

Abdul Rehman

Vs

State of Karnataka

Criminal Appeal No. 181 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

20.03.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Karnataka High Court upholding the conviction of the appellant under Section 302 and his sentence of life imprisonment. Facts of this case have been fully detailed in the judgment of the High Court and it is not necessary for us to repeat the same all over again.

2. The central evidence against the appellant consists of his confessional statement before PW 20, Nemichand, a Taluka Magistrate, Hubli. It appears from a perusal of his evidence where he has categorically stated that he gave necessary warning to the accused that he was not bound to make any confession and if he does so, he may be convicted thereon. The Magistrate has also asserted in his statement that he was satisfied that the confession was true and voluntary. We have also perused the confessional statement of the appellant which gives coherent version of the manner and the circumstances in which the deceased was killed, by the appellant. The High Court has pointed out that the material facts mentioned in the confession have been generally corroborated by the evidence produced in the case. Mr. B. P. Singh appearing for the appellant submitted that the confession suffers from important infirmities. In the first place he submits that according to defence the accused was arrested on April 26, 1971, and thus a month elapsed between the time of his arrest and the making of the confession from where a reasonable inference can be drawn that the confession was extorted. There is, however, no evidence to show that the accused was actually arrested on April 26, 1971 as alleged by the defence. On the other hand, the evidence shows that he was arrested on May 31, 1971 and soon thereafter the confession was recorded. In the circumstances, we are unable to accept the first plank of the argument advanced by the learned Counsel for the appellant. Secondly, it was argued that as a Judicial Magistrate was available at Hubli, the Investigating Officer should have requisitioned his services rather than that of the Taluka Magistrate. It is no doubt true that it would have been better for the Police to get the confession recorded by a Judicial Magistrate but that by itself is not sufficient to enable us to discard the sole testimony of PW 20. PW 20 has also stated that he was appointed as Magistrate in 1952 and he had been specially empowered to record the confession. Thus PW 20 was a Magistrate of sufficient experience. Having carefully gone through evidence of the witness we are satisfied that he was fully satisfied that the confession was voluntary and was given without any duress or coercion. In the circumstances, therefore, the second contention raised by the appellant must fail. On a careful perusal of the evidence, we are satisfied that the prosecution has been able to prove its case against the accused beyond reasonable doubt. There is no merit in this appeal which is, accordingly, dismissed.

</html