

Kedar Nath

Vs

State of M.P

Criminal Appeals Nos. 99-100 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

08.11.1990

JUDGMENT

1. Appeal No. 99/79 is preferred by one Kedar Nath who stands convicted under Section 201, IPC and sentenced to undergo three years' rigorous imprisonment whereas Criminal Appeal No. 100/ 79 is preferred by one Baijnath who stands convicted under Section 302, IPC and also u/S.201, IPC and sentenced to undergo imprisonment for life and three years' respectively. These two appeals arise out of a common judgment. According to the prosecution, the deceased in this case used to sell out piece cloths by carrying them on his cycle. On the date of the occurrence, he went to the market for selling the cut-pieces of cloth but he did not return. A search was also not fruitful. Therefore, on 13-5-73 his brother made a complaint before the police. Thereafter on a tip off, a constable (PW 1) attached to the concerned Police Station made an entry in the first information report. The investigation proceeded on the strength of the report given by PW 24 and on the basis of information of PW 1 who is said to have obtained that information from an undisclosed informant. During the course of the investigation Baijnath was arrested on 29-5-73. The case of the prosecution is that on the information given by this Baijnath the dead body was recovered which was in a highly decomposed and beyond identification. Some cloth pieces were also seized pursuant to the statement given by this Baijnath along with some parts of the cycle. The appellant Baijnath was a licensee, owning a gun. His gun was seized and sent for examination to the ballistic expert (PW 23) to examine whether the flattened lead pellets recovered from near the dead body could have been fired by the gun of Baijnath. PW 23 opined that the said pellets could have been fired from the gun of Baijnath.

2. Appellant, Kedar Nath was arrested on 31-5-73 and in pursuance of his statement, certain cloths, said to have been carried by the deceased were recovered.

3. The trial Court found the appellant Baijnath guilty of the offences u/Ss., 302 and 201, IPC and convicted him as aforementioned which conviction and sentence were confirmed by the High Court. The trial Court further convicted Kedar Nath u/ S. 201, IPC and sentenced him. The High Court upheld the conviction of Kedar Nath also.

4. We heard both the learned counsel appearing for both the parties and also perused the records.

5. There cannot be any dispute that this occurrence was not witnessed by any witness. Though the earlier report was given by PW 24 even on 13-5-73, it seems that no investigation proceeded on the basis of that information given by PW 24, but the investigation was started only on the basis of the

tip off from an undisclosed informant.

6. Though there is no specific evidence as to the cause of death the prosecution proceeded on the presumption from the recovery of an empty cartridge seized from the side of the dead body that the deceased should have been murdered by shooting. Apart from this conjecture there is no evidence how the deceased met his end. Therefore, we are unable to agree with the finding of both the Courts below as the evidence relating to the murder charge is insufficient and is not worthy of acceptance. It seems that there was no charge u /S. 411. We think that it will not be worthwhile to convict these two appellants u/ S. 411, IPC at the length of time - that too in the absence of any charge, though the appellant may not be prejudiced by such a conviction as the evidence, appearing on the records, puts 'them on notice. However, the conviction u/ S. 201 now remains to be considered. On consideration of the entire materials on record, we are of the view that the conviction under Sec. 201 is not liable to be interfered with. The result, the conviction of both the appellants u/ S. 201 is confirmed. On coming to the question of sentence, as this occurrence took place in the year 1973 and the appeal is pending before this Court from 1979 onwards, we feel that the ends of justice would be met by reducing the sentence of both the appellants awarded u/S.201, IPC to the period already undergone.

7. In the result, the conviction of Bajjnath under Section 302 and the sentence of life imprisonment are set aside and the conviction of both the appellants under Section 201, IPC is confirmed but the sentence is modified as indicated above.

8. The appeals are disposed of accordingly

Order accordingly.

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