

State of Kerala

Vs

Bahuleyan

Criminal Appeal No. 22 of 1978

(M. P. Thakkar, S. Natarajan JJ)

19.08.1986

JUDGMENT

NATARAJAN, J. –

1. While allowing this appeal by special leave by the State of Kerala and restoring the conviction awarded to the respondent by the Sessions Judge under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life, we have, in our judgment dated July 31, 1986, stated that the reasons will follow and accordingly we are giving the reasons for allowing the appeal against acquittal by the State.

2. The respondent-accused was charged under Section 302 of the Indian Penal Code for having committed the murder of his wife Sulochana on the night of August 24, 1975, when she was sleeping in the house, by cutting her neck with a knife (MO 1). The occurrence was witnessed by the 13 year old daughter of the accused (PW 1) and a servant maid by name of Omana (PW 2). The murder was committed because Sulochana was proving to be a stumbling block to the accused marrying PW 2 as his second wife and would not give her consent. The prosecution had examined PWs 1 and 2 who had actually seen the commission of the murder and some of the neighbours viz. Karthyayani (PW 3), Mathew (PW 4) and Pavithran (PW 9) who had come out of their houses on hearing the commotion and seeing the accused washing his hands and dressing himself up and going to the house of one Peethambaran Master for seeking his advice regarding his future course of action. Within a few minutes PW 4 gave information through telephone to the Cochin Cusba Police Station about the murder of Sulochana. On receipt of the phone message PW 15 Sub-Inspector of Police came to the scene house and recorded a statement Ex. P-1 from PW 1. PW 16, the Deputy Superintendent of Police took over the investigation of the case, arrested the accused, held inquest over the dead body of Sulochana and seized blood-stained knife MO 1 as well as the blood-stained clothes of the deceased and the frozen blood found on the flooring.

3. The accused admitted his presence as well as that of PWs 1 and 2 in the house on the night of the murder but contended that he had not wanted to marry PW 2 or quarrelled with his wife or cut her neck with a knife.

4. The Sessions Judge did not deem it safe to place reliance on the evidence of PW 1 but accepted the evidence of PW 2 in full and the evidence of the neighbours and found the accused guilty under Section 302 of the Indian Penal Code and awarded him death sentence as in his view the murder was very heinous.

5. Besides the reference under Section 366 Criminal Procedure Code by the Sessions Judge, the

accused also preferred two appeals, one through counsel and one and from the prison. The reference and the appeals were heard together by a Division Bench of the Kerala High Court and the Bench allowed the appeals and dismissed the reference and acquitted the accused of the charge of murder and set him at liberty. To challenge the correctness of the acquittal of the accused, the State has filed this appeal.

6. We have been taken through the evidence of PW 2 and the neighbours PWs 3, 4 and 9 and the doctors PW 8 and DW 1 as well as the relevant portions of the judgment of the Sessions Judge and the High Court by Mr K.R. Nambiar, learned counsel for the appellant. DW 1 (Dr Ravindranathan) has been examined by the accused to contend that the incised injury on Sulochana's neck could have been caused by the assailant only if he had held firm the head of the victim with one hand while inflicting the cut on the neck with a knife held in the other hand.

7. On a consideration of the evidence, we find that certain facts are not in controversy. The house where the murder was committed consists of a verandah in the front portion and three rooms in the rear situate east-west in a row. The only occupants of the house were the accused, his deceased wife, their 13 year old daughter PW 1 and the servant maid PW 2. Sulochana was of a poor health and it would appear that she was also subjected to epileptic fits. On account of Sulochana's poor health, PW 2 aged 18 years and belonging to a poor family, had been engaged to look after her and assist her in running the household. The employment of PW 2 was secured through her elder sister Ratnamma who was residing in a shed immediately adjoining the house of the accused. On the night in question Sulochana and PW1 and 2 took bed in the room on the western side of the house while the accused took his bed in room on the eastern side. The murder of Sulochana had taken place at about 2 a.m. Her throat had been cut with the knife MO 1 which was found lying near the dead body. It is in the light of these factors the guilt of the accused has to be determined.

8. PWs 1 and 2 have deposed that they woke up on hearing some moaning noise and they then saw the accused seated in a kneeling posture over the chest of Sulochana and cutting her throat with MO 1 knife held in his right hand and holding a lit torch MO 9 in his left hand. PWs 1 and 2 also noticed that the accused had pinned down the arms of Sulochana with his knees so that she could not move them. PWs 1 and 2 raised alarm and appealed unsuccessfully to the accused to spare Sulochana. After cutting the throat of Sulochana the accused went out to the verandah and washed his hands and chest. PWs 1 and 2 felt afraid to remain in the room and they too came out and stood in front of the house. By then the neighbours PWs 3, 4, 9 and others had come out and they saw PWs 1 and 2 as well as the accused standing there. The accused dressed himself and went to the house of one Peetambaran Master, a Corporation Councillor, and returned back. By then PW 4 had telephoned the police station and informed them about the death of Sulochana.

9. PW 1's evidence was not taken into account by the Sessions Judge because in her cross-examination she had nodded her head meekly to whatever questions that were put to her by the defence counsel. PW 2's testimony was accepted in full because she had given clear and cogent evidence about the appellant committing the murder. Likewise the testimony of the neighbours, who had come out and seen the accused washing his hand and dressing himself up, was also accepted by the Sessions Judge.

10. The evidence of the witnesses relied on by the Sessions Judge established beyond doubt that the appellant was the perpetrator of the crime and nobody else would have had any motive to commit the crime or gained access to the house and murdered Sulochana. In spite of the evidence being of a very telling nature the High Court has entertained imaginary doubts and concluded that the evidence

did not 'conclusively' prove the guilt of the accused. It was overlooked that the law does not require conclusive proof; only proof beyond reasonable doubt. The High Court has failed to see that the accused and none else would have had any motive to commit the offence. Even though PWs 2 and 4 have clearly stated that the accused was angry with Sulochana because she refused to permit him to marry again, the High Court has clutched at a stray statement of PW 3 and held that Sulochana should have given her consent to the second marriage and as such there was no reason for the accused to kill her. Besides the High Court has failed to see that the murder has taken place inside the house and as such no outsider could have entered the room where Sulochana was sleeping and killed her without attracting notice. It may be that the door on the western side room did not have any bolts or latches, but that would not necessarily mean that an outsider could have stealthily entered the room and committed the murder. The High Court has been obsessed with the defence plea that the accused could not have inflicted a clean cut wound on the throat of Sulochana without holding her head firm with his left hand. Since PWs 1 and 2 have stated that the accused was holding the torch in his left hand while inflicting the cut on Sulochana's neck with MO 1 held in his right hand, the High Court has concluded that the occurrence could not have taken place in that manner and hence their evidence is unacceptable. The High Court has failed to see that Sulochana was a woman of very weak constitution and furthermore the accused had knelt over her chest and pinned her hands to the ground with his knees and as such it would not have been possible for Sulochana to offer any resistance when the accused cut her throat. In failing to see the obvious, the High Court has gone so far as to entertain doubts about the presence of PWs 1 and 2 in the room where the murder had been committed and even doubt whether the murder had really taken place in the western side room. These doubts and suspicions are wholly unwarranted because even the accused has admitted in his statement under Section 313 CrPC that Sulochana and PWs 1 and 2 went to bed in the western side room and it was in that room Sulochana had been murdered. We, therefore, find the reasonings of the High Court and the resultant conclusion arrived at by it to be not only unwarranted but also to be altogether devoid of any basis.

11. We find the evidence of PW 2 to be natural and truthful and amply corroborated by the evidence of the neighbours who had seen the accused coming out to the verandah, washing his hands and putting on a shirt and going over to the house of the Corporation Councillor for seeking his advice. If someone else had been the assailant the reaction and the conduct of the accused would have been entirely different. He would have called out the neighbours for help and he would not have washed himself or put on his dress and walked composedly to the house of the Corporation Councillor.

12. The Sessions Judge was fully justified in accepting the evidence of the disinterested witnesses and finding the accused guilty and convicting him under Section 302 of the Indian Penal Code.

13. The High Court was clearly extremely unreasonable in brushing aside the compulsive evidence of the witnesses and acquitting the accused by giving free reign to flights of fancy. The appeal is therefore allowed and the conviction of the accused by the Sessions Judge under Section 302 of the Indian Penal Code is restored. However, in the matter of sentence the extreme penalty of law is not called for and hence we have awarded the sentence of imprisonment for life to him.

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