

Rau Chima Chougule

Vs

State of Maharashtra

Criminal Appeal No. 50 of 1977

(P.K. Goswami, P.N. Shinghal, Jaswant Singh JJ)

28.09.1977

JUDGMENT

SHINGHAL, J. -

1. This is an appeal by special leave of Rau Chima Chougule who was convicted of an offence under Section 302, IPC on two counts, for murdering his daughter Vijaya and his son-in-law Shivaji Ananda Dalvi. The Sessions Judge sentenced the appellant to death. His conviction has been upheld and the sentence of death has been confirmed by the judgment of the Bombay High Court dated July 20/21, 1976.

2. Appellant Rau Chima Chougule used to reside in Kolhapur, where he was working as a skilled labourer. His eldest daughter Vatsala alias Kalpana (DW 1) was married to Dhondiram (PW 9) some 6 years before the incident, and used to live near his house. The appellant's wife died nearly four years before the incident. He used to reside in a one room tenement along with his second daughter Vijaya (deceased) aged about 18-20 years, his third daughter Sanjivani (PW 2) aged about 14 years and his fourth daughter Sunita (PW 6) aged about 10 years. Shivaji Ananda Dalvi (deceased) belonged to village Bambarde of Kolhapur district, and used to work under the aforesaid Dhondiram as a tea vendor. For about a month before the incident which has given rise to the present appeal, Shivaji Ananda Dalvi started working with his cousin Maruti Patil (PW 26). It is alleged that whole Shivaji Ananda Dalvi was working with Dhondiram, he and the appellant's second daughter Vijaya fell in love. The appellant however settled the marriage of Vijaya with another boy. At the time of the betrothal ceremony on April 2, 1975, when several guests had assembled at the house of Dhondiram, for the occasion, Vijaya escaped on the pretext that she wanted to put on new bangles. She did not return and the appellant and Dhondiram gave out that she had fallen ill and had been hospitalized. The boy's party therefore left the place. It is further alleged that Vijaya and Shivaji Ananda Dalvi eloped on April 22, 1975. The appellant and Dhondiram came to know on May 10, 1975, that they were both living in the house of Shivaji Ananda Dalvi at Bambarde. They went there in a taxi to fetch Vijaya and, on the way, they recorded a complaint (Ex. 19) at police station Radhanagri alleging that Vijaya was under 16 years of age and had been kidnapped by Shivaji Ananda Dalvi and that they had taken away some money and ornaments. The Station House Officer accompanied the appellant and Dhondiram to Bambarde. They found Shivaji Ananda Dalvi there, but Vijaya had gone to the river to fetch water. They all then went there and brought back Vijaya and Shivaji Ananda Dalvi to the police station. As Shivaji Ananda Dalvi and Vijaya expressed their desire to get married, the appellant gave it in writing at the police station that Vijaya was in fact 20 years old and that as she wanted to get married to Shivaji Ananda Dalvi, he did not want to proceed further with the matter because he had not in fact lost any ornaments or money. The appellant, his son-in-law Dhondiram, Vijaya and Shivaji Ananda Dalvi thereafter returned to Kolhapur. Vijaya and

Shivaji were married the same day, in the local temple. After their marriage, Shivaji and Vijaya started living with the appellant. Shivaji, as has been stated, was then working with his brother Maruti Patil (PW 26). He used to pay his daily earnings, to the appellant. The appellant's daughter Vijaya looked after the household including her two younger sisters Sanjivani and Sunita. It appeared as though the appellant had reconciled himself to the marriage of Vijaya and Shivaji. It is the case of the prosecution, however, that this was really not so because when the appellant attended another wedding in the company of Dhondiram (PW 9), he remarked that while that marriage was being celebrated with fanfare, his daughter was married stealthily.

3. It has been alleged by the prosecution that immediately before the incident, the appellant went to Dadoba Sutar (PW 14) who was a blacksmith of village Balinga, and got his axe (article 8) sharpened by him.

4. Shivaji used to return to the house after his daily work, at about 9 p.m. The prosecution has alleged that the appellant went to Maruti Patil (PW 16) at about 6.30 p.m. on June 11, 1975 and asked Shivaji to return to the house early, for his night meal. Shivaji did so, and after the meal was over at about 9 p.m., the appellant and his daughter Sunita (PW 6) went and slept on the left of their one room tenement, while Vijaya, Shivaji and the appellant's other daughter Sanjivani (PW 2) slept on the floor of the same room after Sanjivani had latched its door from inside. A wick lamp was kept burning all the while. Sanjivani woke up at about 4 a.m. in the early hours of June 12, 1975, and saw that Shivaji and Vijaya were bleeding from their necks and had been killed. She went to the left and brought down her sister Sunita (PW 6). She then removed the latch of the door of the room and she and Sunita went out. Bapu Shinde (PW 7) and Waman Chavan (PW 8) were sleeping outside the room, in the open. They woke up when they heard the cries of Sanjivani and Sunita and saw them coming out of their room. According to the prosecution, Sanjivani told them that their father had killed Shivaji and Vijaya. Waman Chavan went inside the room and saw, in the light of the wick lamp which was burning there, that the dead bodies of Shivaji and Vijaya were lying in a pool of blood. He also found that the appellant was the only person present in the room. The appellant then went out of the room with a pot of water, and washed his hands and feet. He was wearing a half-pant and a shirt. After washing his hands and feet, he (appellant) went inside his room and came out covering himself with a "dhoti". He asked Bapu Shinde where he should go and report the matter. When Bapu Shinde asked him what had happened, it is alleged that the appellant told him that he had killed his daughter and son-in-law with an axe and that he wanted to surrender. Bapu Shinde asked him to go to Juna Rajawada police station. The appellant latched the door of his room and went to Juna Rajawada police station after leaving his daughters near a cement factory. He reached the police station at about 4.40 a.m. and made statement Ex. 36 to head constable Gajanan Salokhe (PW 17). As the head constable noticed blood stains on the clothes of the appellant, and his fingers nails, he arrested him and seized his shirt (article 1), handkerchief (article 2), 'banian' (article 3) and half-pant (article 4) as well as his nail-clippings (article 5) under "panchnama" (Ex. 22) in the presence of two panches including Govind (PW 10). As the offence fell within the jurisdiction of Laxmipuri police station, the head constable sent a telephonic message there and Inspector Bhosale (PW 22) rushed to the Juna Rajawada police station and took the appellant in his custody along with the "panchnama" and the articles which had been seized by head constable Gajanan Salokhe. It has been alleged by the police that the appellant gave information as per memorandum (Ex. 24) in pursuance of which axe (article 8) was recovered from his house in the presence of "panchas". The dead body of Shivaji was examined by Dr. Khare (PW 3) who found that the head of Shivaji had practically been severed from the trunk. The injuries were, in the opinion of the medical expert, sufficient to cause death in the ordinary course of nature and could be inflicted by axe (article 8). The dead body of Vijaya was examined by Dr. Vasant Deshmukh (PW 4) who found that there were

injuries on the face and the neck which were individually and jointly sufficient to cause her death in the ordinary course of nature. The blood of the appellant was taken for examination and was found to be of "A" group. The blood stain on the "saree" of Vijaya was also examined and was found to be of the same group. The blood-stain on the under-pant (article 19), of Shivaji was found to be of "AB" group. The appellant's shirt (article 1) and his nail clippings were found to have human blood-stains of "AB" group while his half-pant (article 3) was stained with blood of "A" group.

5. It was with these allegations that the appellant was tried. He denied the allegations altogether, as well as the ownership of the axe (article 8). He took the plea that he went out to answer the call of nature at about 4 a.m. and, when he returned, he found the dead bodies of his daughter Vijaya and his son-in-law Shivaji lying in the room. All the same, the appellant admitted that he came out of the room and asked Bapu Shinde as to where he should report the matter. He examined his eldest daughter Vatsala alias Kalpana (DW 1) as the only witness in his defence and she stated that her sister Vijaya was a girl of easy virtue. As has been stated, the appellant has been convicted and sentenced by the Court of Session as well as the High Court for the two murders.

6. It has been argued by Shri K.C. Dua that the trial Court as well as the High Court erred in convicting the appellant for the murders of Shivaji and Vijaya, and he has invited our attention to the evidence on the record.

7. The High Court has taken the view that the appellant felt humiliated by the conduct of his son-in-law Shivaji and his daughter Vijaya, referred to above, and that led to the two murders. We have gone through the statements of Dhondiram (PW 9), Sanjivani (PW 2), head constable Ananda Salokhe (PW 21) of Radhanagri police station, the appellant's complaint (Ex. 19) dated May 10, 1975 and his statement in the trial Court, and it appears that the finding of the High Court in this respect is quite justified. It is true that Shivaji was paying his daily earning to the appellant and was living with him along with his wife Vijaya, but he subsequent conduct of the appellant leaves no room for doubt that he was not reconciled to that state of affairs and was smarting under the humiliation caused by the conduct of the deceased.

8. The High Court has left out of consideration the evidence regarding the sharpening of the axe by Dadoba Sutar (PW 14) and the statement of Maruti Patil (PW 16) that he went and asked Shivaji to return to the house early, for his meal, on the day of the incident. Even so, there is convincing evidence on the record to show that the appellant was the only person in his one room tenement who had the opportunity to commit the two murders. He has admitted in his statement in the trial Court that while he and his daughter Sunita slept on the left of his one room tenement, his daughter Vijaya and his son-in-law Shivaji slept on the floor along with his daughter Sanjivani (PW 2). He has also admitted that a wick lamp was kept burning in the night and that Sanjivani had latched the door of the room from inside, before sleeping. He has also admitted that it was Sanjivani who removed the latch from inside when she went out at 4 a.m. along with Sunita. Sanjivani (PW 2) no doubt went against the prosecution case during the course of her testimony, and was allowed to be cross-examined. She however admitted that she had latched the door of the room from inside before sleeping, and that she removed the latch of the door when she and Sunita came out weeping. Much to the same effect is the statement of Sunita (PW 6). No evidence has been led in rebuttal so that there can be no doubt that the High Court rightly held that it was the appellant alone who had the opportunity to commit the two murders.

9. The statements of Bapu Shinde (PW 7) and Waman Chavan (PW 8) also go to prove that the appellant met and told them soon after that he had killed his daughter and Shivaji with an axe and

wanted to surrender at the police station, and that he was told by Bapu Shinde to go to the Juna Rajawada police station. Nothing has been solicited in the cross-examination of these witnesses to shake their testimony. The High Court has taken the view that they are both "witnesses of truth and that they could be safely relied upon" and without any reservation. There is no occasion for us to reassess the evidentiary value of their statements.

10. Then there is the further fact that the appellant went to police station Juna Rajawada and surrendered there. This has been established not only by the statement of head constable Gajanan Salokhe (PW 17) but also by that portion of the appellant's report (Ex. 36) which is admissible in evidence.

11. It will be recalled that head constable Gajanan Salokhe seized blood-stained shirt (article 1), handkerchief (article 2), "banian" (article 3) and half-pant (article 4) from the person of the appellant and also took clippings of his nails (article 5) as they were also suspected to be stained with human blood. As has been stated, the chemical examination showed that while the appellant's blood was of "A" group, the blood of his son-in-law Shivaji was of "AB" group and the blood of his daughter Vijaya was of "A" group. The appellant's shirt and clippings of his nails were found to be stained with human blood of "AB" group, while his half-pant (article 3) was found to be stained with human blood of "A" group. The High Court was therefore quite justified in reaching the conclusion that it was the appellant who had committed the two murders.

12. Then there is the evidence of Dr. Khare (PW 3) that when he examined the dead body of Shivaji he found that the head had been severed from the trunk and only a small tag of skin was bridging the head and trunk posteriorly. He has also stated that the injuries could have been caused by an axe. So also, there is the statement of Dr. Vasant Deshmukh (PW 4) that when she examined the dead body of Vijaya on June 12, 1975, she found two external injuries including a complete trans-section of the spinal cord at thoracic 2 level, and the fracture of ramus of the mandible. The medical evidence therefore also goes to prove the case of the prosecution.

13. The appellant tried to suggest in his statement that he went to ease himself at about 4 a.m. and that someone entered his room in his absence and murdered his daughter and son-in-law. He also tried to establish from the statement of his other daughter Vatsala alias Kalpana that Vijaya was a girl of easy virtue. He tried to suggest that his clothes were stained with blood as they were hanging on the wall, on a nail. The High Court has considered the defence and has given adequate reasons for rejecting it.

14. It would thus appear that there is no reason for us to interfere with the finding of the High Court and the conviction of the appellant for the offences under Section 302, IPC is fully justified.

15. We have considered the question of sentence also. Here again the High Court has rightly taken into consideration the special reasons for confirming the sentence of death. The appellant lured his son-in-law Shivaji and his daughter Vijaya into the belief that they were happy and secure under his roof. They were living with him and Shivaji was giving even his daily earnings to him. The appellant's daughter Sanjivani (PW 2) latched the door of the room inside, and Vijaya and Sanjivani therefore went to bed with a sense of security and protection under the appellant's roof. The appellant, however, had decided to murder them. He killed them with an axe, and the intensity of the blows on vital parts of their bodies leaves no room for doubt that he had selected those parts for the attack. The murders were therefore not only preplanned and cold-blooded, but were acts of treachery of the "worst kind" as stated by the High Court. The appellant was not an immature person

as he was 60 years old at the time of the commission of the murders, and we are unable to think that the High Court erred in taking the view that there were special which it has recorded, for imposing the extreme penalty of death.

16. As we find no merit in this appeal, it is hereby dismissed.

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