

Shrishail Nageshi Pare

Vs

State of Maharashtra

Special Leave Petition (Criminal) No. 372 of 1985

(O. Chinnappa Reddy, V. B. Eradi JJ)

25.03.1985

ORDER

1. This special leave petition by the first accused in Session Case No. 134 of 1980 before the Sessions Judge, Sholapur whose conviction by the Sessions Judge under Section 302 has been confirmed by the High Court, has to be dismissed as it rests entirely on appreciation of evidence. While dismissing the special leave petition we are however, constrained to make a few remarks about some of the observations of the High Court. In paragraph 18 of the judgment of the High Court it has been said "the case of the prosecution stands on the pedestal of a tripod having the eyewitness account of Shrimant and Nirmala as one leg; the discovery of axes, spear and a pair of trousers as the second leg and the animosity generated by high-handed behaviour of Malkari regarding diversion of rain water as the third leg. The confession made by accused 1 Nageshi which was subsequently retracted forms the additional fourth leg of the tripod but it is well settled that the confessional statement can never be an evidence upon which to found a conviction. It can at best furnish an additional re-enforcement when the other evidence is clinching enough to pronounce a verdict of guilt. The confessional statement alone and by itself would lead us nowhere; if one of the legs of the tripod on which the prosecution bases its case gives way, the whole case like Humpty Dumpty would come tumbling down and the additional fourth leg - that is, the confession, will not, like all the King's horses and all the King's men would put Humpty Dumpty together".

2. The metaphor used by the Judges is entirely misapplied and misleading. The evidence of the eyewitness, if accepted, is sufficient to warrant conviction though in appropriate cases the Court may as a measure of caution seek some confirming circumstances from other sources. But ordinarily, the evidence of a truthful eyewitness is sufficient without anything more, to warrant a conviction and cannot, for instance, be made to depend for its acceptance on the truthfulness of other items of evidence such as recovery of weapons etc. at the instance of the accused by the police. The judges of the High Court were wrong in treating the evidence of eyewitness as "one of three legs of a tripod" which must collapse if any of the other legs collapses. Again the High Court is wrong in thinking that a confession cannot be foundation of a conviction but can only constitute "a fourth leg to tripod". This statement has been repeated again in paragraph 30, where the High Court has observed "the confession alone and by itself cannot prove the guilt of an accused". We are not a little surprised that such a statement should have been made by the High Court. We wish to make it clear and this is only to repeat what is so well established that a retracted confession by an accused may form the basis of a conviction of that accused if it receives some general corroboration from other independent sources. It cannot however, be the bias for convicting co-accused though it may be taken into consideration against co-accused also. It is entirely wrong to think that a confession can lead nowhere. We are sorry to find such careless statements in the judgment of a High Court.

3. Special leave petition is dismissed.

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