

Chandrakant Somnath Kudale and Another

Vs

State of Maharashtra

Criminal Appeal No. 49 of 1979

(S. Natarajan, Kuldip Singh JJ)

31.03.1989

ORDER

1. This appeal by special leave is directed against a judgment of the High Court in an appeal preferred by the State to challenge the conviction of the appellants under Section 304 Part II IPC instead of under Section 302 IPC by the Additional Sessions Judge, Poona. The Additional Sessions Judge convicted appellant 1 under Section 304 Part II IPC and the second appellant under Section 304 Part II read with Section 109 IPC and sentenced them to undergo RI for seven years and fine of Rs. 1000 and RI for two years and fine of Rs. 500 respectively. The High Court set aside the convictions of the two accused for the lesser offence and convicted them under Section 302 IPC and Section 302 read with Section 109 IPC respectively and sentenced both of the to suffer imprisonment for life. Against the judgment of the High Court the appellants have preferred this appeal.

2. The facts of the case are not disputed and the only controversy in the appeal is regarding the nature of the offence committed by the two appellants.

3. The prosecution case which has been accepted by the Sessions Judge as well as the High Court is to the following effect. Deceased Papa had sent a sum of Rs. 398 on January 24, 1974 through his employee PW 10 to purchase ganja from the shop of appellant 1. While the ganja was being purchased, the shop was raided by the police and they seized the ganja as well as the sum of Rs. 398 sent by Papa. PW 10 was also taken into custody but after being released on bail, he informed Papa as to what had happened. On January 27, 1974, Papa demanded return of the sum of Rs. 398 by appellant 1. Appellant 1 asked Papa to meet him at his house half an our later. Accordingly, when Papa went there, appellant 2 caught hold of his hands from behind and appellant 1 repeatedly stabbed Papa with a knife having a blade of 6 inches length uttering the words 'take this money, take this money'. As many as five injuries were inflicted on vital parts of the body of Papa and all the time appellant 2 kept his hold on Papa and thus effectively prevented him from running away or warding off the stabs inflicted on vital parts of his body. On receipt of the stab injuries Papa met with instantaneous death. The occurrence was witnessed by PW 9 and he ran to a place nearby where PW 10 and other witnesses were seated and brought them to the scene.

4. While the evidence regarding the murderous attack on Papa by appellants 1 and 2 in the manner set fort above was clear and clinching, the Sessions Judge formulated a theory of his own to conclude that the offence committed by the two appellants would only constitute an offence of culpable homicide not amounting to murder and not murder itself. The Sessions Judge, without there being any basis in the evidence for it, proceeded to act on surmises and conjectures and presumed that a heated altercation must have ensued when Papa went to collect the money, that

Papa must even have had a tussle with appellant 1 and caused the abrasions found on him and that in the heat of the quarrel appellant 1 must have stabbed Papa under grave and sudden provocation and as such he cannot be held to have caused Papa's death with an intention to cause death of nature to cause death. By means of such specious reasoning, the Sessions Judge brought down the offence committed by the appellant 1 to one under Section 302 Part II IPC and the offence committed by appellant 2 to one under Section 304 Part II read with Section 109 IPC and awarded RI for seven years and two years respectively besides imposing fine amounts on them.

5. The High Court after subjecting the evidence to a careful scrutiny and noticing the manner in which the appellants had attacked Papa after asking him to come home to collect the money claimed by him and the nature of the weapon used and the serious nature of the injuries caused on him by accused 1 repeatedly stabbing him and accused 2 effectively abetting the commission of the offence by keeping a tight hold on his hands till all the stabs were inflicted, came to the conclusion, and in our opinion very rightly, that the offence committed by the two accused clearly amounted to murder punishable under Section 302 IPC.

6. Mr. T. S. Arora, learned counsel for the appellants sought to contend that the view taken by the Sessions Judge is a plausible view and as such the High Court should not have altered the conviction of the appellants to the under Section 302 IPC. We find no merit in the argument because the view taken by the Sessions Judge regarding the nature of the offence committed by the appellants is in flagrant violation of the evidence adduced in the case and the Sessions Judge has acted on a theory evolved by him on his own surmises and conjectures. The High Court was therefore fully justified in allowing the appeal preferred by the State. Consequently, we find no merit in the appeal and accordingly dismiss it. The appellants who are on bail shall surrender themselves to custody for serving out the sentence failing which they shall be arrested and placed in custody.

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