is ingenious and interesting. But it belongs to the realm of make-believe. It is too fanciful to be accepted. While it is true that PWs 1, 2, 3 and Mehlu's father-in-law all knew about the antecedent illicit intimacy of the appellant with the deceased, there is absolutely no foundation in evidence, to speculate that even after the marriage of the deceased with Mehlu, the appellant was to be allowed to continue his illicit liaison with the deceased in

consideration of enjoyment of the appellant's land by the father and the brothers of the deceased. On the contrary, there is categorical evidence rendered by Hansa, PW 1, and Mehlu, PW 2, that the marriage of Mehlu and the deceased was brought about on the assurance given by the appellant that thenceforth he would not visit the residence of Mehlu or continue his illicit relationship with the deceased. It was the appellant who, in violation of that assurance, made repeated attempts to resume his illicit connection with the deceased despite objections and unrelenting opposition from all including the deceased. As regards the dispute over the cultivation of land. Hansa PW 1, has stated that they had cultivated 9 acres of the land belonging to the appellant on batai (rental) basis. The appellant asked them to given up the cultivation, on the ground that he wanted to cultivate the land himself. At the instance of the Father (of the Church) they had restored possession of that land to the appellant.

13. The conduct of the appellant in attempting to disrupt the matrimonial home of the deceased was highly immoral and cannot be looked upon with commiseration, particularly when after her marriage, the deceased had returned to the path of rectitude and was firmly faithful to her husband. Again the crime was committed in a dastardly fashion. No less than four unarmed persons were indiscriminately stabbed when most of them were lying asleep, unaware and helpless. The crime was premeditated and preplanned. Mehlu's injury was dangerous to life. But for timely medical aid, the injury would have proved fatal. Even the mother of the deceased was not spared.

14. In *Ediga Anamma v. State of Andhra Pradesh* ((1974) 3 SCR 329 : (1974) 4 SCC 443 : 1974 SCC (Cri) 479), cited by Mr. Maheshwari, it was observed : [SCC p. 454 : SCC (CRI) p. 490, para 26]

that the horrendous features of the crime, the hapless, helpless state of the victim and the like, steel the heart of the law of a sterner sentence.

These observations are apposite and apply in full force to the facts of the present case.

15. This takes us to the second point, Doubtless, the appellant is under a sentence of death since his conviction on March 20, 1972 by the trial Court. But it is to be noted that after the dismissal of his appeal by the Patna High Court on September 20, 1972, he did not for a period of more than 18 months move this Court. It was only after condonation of this delay, that special leave to appeal under Article 136, was granted. In view of the extremely heavy load of work with the High Court and this Court, the delay in hearing this appeal cannot be said to be extraordinary. Be that as it may, the value of such delay as a mitigating factor depends upon the features of a particular case. It cannot be divorced from the diabolical circumstances of the crime itself, which, in the instant case fully justify the award to capital sentence for the murder of the deceased. We therefore, uphold the award to the capital sentence of the appellant and dismiss his appeal.

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