

# SUPREME COURT OF INDIA

Sumitra Banik

Vs.

State of W.B.

(G Nanavati and S Phukan JJ.)

29.07.1999

## ORDER

**NANAVATI, J.**

1. For the unnatural death of Debjani (Deyyani) five persons, namely, Chandranath Bani, Chandan Banik, Ashim Banik, Jayanti Banik and Sumitra Banik, who were her father-in-law, husband, brother-in-law and sisters-in-law respectively, were tried in the Court of Additional District Judge, Alipore, in S.T. No. 4(5) of 1983. The case of the 6th accused, being a juvenile, was separated. The trial Court convicted all the five accused under Section 302 IPC read with Section 34 IPC and also under Section 201 I.P.C. read with Section 34 I.P.C. The husband and the father-in-law were sentenced to death and the rest of them were sentenced to suffer imprisonment for life for the offence of murder. All the five convicted accused appealed to the High Court and there was also a reference to the High Court for confirmation of the death sentence imposed upon the husband and the father-in-law. The High Court not only confirmed the conviction of the husband and the father-in-law but also the death sentence. Conviction of Sumitra was confirmed both under Section 201 read with Section 34 I.P.C. and under Section 302 read with Section 34 I.P.C. The appeal of Ashim and Jyanti was allowed partly, they have been acquitted under Section 302 read with Section 34 I.P.C. but their conviction under Section 201 read with Section 34 I.P.C. has been maintained. Aggrieved by her conviction, Sumitra has filed Criminal Appeal No. 527 of 1989. The husband and the father-in-law had also filed an appeal to this Court but we are told that it was dismissed but later on in the Review Petition filed by them, the sentence of death was reduced to the sentence of imprisonment for life. The other two appeals being Criminal Appeals Nos. 461 of 1989 and 462 of 1989 are by the State against the acquittal of Ashim and Jyanti. As the three appeals arise out of the same judgment, they are heard together and disposed of by this common judgment.

2. The prosecution case was that Debjani was married to Chandan Banik but her husband and in-laws were not happy with her and quarrels used to take place between them. After some time they also started ill-treating her life became more miserable as the husband and the in-laws used to make accusations against her of bad character and adultery. All the accused were abusing her and the husband used to beat her also. On 28.2.83, the husband had beaten her in the morning. It is the prosecution case that thereafter the husband and the other in-laws decided to kill her. They beat her in the afternoon and after she was killed they hanged her body in order to make it appear that she had committed suicide by hanging herself from a fan after toeing her sari around her neck.

3. In order to prove its case, the prosecution had mainly relied upon the evidence of Dhanpati (P.W.-4), father of the deceased, the three letters, Exhibits 8, 8/1 and 8/2 written by the deceased to her mother and sister-in-law and the evidence of two domestic servants, Jagdish (P.W. 19) and Shanti (P.W. 20). The prosecution also relied upon the evidence of Dr. Bose to prove that hanging was subsequent to the death of Debjani and she had really died because of beating. The trial Court after carefully scrutinizing the evidence held that her husband and in-laws were systematically ill-treating and torturing her and that on the day of the incident at about 4.00 p.m. the husband and the father-in-law had beaten her, that all the other accused were present at that time and again after about 45 minutes they were all seen near that very place. All the males then left their home and the females went to the extent of telling the police that they did not know whose dead body it was.

4. The High Court, after reappreciating the evidence, agreed with the findings recorded by the trial Court believing the evidence of Jagdish and Shanti and relying upon the three letters written by Debjani. The High Court, however, held that there was no clear and reliable evidence to show that Ashim and Jyanti - (married daughter of Chandranath), had ill-treated her in the past and that created a doubt regarding their participation in killing her. Therefore, giving them benefit of doubt, the High Court acquitted them of the offence of murder. But, their conviction under Section 201 read with Section 34 I.P.C. was maintained in view of the other evidence on record.

5. Mr. K.G. Shah, learned senior counsel, for the appellant-Sumitra submitted that the three letters, Exhibits 8, 8/1, 8/2 did not disclose that Sumitra was also a party to the torturing and ill-treatment given to Debjani. We find that only in one letter Debjani has specifically referred to appellant-Sumitra, and the only complaint against her was that she had also stopped talking to her. This evidence should not have been considered as sufficient for coming to the conclusion that Sumitra was also ill-treating Debjani. Moreover, we do not find any evidence to prove that she had participated in the beating which led to the death of Debjani. It was the definite case of the prosecution that Debjani died as a result of beating. Neither Jagdish (P.W. 19) nor Shanti (P.W. 20) have deposed that Sumitra had taken any part in beating Debjani. What they have stated is that about 4 O'clock when Debjani was being beaten by her husband and father-in-law Sumitra was also seen standing outside that room along with other family members. What they have further stated is that after about 45 minutes when some noise of 'thakthakani' was heard, they had rushed to that place to see what was happening and, they had seen Sumitra standing near the door of that room along with other family members. This was the only evidence led by the prosecution to prove the involvement of Sumitra. The learned counsel for the State submitted that Sumitra, Ashim and Jyanti being the family members, it was their duty to intervene and prevent the other two accused from beating Debjani and as they did not do so, this Court should infer, that by remaining present (sic) they had encouraged or facilitated the murder of Debjani and had thus shared the common intention with the other two accused. We cannot accept this submission because mere presence of these persons near the place of the incident cannot lead to an inference that they shared the common

intention with the other two accused as they were also residing in that house. They had not entered the room of Debjani at 4 O'clock when the beating took place or thereafter. They had remained standing outside that room. As something was happening in the room of Debjani, it was quite natural for the other family members to go near that place and see what had happened. Merely because they did not try to prevent the other two accused from beating Debjani no inference of sharing the intention of beating her to death can be inferred in view of their relationship with them and their indifferent attitude towards Debjani. The only positive act alleged against Sumitra is that she had told Jagdish and Shanti to go away from that place. On the basis of this circumstance it would not be reasonable to jump to the conclusion that she also intended that Debjani be killed on that day. It was a family quarrel and it is quite natural that Sumitra did not like the domestic servants to witness the same.

6. In our opinion, the evidence against Sumitra was not sufficient to sustain her conviction under Section 302 read with Section 34 I.P.C. The High Court, thus, committed an error in confirming her conviction under those sections. We, therefore, allow appeal No. 527 of 1989 filed by Sumitra and dismiss appeals Nos. 461 of 1989 and 462 of 1989 filed by the State against Ashim and Jyanti. Conviction of Sumitra under Section 302 read with 34 I.P.C. and the sentence imposed upon her for that offence are set aside.