

In Re: Sona Mia

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Court : Guwahati

Decided On : Apr-30-1951

Judge : Narendra Nath Sen Gupta, J.C.

Appellant : In Re: Sona Mia

Judgement :

Narendra Nath Sen Gupta, J.C.

1. Sona Mea appealed to this Court against his conviction under Section 302, I.P.C. by the Sessions Judge of Agartala, sentencing him to transportation for life. The appeal was dismissed and a notice was issued upon Sona Mea by this Court, in exercise of its re-visional powers under Section 439, Cr.P. Code, to show cause why his sentence should not be enhanced to one of capital punishment.

2. Cause has accordingly been shown.

3. At the hearing of the matter, Sona Mea was represented by one of the senior Advocates of this Court. The State Advocate appeared in support of the rule.

4. The following points were put forward on behalf of the accused who filed a written statement:

(1) That the only witnesses against the convict were the wife and the two sons of the deceased. Of these the first named had a grudge against the convict and her two sons were tutored to implicate him falsely.

(2) That the wife of the deceased, Nur Che-hara had herself murdered her husband and implicated the convict with the help of her sons in order to save herself.

(3) That the convict did not get facilities for producing witnesses to prove the alibi set up by him in defence.

5. Although the first two points were discussed generally at the hearing of the appeal it is desirable to make some further comments thereon.

6. It has been stated by the convict in his written statement that the deceased was an old man of 75 & his wife Nur Chehara P.W. 2 was aged about 30 years and had a bad character: that they were in the habit of quarrelling with each other and Noor Chehara had on two occasions attempted to murder her husband by throwing him under the Dhenki and on each occasion he was saved by the intervention of the convict and Abdul Hashim and that on each occasion of the quarrel between the husband and the wife the convict had managed to bring about a settlement: That for the reasons referred to above NoorChehara had a grudge against the convict and that on account of such grudge, Noor Chehara had falsely implicated the convict with the help of her own after murdering her own husband.

7. As was already noted in the appellate judgment, this defence was not taken by the convict himself but was suggested to the witness for the prosecution, on his behalf, Noor Chehara and Abdul Gani, her sons, flatly denied the allegations., Abdul Odud Munshi P.W. 5 and his son Abdul Hashim P.W. 6 the nearest neighbours of the deceased would normally be the persons to know if there was any difference between the deceased and his wife, The former denied the existence of any such ill feeling. No question was asked to the latter about this point, although according to the written statement of the convict Abdul Hashim, was said to have saved the life of Pohorchand from attacks of Noor Oehara with the help of the present convict on two occasions. There is no other witness to prove the story of ill feelings alleged in defence. The story of Noor Chehara having murdered her husband has not been proved and is improbable.

8. So far as the allegation of the sons of Noor Chehara being tutored witnesses, this Court does not consider this a credible story.

9. The learned Sessions Judge and the assessors-saw the minor sons of Noor Chehara & appear to have relied on them. They must have been found to be intelligent and dependable in spite of their age being tender. This Court also did not find any material indicating any tutoring as alleged. Besides the evidence of the other witnesses who came to the place of occurrence and were told of the details of the occurrence soon after the happenings shows that there was no time for manipulation or tutoring of the witnesses for getting up a false case for the purpose of implicating the convict falsely.

10. On an anxious consideration of the allegations of the convict Sona Mea this Court is clearly of opinion that the first two points raised are unsubstantial and unacceptable.

11. On the third point it appears that a list of witnesses was filed on behalf of the accused before the committing Court. No witnesses for the defence however appeared before the Sessions Court. Nevertheless, there is nothing to show that the accused really intended to examine any witnesses before the Sessions Court or required their attendance in that Court. If the accused wanted to prove alibi, he would have certainly expressed his intention to do so in some form or other before the Sessions Court. Nothing was however done and advantage was taken of the right of reply before the Sessions Court showing thereby that production of evidence was considered useless. It cannot, under the circumstances, be said that the convict had no facilities for production of witnesses for proving his alibi.

12. It is worthy of note that the accused did not take this point seriously as a ground of appeal. Further, it appears that the convict had in his statement before this Court named persons other than those named by him before the Committing Magistrate. They are Atarjjama Sarder, Mabatali and Abdul Hashim. Their residences have not been given but apparently they are residents of Murapara where the convict stated he was staying during the night of occurrence. One Atarjjama of Marapara has already been examined for the prosecution. He was not however asked any question about this plea of alibi. Mahabatali and Abdul

Hashim also deposed for the prosecution but they belong to Mogh Puskarini.

13. This Court is of the opinion that the prayer for calling witnesses at this late stage after the conviction has been upheld on appeal cannot be allowed.

14. With regard to the plea of alibi, the statement of the convict is that on the night of occurrence he was in his old house at Murapara which was about 4 miles from Mogh Puskarini where the murder was committed. He stated that he had gone there in the evening in search of labourers but as it became late and as the way back lay through jungles and was frequented by wild animals he did not return home that night. That he was absent from his house after the occurrence has been proved by some of the prosecution witnesses but the evidence of Abdul Odud Munshi P.W. 5 is that the accused had come to his house after candle light the same evening. If the way to his old house was jungly and was frequented by wild animals the accused would not have ventured to take the journey after nightfall unless there was some pressing necessity. Search for labourers does not prima facie seem to be such a necessity. On the other hand, running away from his house after commission of the offence seem to fit in with the prosecution evidence which was relied on by the assessors, the learned Sessions Judge and this Court at the hearing of the appeal.

15. The third point raised by the convict does not thus help him in any way.

16. While admitting that this point has already been considered in the appellate judgment of this Court, the learned Advocate for the convict thought that the question of correct identification of the convict as murderer is worth reconsideration. He considered that the story of identification of the accused as the murderer by the light of a Bati (lamp) as stated in the First Information Report being in conflict with the evidence about recognition by the light of the Dhuni (burning logs) the entire story of identification should be discarded. This point was discussed at some length in the appellate judgment and no recapitulation of the discussion is necessary. It was clearly found that it was possible for the eye-witnesses to identify the accused under the prevailing conditions. The accused was neighbour of the eye-witnesses. Whoever inflicted the three blows on Pohorchand's head, and struggled with Abdul Gani and Noor Chehara as deposed

by them, must have been at the spot for a sufficiently long time to enable identification, by the light of the burning logs, Such identification would normally be much easier if the person to be identified is a neighbour whose features and movements would be well known. Taking all the facts and circumstances into further consideration, I do not find any room for reasonable doubt about the correctness of the identification of the convict as the murderer of Pohorchand.

17. Coming now to the question of punishment it is necessary to quote the observation of the learned Sessions Judge in this connection. The observation is as follows:

Sentence of death is the only punishment according to the provision of the Indian Penal Code for such a case of deliberate and cruel murder. Nevertheless after consideration of the education and culture of the accused and all surrounding circumstances, I think that the prestige of law and justice will not suffer if a sentence of transportation for life is awarded to the present accused instead of a sentence of death. It is therefore ordered that the present accused is sentenced to transportation for life under Section 302, I.P.C. for having committed the offence of murder with knowledge.

18. It has been pointed out by the learned State Advocate that there is no material on record about the education and culture of the accused.

19. There is also nothing on the record to show how the education and culture of the accused mitigated the offence and warranted the lesser sentence.

20. The actual surrounding circumstances which were considered by the learned Sessions Judge, in deciding upon the award of the lesser sentence, has not also been indicated anywhere in the judgment.

21. After holding that death sentence was the only punishment provided by law for such a deliberate and cruel murder, it was the clear duty of the learned Sessions Judge to be more precise and explicit in stating the facts and circumstances which in his opinion were sufficiently extenuating for avoiding the normal punishment provided by law.

22. The accused appears to be a normal man capable of understanding the gravity of the offence committed by him and the normal legal consequences thereof. There is nothing to show that any deficiency in education or culture had impaired his understanding in any way. There are no circumstances militating against the atrocious nature of the crime committed by him. Any punishment less than the normal sentence provided by the law was therefore manifestly inadequate. To vindicate the ends of justice therefore the sentence has to be enhanced to one of capital punishment.

23. The sentence of transportation for life passed on Sona Mia by the Sessions Judge of Agartala in Sessions case No. 15 of 1930 is therefore enhanced to one of death.

24. Sona Mia shall be hanged by the neck till he is dead.

25. Let the decision above be certified to the Sessions Judge of Agartala, under Section 442, Criminal P.C. for making necessary orders conformable to the decision.

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