

Ashok Laxman Sohoni and Another

Vs

State of Maharashtra

Criminal Appeals Nos. 238 And 239 of 1976

(Syed M. Fazal Ali, P.N. Bhagwati JJ)

17.02.1977

JUDGMENT

FAZAL ALI, J. –

1. It is strange that superstitious beliefs should still persist in an age where science has made such progress and rationalism dominates over thinking. Yet we find a few stray cases where baseless and unfounded superstitions entertained by an educated person may lead to a family disaster. One such case forms the subject of this appeal filed in this Court after obtaining special leave.

2. The appellant Ashok Laxman Sohoni has been convicted under Section 302 I.P.C. and sentenced to death, where another appellant Vijaya has been convicted under Sections 302/34 I.P.C. and sentenced to imprisonment for life. The facts of the present case lie within a narrow compass. Laxman's family was residing in House No. 622, Ravivar Peth in the town of Nasik. Prabhakar Sohoni who was the grandfather of appellant No. 1 had five sons, namely, Ram, Pandua, Laxman, Bharat and Raghunath. We are not concerned with the branches of Pandua, Bharat and Raghunath. The appellant Ashok was one of the sons of Laxman by his wife Prabhavati. Usha and Vijaya, appellant No. 2, were the daughters of Laxman and sisters of Ashok. Shyam was another son of Laxman. In the branch of Ram, we have PW 1 Suresh who is married to one Sabita. Suresh was, therefore, the first cousin of appellant No. 1. According to the prosecution Suresh used to reside on the second floor of the house and Ashok on the first floor of the house which consisted of a few rooms, some of which were converted into a kitchen, bed-room and a baithak. The ground floor was occupied by a tenant. Appellant No. 1 Ashok Sohoni, for short to be referred to as "Ashok" was married to Shubhangi on June 22, 1973. Ashok appears to have joined the Army in 1962 and left the same in 1969 and took a job in the State Transport Department as a mechanic at Nandgaon 40 miles away from Nasik. The family of Ashok was a typical middle-class family which had just sufficient means to meet their two ends. Ashok and Vijaya lived in the first floor of the house along with their father. Ashok used to stay with his wife in a part of the kitchen which was converted into a bed-room. Shyam was married to Shelpa on June 27, 1974 about six months before the occurrence. Appellant No. 2 Vijaya was a primary school teacher but was unmarried. The other son Shyam was working as an electrician in Ozar a locality about 8 miles away from Nasik. It appears that soon after the marriage of Ashok and Shubhangi their relations became strained and the happiness of the couple was marred by a superstitious belief entertained by Ashok and other members of the family that Shubhangi was a witch and was practicing sorcery with the aid of beads, wooden snakes and other articles. It is also alleged and in fact admitted by the accused that Vijaya appellant No. 2 appears to have been possessed of by a spirit of Meeravali Baba. Meeravali Hills situated at a short distance from the place of occurrence contained a Muslim Dargah where an old saint Syed Ishaque Ali Shah had been buried since 1565. It appears from the evidence that Ashok

and other members of the family were the devotees of this saint and so deep was the devotion of Vijaya appellant No. 2 that she got possessed with the spirit of Meeravali Baba himself. From a letter produced by the prosecution Ext. 55 dated June 10, 1974 the deceased Shubhangi whose maiden name was Pushpa had written to her brother for bringing certain presents on the forthcoming marriage of Shyam. This letter has been used by the prosecution in order to build a suggestion that the family of Ashok tried to make heavy demands for presents and money from the father of the deceased and that may have led to the death of the deceased at the hands of the appellants. We are, however, unable to find any clear or cogent evidence to prove this suggestion. Some stray observations in Ext. 55 cannot lead to the inescapable conclusion that there was any kind of unusual demand by the family of Ashok. We might also mention that few months before the occurrence Shubhangi had given birth to a daughter who was named Jahan Nabi. This daughter was born on May 5, 1974, at Nashik. The birth of a daughter to Shubhangi at her father-in-law's place clearly indicates that till that time relations between the two families were quite cordial. It appears that on the night intervening January 14 and 15, 1975 which was Maghar Sankranti day there was some altercation which unfortunately ended in the death of the deceased Shubhangi and the appellants tried their best to hush up the matter by arranging a quick and hasty cremation and by not informing their normal relations regarding the circumstances in which the death had occurred. A van was sent for along with the stretcher and the body of the deceased covered with chadar was placed on the stretcher and taken to the cremation ground. The prosecution further alleged that even the usual religious rites which were customary in the family were also not performed. It appears that somebody informed the police that the deceased Shubhangi had died an unnatural death and that the matter was tried to be hushed up by the appellants who were the real murderers. Thereupon the Sub-Inspector of Police visited the house of the appellants and interrogated the appellant and other members house of his family. It may also be noted here that the father of deceased had also arrived on getting a telegram and he was also told that Shubhangi had died without revealing the circumstances under which she died. On January 16, 1975 the appellant Ashok made a disclosure statement before the Sub-Inspector and one Ashok Ganpatrao Sambre when he narrated the incident and expressed his desire to point out the various incriminating articles. Consequently he climbed a loft over the kitchen with the aid of a ladder and after removing a number of clothes which were kept there he recovered and produced a crow bar, pieces of stick, the clothes of Shubhangi which were blood-stained, a blouse and other articles. A search memo, namely, panchnama, was made at 8.15 a.m. on January 16, 1975 which was duly signed by Ashok Ganpatrao Sambre and another person. The search witness Ashok Ganpatrao Sambre has appeared as PW 9 in the case and has proved the contents of the panchnama as also the fact that appellant No. 1 after having made the statement took the party to the house and recovered the articles mentioned above. The witness appears to have been cross-examined only on the point whether he had seen the blood on the blade of the crow bar or in the middle of it. There is no dispute that the crow bar was blood-stained, Whether the blood stains were in the middle or on the blade may only be a matter of detail which the witness may or may not remember. But his testimony in the Court remains unchallenged. In these circumstances the recovery of the articles which has been proved by PW 9 and supported by the panchnama Ext. 32 fully establishes the guilt of the appellant Ashok.

3. Apart from this circumstantial evidence, the prosecution has led the evidence of three eye witnesses and three other witnesses to prove the fact that it was appellant No. 1 and his sister Vijaya who had combined to cause the death of Shubhangi. Both the High Court and the Sessions Judge have believed PWs 1 and 2 the eye witnesses and PWs 3, 4 and 5 the ear witnesses and have accepted their evidence. Learned Counsel for the appellants fairly conceded before us that in the present state of the evidence it was not possible to contend that the deceased had not died an

unnatural death. The only argument put forward by counsel for the appellants was that even taking the evidence at its face value, at the most the case made out is one under Section 323 I.P.C. and not one under Section 302 I.P.C.

4. Before indicating the evidence in the case, it may be necessary to state defence of the accused. The fact that appellant Nos. 1 and 2 were to go during the night of January 14 and 15, 1975 to Dargah of Meeravali Baba is not disputed. According to the statement of Ashok after taking food and before retiring to bed he had asked his wife to give up the habit of sorcery and try to mend her ways and she promised to do so and both the husband and wife went to sleep. At about 4.30 a.m. he woke up and reminded his wife that they had to go to the Hill of Meeravali Baba and that she should abandon her witch craft. This appears to have enraged her as a result of which she confessed and exhorted that Meeravali Baba to forgive her as she was at fault. She became wild all of a sudden, dishevelled her hair and removed her saree and also wanted to take out even her blouse. Thereafter, says the appellant No. 1, that she exhorted Meeravali Baba to save her and dashed her head on the floor and the wall and also on the wooden cupboard. She also dashed her hands and feet against the trunks. In spite of the appellant's trying to pacify her, she paid no heed, fainted and fell on the floor. Thereafter his mother, and Vijaya appellant No. 2 came and the appellant narrated the incident to them. Dr. Dani who was also one of the accused came at 7.15 a.m. and after examining the deceased went away. An ambulance was called at about 9.45 a.m. and the body of Shubhangi was taken to the cremation ground. We might like to note one important admission made by the accused in his statement. He clearly states that he had himself covered the body of Shubhangi from feet only up to the neck by a white new cloth. This is important because one of the witnesses PW 5 Francis has been disbelieved by the High Court on the ground that he could not have seen the face of the deceased. PW 5 had said that when the body was being kept on the stretcher the Chadar slipped and thus he saw the face of the deceased and found that it contained blood marks. If the version of appellant No. 1 in his statement is believed, then it would appear that the body of the deceased was covered only upto the neck and no further. If that was so, there can be no impediment for PW 5 Francis in noticing the blood stains on the deceased's face which was open. Appellant No. 1 has further stated in his statement that according to the customs in their family the face of a person having issue is not covered while being taken for cremation. In these circumstances, therefore, if PW 5 Francis was in a position to notice the blood stains on her face his evidence furnishes a very strong corroboration of the prosecution case against the accused, namely, that the appellants had caused the death of the deceased. The High Court did not notice this important fact while disbelieving PW 5. However, even if we exclude this fact from consideration, that would not make any material difference to the prosecution case.

5. The two main eye witnesses are PW 1 Suresh Sohoni and PW 2 Ratnamala wife of Gopalrao Arole. Suresh Sohoni has clearly stated that he saw Shubhangi alive on January 15, 1975 at about 3.30 or 4.00 a.m. in the partitioned room in the kitchen. He also saw Ashok and Vijaya. The witness further stated that at that time the deceased Shubhangi was wearing one violet coloured saree. This fact is corroborated by the recovery of the articles which included a blood-stained violet coloured saree. The witness goes on to state that near about 3.30 a.m. he heard the shrieks of a woman shouting "Baba" "Baba" and when he came to the premises of his uncle he found appellant No. 1 Shubhangi and also Vijaya. He actually saw Ashok holding a stick in his hand and giving one stroke to his wife Shubhangi. The witness further deposed that no one from the family of his uncle informed him that Shubhangi was dead although it was customary to do so. This fact is admitted by appellant No. 1 under Section 313 of the Code of Criminal Procedure, 1973 and forms a very important conduct of the accused which speaks volumes against him. PW 2 Ratanamala who is the next door neighbour of the appellants' family deposes that about 3.30 a.m. she heard the cries of

Shubhangi coming from her house. She then peeped through the open jail over the window and through the chink in the window she saw Ashok with a stick in his hand in the partitioned room of the kitchen. She also saw appellant No. 2 Vijaya catching hold of the hands of Shubhangi. She also deposed that appellant No. 1 was hitting Shubhangi with the stick. She further states that Shubhangi also used to say "Baba save me, I have no bead" which suggests that while beating the appellant No. 1 was demanding his wife to return the beads and she denied that she possessed any. Learned counsel for the appellant suggested that this witness could not have seen the occurrence from the chink because the partitioned room in the kitchen was situated at a fair distance from the place where the witness was. The learned Sessions Judge, in view of the controversy, visited the site and held a local inspection and got prepared a site-plan which is Ext. 80. The inspection was held in the presence of the parties and the Sessions Judge has categorically observed that the maximum width of the chink at the southern end was 1'-6" whereas the width of the window in the kitchen in the western wall was 2'-1". The learned Judge was also of the opinion that the portion from waist to chest of a person standing in the bed-room of the accused No. 1 was clearly visible. In these circumstances it is not possible for us to distrust the evidence of PW 2 Ratnamala which is of a purely independent character.

6. The evidence of PWs 1 and 2 is further corroborated by the evidence of PWs 3, 4 and 6. PW 3 Pushpawati relates the conversation between accused Nos. 1 and 2 and the deceased and says that while the appellants were demanding beads from the deceased and were constantly beating her, Shubhangi was demanding water and was being accused of being a witch.

7. Similarly PW 4 Rajmal husband of PW 3 corroborates his wife and says that near about early morning he heard conversation between Vijaya and the deceased. Vijaya appellant No. 2 was demanding beads and Shubhangi was protesting that she had no beads. A similar demand was then made by appellant No. 1 Ashok. Thereafter he and his wife both heard the noise of a stroke being given to Shubhangi.

8. PW 6 Balchandra also proved that at about 3.30 a.m. he heard the cries of Shubhangi and shouting the words "Aai Ga, Do not beat me". The witness says that he heard these words being uttered by Shubhangi three or four times. The evidence of this witness which has been believed by the courts below clearly establishes the following circumstances :

- (i) that the appellants undoubtedly believed the deceased to be a witch;
- (ii) that such a belief was totally unfounded and was not based on anything substantial;
- (iii) that Vijaya and appellant No. 1 were last seen with the deceased Shubhangi;
- (iv) that appellant No. 1 Ashok held a stick with which he had given several strokes to the deceased while Vijaya was helping him; and
- (v) that Vijaya was also inciting the appellant No. 1 to assault the deceased.

These facts are substantially corroborated by the recovery of the articles in consequence of the disclosure statement made by appellant No. 1 and supported by the panchnama referred to above.

9. Another important fact which suggests the guilty intention on the part of the

appellants is the fact of the hurried cremation without informing their near relations and without performing the necessary ceremonies.

10. Finally the courts below have pointed out that even in the death register a false entry was made at the instance of appellant No. 1 that his wife has died due to sickness which was the case of neither party. A consideration of these circumstances, therefore, unmistakably leads to the conclusion that appellant No. 1 had undoubtedly beaten his wife to death. The evidence shows that he started beating his wife with various weapons right from 3.30 a.m. and stopped only after she was completely silenced.

11. Learned counsel for the appellants submitted that since the appellants were under a bona fide belief that the deceased was a witch and was practising sorcery appellant No. 1 never intended to cause her murder but only inflicted a simple assault. We are, however, unable to agree with this argument. The apprehension that Shubhangi was a witch was totally unfounded. No reliable evidence has been led by the defence to show that there was any substantial ground for entertaining this belief. Further more when appellant No. 1 started beating his wife continually for one or two hours and left her only when she was silenced the only inference that could be drawn from his act was that he deliberately intended the murder of the deceased. In these circumstances, therefore, we fully agree with the courts below that the prosecution has proved its case of murder beyond reasonable doubt.

12. The other question that remains is whether the courts below were right in passing the sentence of death on appellant No. 1. We feel that as appellant No. 1 was labouring under a hallucination, however unfounded it may be, and as there is no corpus delicti in the instant case so that the courts may be in a position to know the nature and character of the injuries and to assess that the murder was of such a brutal or dastardly character that only a death sentence could be imposed on appellant No. 1 and in the absence of there being anything to show the exact circumstances in which the murder took place we would rather like to err on the side of leniency. We do not find any special reasons for awarding the extreme penalty of the death on the appellant No. 1. We, therefore, allow appeal of appellant No. 1 only to this extent and commute his sentence from one of death to imprisonment for life.

13. As regards Vijaya appellant No. 2 the evidence does not show that she was present throughout when the beating was given to the deceased. From the evidence it also appears that at the time when Vijaya was inciting her brother Ashok to assault Shubhangi she believed that she had been possessed of some spirit and was shouting slogans. As the deceased had recently given birth to a child and there was nothing to show that in her presence any other weapon excepting a stick was used it will be impossible to attribute to Vijaya a common intention to murder which she shared along with appellant No. 1. Moreover, it is quite likely that after having uttered a few words and after having incited her brother to beat the deceased she might have either left the room or ceased to be in possession of the spirit. At any rate in the present state of the evidence it cannot be said that Vijaya shared a common intention to murder the deceased along with appellant No. 1. For these reasons, therefore, we would alter the conviction of Vijaya from one under Section 302 read with Section 34 I.P.C. to that under Sections 325, 34 I.P.C. and reduce her sentence from life imprisonment to that of two years' rigorous imprisonment. As Vijaya has already served out the sentence of two years she is directed to be set at liberty forthwith.

14. We accordingly confirm the conviction of appellant No. 1 Ashok and reduce his sentence from death to life imprisonment. The conviction of Vijaya is altered from that under Sections 302/34

I.P.C. to one under Sections 325/34 I.P.C. and the sentence is reduced to two years' rigorous imprisonment. The appeals are disposed of accordingly.

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