Devku Bhikha

Vs

State of Gujarat

Criminal Appeal No. 432 of 1987

(M. M. Punchhi, K. Jayachandra Reddy JJ)

31.01.1995

JUDGMENT

1. This is a case of peculiar angularities. The deceased Ramniklal was a middle aged school Head Master working at a village known as Akala. In order to go to his place of work he was waiting on the day of occurrence at bus stand Lathi whereat the appellant herein, Devku Bhikha, a young man, came. They engaged in talks. Apparently, there was a topic and background to the talk. The appellant was unemployed for long and the Headmaster had a job up sleeve which he could give to the appellant. The deceased enquired of the appellant whether he could be able to send his wife to the former's house at night. On that suggestion the accused was taken aback. Then the deceased charged the appellant for being impotent. This further enraged the appellant. The deceased then told the appellant that his wife had sent the former a letter inviting him and that that letter he carried in his hand bag. The accused in a rage snatched the bag and frantically searched for the letter, but to no avail. He then took out a knife found in the bag and with that he inflicted five/six blows on the deceased in quick succession in the presence of some witnesses, whereafter he went away. The deceased in injured condition was removed by those people to the dispensary whereat firstly, the Police questioned him about the occurrence. The deceased named the appellant as his culprit, but did not tell the reason for the assault when though asked. He then said that he would tell about the cause of the dispute afterwards. Sometimes later, in the hospital the deceased was questioned by an Executive Magistrate before whom he reiterated that the appellant was the culprit of the crime committed on him because he had taken interest in reprimanding the appellant for maltreating his wife and likewise his family members. This in a nutshell is the story interwoven between the versions of the prosecution and that of the defence.

2. But for the aforementioned two dying declarations, there is no other stock with the prosecution. All the eye witnesses and other material witnesses examined by the prosecution turned hostile. They only said that they had seen the deceased lying injured at the bus stand Lathi. The two dying declarations being the only pieces of prosecution evidence were thus put to the appellant during trial. In his statement recorded under S. 315, Cr. P. C., the appellant owned inflicting injuries to the deceased but gave a counter version the weave and fabric of which we have set out earlier. He stepped into the witness box and owned having caused the injuries to the deceased, but explained the cause as grave and sudden provocation which led him to it. The trial Court rejecting the plea convicted the appellant under S.302, I.P.C. and sentenced him to life imprisonment. The High Court on appeal confirmed the conviction and sentence. In appeal to this court, a remand was effected, for it was thought that a serious case like the present one had not been dealt with properly by the High Court. On remand then an application was made by the defence for summoning the wife of the

appellant as a Court witness. The prayer was granted and so Y. Triveni was examined as a court witness. Besides supporting the case of the appellant, she also stated that the deceased had made amorous suggestions to her repeatedly for two or three times prior to the occurrence suggesting to her to live with him as his mistress or concubine.

3. It is settled law that the confession of the accused has to be taken as a whole and the exculpatory part cannot be thrown aside. As said before, the case of the prosecution lies solely on the two dying declarations of the deceased. The appellant instead of projecting a plain denial has on the other hand strengthened those dying declarations by his statement in admitting that he was responsible for the death of the deceased. Yet, his owning the commission of the crime does not lead to the conclusion that he was guilty of offence punishable under S.302, I.P.C. In his statement as his own defence witness he has narrated the sequence of events by which he was provoked by the deceased. It stands out prominently that the deceased was a member of a high caste and the appellant of a low caste. Unfortunately the appellant was subjected to repeated insults at the end which, when his tolerance broke down, he made use of the knife and inflicted repeated injuries on the deceased who had unabashedly and lacherously asked the appellant to make available his wife to him for immoral purpose. This part of the statement of the appellant cannot be doubted. It is also in evidence that there was a job available in the school of the deceased head master and that the appellant wanted to apply for the same to the headmaster. This may have provided enough opportunity to the deceased to exploit the situation, as the appellant was unemployed in those days when the occurrence took place. Thus, from this analysis it becomes abundantly clear that the appellant was driven to the crime which was not premeditated and the occasion had sprung up at the moment, gradually leading to the point when the appellant lost his self-control , and due to grave and sudden provocation, inflicted the injuries on the deceased, successively within seconds. We think, therefore, that the offence made out against the appellant is under S. 304 Part I, I.P.C. Accordingly, the offence is scaled down from one punishable under S. 302, I.P.C. to one under S. 304 Part I, I.P.C. for which we impose sentence of seven years' R.I. on the appellant. Apparently it seems that the appellant has already undergone that sentence. Should there be any difference and he has to be taken back in jail then the law will have its own course. The appeal is, thus, partially allowed with the above result. Order accordingly.

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