

In Re: Rupa Sonya

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Court : Mumbai

Decided On : Nov-03-1955

Reported in : AIR1956Bom193; 1956CriLJ479

Judge : Shah and Vyas, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367; [Indian Penal Code \(IPC\), 1860](#) - Sections 326

Appeal No. : Criminal Appeal No. 689 of 1955 and Cri. Review No. 827 of 1955

Appellant : In Re: Rupa Sonya

Advocate for Def. : A.A. Mandgi, Asst. Govt. Pleader

Advocate for Pet/Ap. : G.N. Purandhare, Adv.

Judgement :

Shah, J.

1. Rupa Sonya Rathodi of the village of Nasarpur Taluka Nandurbar, District West Khandesh, was tried before the Additional Sessions Judge, West Khandesh, for an offence under Section 326 of the Penal Code. The trial was held with the aid of assessors. The assessors were unanimously of the opinion that the accused was guilty of the offence charged. The learned Sessions Judge agreed with the view of the assessors and sentenced the accused to suffer rigorous imprisonment for

three years.

The accused preferred an appeal to this Court against the order of conviction and sentence. At the time when the appeal was heard for admission, this Court was of the view that the sentence inflicted by the learned Sessions Judge was grossly inadequate and a notice was ordered to be issued to the accused requiring him to show cause why the sentence passed upon him should not be enhanced.

We have, therefore, before us the appeal filed by the accused and the notice issued against him requiring him to show cause why the sentence passed upon him for the offence, if proved, should not be enhanced.

2. The accused was charged with having caused the death of one Shankar Balu Vasave, Police Patil of Nasarpur by causing an injury on Shankar's back with an axe, at about midday on 12-12-1853 in the village of Nasarpur. The case for the prosecution was that one Jaitha, a widow who was about 20 years of age, was residing with her mother at Nasarpur. She used to go to the field to do agricultural work.

One Mamdya used to follow her and often insulted her by using indecent language. Sometime in the month of December 1953 Jaitha had gone to the village well for fetching water. Mamdya followed her and used insulting language to her. Jaitha thereupon returned home and complained to her mother about the conduct of Mamdya. Jaitha's mother approached the Police Patil Shankar Balu and reported the grievance of Jaitha against Mamdya to the Police Patil.

The Police Patil then called Mamdya and the village panchas at his house and discussed the complaint of Jaitha. Sometime during the course of this discussion, the police Patil and the village elders went into the house to take tea and Mamdya was allowed to sit on the ota. Mamdya availed himself of the opportunity and ran away. Thereafter, the Police Patil and the panchas went in search of Mamdya. Mamdya was found in the field of one Germansing. Mamdya was brought back to the house of the Police Patil.

It appears that the accused came to learn of the proceedings started against Mamdya by the Police Patil and of the attempt made by the Police Patil to bring back Mamdya to his house. The accused, who is the brother of Mamdya, came from behind and struck the Police Patil a blow with an axe on his back. The Police Patil fell down, and began to bleed profusely from the injury. Sonya, the maternal uncle of the accused, snatched away the axe from him and thereafter the accused ran away.

The village panchas who were present recorded the statement of the Police Patil as they apprehended that he might die. They also made a panchnama of the injuries on his person and sent him to the dispensary at Nandurbar. The Police Patil was admitted into the dispensary as an indoor patient. On 24-12-1953 the condition of the Police Patil Shankar Balu was found to be serious and his dying declaration was recorded in the presence of a Magistrate.

The accused was thereafter charge-sheeted for an offence under Section 326 of the Penal Code. The Police Patil did not survive the injuries which were caused to him. He died sometime about the end of the month of February 1954. The learned Magistrate, before whose Court the charge-sheet was lodged, committed the accused to the Court of Session for trial and ultimately the accused was tried before the Additional Sessions Judge with the aid of assessors with the result already stated by me.

3. The prosecution examined before the Court of Session four principal witnesses. They were Jaita, Revaji, Damji and Germansingh. Jaita deposed to the circumstances in which a complaint was made to the Police Patil against Mamdya for using indecent and insulting language to her. That evidence was relevant for the purpose of showing that the accused who is the brother of Mamdya, had some motive for the commission of the offence for which he was charged.

Revaji Jatria who is a village kamgar stated that, when he & the panchas and the Police Patil were gathered together for making an enquiry into the complaint made by the mother of Jaita, Mamdya ran away taking advantage of the temporary absence of the Police Patil and the panchas when they went into the Police Patil's house for taking tea.

He then stated that the Police Patil and the Panchas went into the fields to find out Mamdya, and traced Mamdya in the field of Germansing and were bringing him back to the Police Patil's house. According to the witness, the accused Rupa Sonya at that time came from behind with an axe and struck the Police Patil Shankar Balu with an axe on his back. He stated that the Police Patil fell down and was bleeding profusely from the injury.

According to the witness, the axe was snatched away from the accused by one Sonya, his maternal uncle, and thereafter the accused ran away, similar is the testimony of Damji and Germansing. The statement of the Police Patil which was recorded immediately after he was injured also is in substantial agreement with the story as given by these three witnesses. A complaint was taken from the Police Patil on the very day and that complaint also substantially agrees with the story of these witnesses.

As we have stated earlier, on 24-12-1953, the condition of the Police Patil was regarded as serious and his statement was recorded by M.G. Patil, the Taluka Magistrate of Nandurbar, and in that statement also the Police Patil stated that the accused Rupa Sonya came from behind and struck him with an axe in the middle of his waist.

4. The accused did not cross-examine any of the witnesses for the prosecution. It is true that the accused was not represented by a lawyer, but the fact remains that he did not attempt to challenge the testimony of any of the witnesses examined on behalf of the prosecution. The case for the accused was that the witnesses Revaji. Damji and Germansing had given false evidence regarding the part played by him in causing injury to the Police Patil. He stated:

'Somebody wanted to strike me with an axe, but the axe blow fell on the back of the Police Patil. I do not know who struck the police Patil'.

The accused was unable to say as to why some unidentified person should have taken into his head to attempt to cause injury to the Police Patil. He was unable to say as to how that blow came to fall on the person of the Police Patil. The accused stated that he did not even know whose hand was responsible for the injury. This

case suggested by the accused was never put to any of the witnesses as for the prosecution.

5. Mr. Purandare, who appears on behalf of the accused, has contended that the evidence led by the prosecution is insufficient to justify the conviction of the accused for an offence under Section 326 of the Penal Code. He contends that the accused had no motive for causing injury to the Police Patil. As we have, however, pointed out, the police Patil was making an enquiry into a complaint made by the mother of Jaita against the conduct of Mamdya, brother of the accused, and that appears to have provoked the accused.

It appears from the dying declaration of the Police Patil that the accused abused the Police Patil and asked him why he (the Police Patil) was taking the name of his (the accused's) brother only. That clearly shows that the accused felt aggrieved by the conduct of the Police Patil. That, in our judgment, appears to be the motive for the commission of the offence by the accused. Mr. Purandare then contended that the accused was undefended in the trial Court and, therefore, there was no cross-examination of the prosecution witnesses.

Mr. Purandare submitted that, if there had been cross-examination of the witnesses, then circumstances would have been disclosed showing that the witnesses for the prosecution were not telling the truth. We are unable to appreciate this argument. We cannot speculate that if the accused or a pleader on his behalf had cross-examined the witnesses, something would, have been elicited which would have justified the Court in disbelieving the testimony of the three prosecution witnesses who claimed to be eye-witnesses to the commission of the offence.

The witnesses appear to be independent and respectable persons. Nothing is shown or even indicated in his statement by the accused why the three witnesses should be prepared to tell a falsehood so as to involve the accused in the commission of a serious offence. Mr. Purandare contended that the evidence of the witnesses was stereotyped and that was a ground for disbelieving the testimony.

The evidence given by the witnesses related to a simple incident and if the witnesses deposed to the part played by the accused in what the learned Advocate calls the stereotyped manner, we do not think that we would be justified in discarding their testimony on that ground. Then Mr. Purandare contended that none of the witnesses had spoken to the axe being in the hand of the accused before the injury was caused.

But all the three witnesses have deposed that injury was caused to the Police Patil with an axe and the injury was caused by the accused. It does not require evidence to establish that before an injury could be caused by the accused to the Police Patil with an axe which was wielded by him, the axe was in the hands of the accused. In our judgment, it is futile argument.

It was then urged that the statement of Mamdya, who was the primary cause of all the trouble, was not recorded. Mamdya is the brother of the accused and it would not be expected that he would support the prosecution case especially when the accused had gone to the succour of Mamdya in what he regarded as a persecution by the Police Patil. In any event it was open to the accused to examine Mamdya as a defence witness, but he has not chosen to do so.

Then Mr. Purandare contended that the accused was not arrested immediately after he caused injuries to the Police Patil. It is true that after the accused was deprived of the axe with which he caused injury to the Police Patil, he was permitted to run away. But the only public servant who could have effected an arrest was the victim of the assault by the accused.

The other village panchas who had collected there were primarily concerned to render first aid to the Police Patil and to secure him medical assistance. The mere fact that the accused was not arrested on the spot would not, in our judgment, affect the value which may be attached to the testimony of the prosecution witnesses.

It may be noted that even according to the accused he was present at the time when injury was caused to the Police Patil, his suggestion being that some one else caused the injury to the Police Patil when he (the accused) averted the blow

which Was aimed at him. The presence of the accused at the scene of the offence is not denied by him. Finally, Mr. Purandare contended that the evidence of the prosecution witnesses was scanty.

We are unable to appreciate how the evidence of three eye-witnesses who have deposed to the circumstances in which the injury was caused to the Police Patil which resulted in his death can be regarded as scanty. In our judgment, there is no substance in the appeal and the conviction of the accused was properly recorded by the learned Additional Sessions Judge.

6. Now, the learned Sessions Judge has sentenced the accused to suffer rigorous imprisonment for three years. In paragraph 11 of his judgment, he has observed that the accused is a poor villager coming from a backward class and appears to be an unusually excitable and pugnacious individual who, not broiling the. inquiry carried on by the Police Patil against his brother, struck him with an axe causing injury.

He then observed that the object of Section 326 is to make grievous hurt more grave and liable to a more severe punishment where it has the differentia of one of the modes of infliction described in the section. He then concluded by saying that the ends of justice would be sufficiently met if the accused was sentenced to undergo rigorous imprisonment for three years. The fact that the accused was an unusually excitable and pugnacious individual cannot, in our judgment be a ground for imposing a sentence which looking to the gravity of the offence appears to us to be grossly inadequate.

That he took offence against the conduct of the Police Patil who was performing his duty can evidently not be regarded as constituting any provocation to the accused which justified him in causing the injury which resulted in the Police Patil's death. That the accused is a poor villager and belongs to a backward class also cannot be a justification for this grossly inadequate sentence.

From the medical evidence it appears that by a single injury which was caused by an axe, the 11th vertebra of the spinal column was fractured. The Police Patil was paralysed as a result of that injury and ultimately that injury resulted in his death.

Here was a case in which a public servant was performing his duty and the accused, who has been described by the learned Judge as unusually excitable, took it into his head to cause injury to the public servant in order presumably to prevent him from prosecuting an enquiry against the brother of the accused.

In our judgment, the sentence is grossly inadequate. We think, having regard to all the circumstances, rigorous imprisonment for seven years should be the proper sentence for an offence of this nature.

7. Accordingly we enhance the sentence passed against the accused to one for seven years' rigorous imprisonment.

8. Sentence enhanced.

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