

Jalalsab Shaikh

Vs

State of Goa

Criminal Appeal No. 874 of 1998

(G. T. Nanavati, S. M. Quadri JJ)

11.08.1999

JUDGMENT

NANAVATI, J. –

1. The appellant has been convicted for the offence punishable under Section 302 IPC by the Court of Sessions Judge, South Goa, Margao. His conviction has been confirmed by the High Court. What has been held against him is that during the night between 26-12-1995 and 27-12-1995, he killed his wife with a pickaxe.

2. The trial court recorded his conviction on the basis of circumstantial evidence and the High Court after reappreciating the evidence has confirmed it. The trial court had also relied upon the evidence of eyewitness PW 6, Ismail, son of the appellant, who was then eight years old. But the High Court did not think it fit to rely on his evidence as he had not stated before the police that he had seen his father killing his mother.

3. The evidence of PW 2 Ganesh Karma and PW 8 Sunita, does not suffer from any infirmity and establishes that the appellant, his wife and child PW 6 Ismail were residing in the room belonging to PW 2 Ganesh Karma since about 12 days before the date of the incident. The evidence further establishes that it was reported to PW 2 Ganesh Karma that the appellant was consuming alcohol, assaulting his wife and creating nuisance almost every day. It was for that reason that PW 2 Ganesh Karma had met the appellant on 26-12-1995 in the morning and told him not to consume alcohol and create nuisance there otherwise he will have to vacate the room. His further evidence is that on that very day at about 2.00 p.m. the accused had met him and sought 8 days' time to vacate the room. In order to confirm whether really the appellant used to return home drunk, PW 2 Ganesh Karma had gone to the room of the appellant at about 7.00 p.m. and found that he was in a drunken condition at that time. He again advised the appellant not to create any trouble and then left that place. The evidence of PW 8 Sunita proves that sometime late in the evening there was a quarrel between the appellant and his wife. The evidence of these two witnesses further proves that on the next date, in the morning at about 7 a.m. the child of the appellant was found weeping outside the room and when they had gone there to enquire what had happened, they found that the wife of the appellant was lying dead on a cot with a pickaxe stuck in her head. PW 4 Mariano Rebellow had also come to know about the death of the appellant's wife and after confirming the same after going to that room had gone to the police station to lodge a complaint. His evidence corroborates the evidence of PW 2 Ganesh Karma and PW 8 Sunita. Relying upon the evidence of these witnesses, the courts below have held that the following circumstances clearly stand established :

(i) the appellant, his wife and child were residing in the room of PW 2 Ganesh since

about 12 days before the date of the incident;

(ii) only those three persons were residing in that room;

(iii) the appellant used to return home in a drunken condition in the evening and create nuisance;

(iv) the appellant had agreed to vacate the room within 8 days' time;

(v) in the evening at about 7 o'clock, there was some disturbance in the room of the appellant;

(vi) at about 7.00 a.m., next morning, the son of the appellant was found crying outside the room;

(vii) the appellant's wife was found lying dead with a pickaxe stuck over her head;

(viii) the appellant had run away from that place and could be traced by the police after 10 days.

4. The explanation of the appellant that he was not residing in one of the rooms in the house of PW 2 Ganesh Karma and that he did not know how his wife was killed as he was away in his own village, was rightly found to be false. If he was really away from that place then on coming to know about the death of his wife, he would have immediately rushed to that village. On the contrary, the police had to go in search of the appellant and he could be arrested only after 10 days. This false explanation given by the appellant, as rightly held by the courts below, provides the missing link in the chain of circumstances.

5. In our opinion, the appellant has been rightly convicted under Section 302 IPC. This appeal is, therefore, dismissed.