

Rajaram Govind Gavade

Vs

State of Maharashtra

Criminal Appeal No. 442 of 1981

(D.A. Desai, Baharul Islam JJ)

14.04.1981

JUDGMENT

DESAI, J. -

1. Special leave to appeal granted.

2. The only defence in this case put forward in the Sessions Court was that the accused acted under grave and sudden provocation having been enraged on finding that his wife Jayashree had deviated from the path of virtue and she had become pregnant on account of her illicit intimacy with Jayaram son of PW Rukmini. Undoubtedly the learned Sessions Judge has fully considered this offence and rejected the same. However, upon a conviction in a criminal trial on a charge of murder under Section 302, there is only one appeal on facts. That appeal lies to High Court. Accused preferred an appeal. The High Court dismissed the appeal preferred by the appellant in limine after making a brief laconic order. And in this order, this defence suggested, is conspicuously silent by its absence. Grave and sudden provocation is a mixed question of law and facts. It was incumbent upon the High Court to examine that defence and record its own findings on the point. Mr O.P. Rana is right in saying that this Court can look into this evidence and examine the defence. Mr Rana also feels that it would be mere formality to remand the case. Maybe, he may be right. The fact, however, remains that an accused convicted upon a charge of murder punishable under Section 302, IPC has only one appeal on facts to the High Court. It is open to the High Court to reject the defence version after applying its mind to it, and to reject it after setting out its reasons on points which are shown to be arguable. In this case, the only point which is being stressed is that the case is covered by Exception (1) to Section 300. There is not even whisper of it in the judgment of the High Court. Therefore in the interest of justice, we set aside the judgment of the High Court and remit the appeal to the High Court for disposal according to law.

3. Appeal allowed to that extent only.

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