

Mojiya Ratna Bhil Vs. State

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Court : Madhya Pradesh

Decided On : Jul-22-1960

Reported in : AIR1961MP10; 1961CriLJ89

Judge : V.R. Newaskar and ;H.R. Krishnan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 428(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Indian Penal Code (Amendment) Act, 1956

Appeal No. : Criminal Appeal No. 133 of 1959

Appellant : Mojiya Ratna Bhil

Respondent : State

Advocate for Def. : S.L. Dubey, Deputy Govt. Adv.

Advocate for Pet/Ap. : V.S. Dandwate, Adv.

Disposition : Appeal dismissed

Judgement :

Krishnan, J.

1. The appellant Mojiya s/o Ralan Bhil (25) of Sagur Bhagur, Thana Gogava, has been convicted under Section 302 I. P.C., for the murder of Ganpat Ahir (a fellow villager) on the night of 3-12-1958 while he was walking towards his village Sagur

Bhagur from the bus stop at village Temarna about two miles away, by hitting him several times with a knife, with the intention, of killing him, for the purpose and relieving Him of most of the sum of about 800/- and odd which he was bringing home from a merchant at Khargone. The learned Sessions Judge has awarded the lesser penalty of life imprisonment, because:

'Ganpat who was advised by numerous witnesses not to undertake a journey at night with money, yet undertook the journey without heeding their advice, and gave a cause and temptation to the accused to take recourse to this ghastly crime, and also in view of the fact that the accused committed this crime out of total poverty and desperation.'

He himself had denied everything, and pleaded not guilty. But it was not accepted.

2. This case raises three important questions; first, as to the sufficiency in quality of circumstantial evidence on which alone the conviction is based; that is to say, if the chain should necessarily be long if the links are all just as firm and sound; secondly, the propriety of admission of further evidence in the form of the serologist's report at the stage of appeal and its probative effect; and thirdly, in principle, in the absence of any prayer by the State it has no practical consequences here, the satisfactoriness of the reasons given by the learned Sessions Judge for imposing the lesser penalty.

* * * * *

17. When the appeal came up before us, we heard the parties as to whether the serologist's report which had been with the authorities all the time, should be brought in evidence in a formal manner. The wording of Section 428(2) Cr. P.C., is wide enough to permit this subject to the usual caution; first, that the prosecution should not be enabled by the further evidence, to make out a case different from the one already on record; secondly, that the new evidence should be put separately to the accused and he should be given an opportunity to explain it and if he thinks necessary, to cross-examine not only the new witnesses but also any of the other witnesses in the light of the new material and, finally, to lead evidence of his own. If these steps are taken, there is no objection to the admission of

further evidence in circumstances similar to the present one.

If the process of admitting further evidence is comparatively simple, then it would be proper for the appellate Court itself to do it as this would save public time and harassment to the parties. On the other hand, if it is likely to be long and complicated, such as the summoning and the examination and cross-examination of several witnesses or the handling of several exhibits, it should go to the original Court. In this case, however, it was easy in this Court itself to admit the serologist's reports into evidence and explain them to the accused and take his additional defence in this regard.

18. Generally speaking, the system by which the exhibits are sent once to the chemical examiner at Agra at some distance in another State, and once again to the serologist working at Calcutta, does result in very considerable delay, sometimes even leading to the unavailability in time of very important and almost decisive evidence. Postal delays are unavoidable and when the work from several States are brought to one centre, there is further delay during which the marks decompose or fall off, making it impossible for the examiner or serologist to give any definite opinion at all. The authorities may usefully consider if the system cannot be improved and the analysis air serological examinations done more promptly at shorter distances within the State.

19-24. (His Lordship then considered the evidence against the accused and continued as under): The most important circumstance is the finding of the knife. Whether or not the person who attacked Ganpat Ahir, had accomplices, the actual attack was made with only one weapon and most probably, by one man; the weapon is no other than that the appellant had in his possession and which he concealed soon after, and discovered three days later before the officer and the panchas. If this was the only circumstance, still it should have been sufficient to justify the conviction. Here, there are other circumstances also. It is a trite proposition that circumstantial evidence should be closely scrutinised, and there should be no weak links, every weak link being a ground of reasonable suspicion, always calling for an acquittal. But with circumstantial evidence as with evidence of any kind -- the real test is qualify and not quantity. The chain need not be long and

complicated and may consist of two or three links only; but the links should fit in and should be strong. That is the position here.

25. Making all allowances, it is difficult to resist the conclusion that the appellant was the man who either accompanied or shadowed Ganpat Ahir on his way back. He either got down from the bus along with Ganpat Ahir or having got to Temarna earlier, joined him soon after he got down. Eight O'clock in the night is not usually considered late; but in the coldest part of the year and in the outskirts of a small village in thinly populated area, it is late enough for doing things without attracting attention. The injuries on Ganpat show that there was no struggle and the man was taken completely by surprise. The appellant was rightly convicted under Section 302, I.P.C. There is absolutely no extenuating circumstance.

26. After the amendment of 1956, there is no statutory direction that a Court should in such cases record its reasons why the lesser penalty is being awarded. Still, the Courts are not absolved of their duty of exercising their judicial conscience as to whether the extreme penalty should be awarded or only the life sentence. Various considerations enter and there is always what can be called the personal equation. Yet certain broad principles can be laid down, and at the two extremes, there will be very little difference between different Courts. A murder on the spur of the moment and actuated by anger, jealousy, pride or sense of honour and the like may call for the lesser penalty. On the contrary, any murder that has been planned before hand, and has been committed with cruelty or for a sordid purpose, and without the least trace of any spirit of fairplay or sportsmanship, without giving a chance to the victim, should necessarily be punished with the extreme sentence.

In this case, the learned Sessions Judge has given reasons (quoted in extenso in Paragraph 1) why he has imposed the lesser penalty. I note that they are altogether unsatisfactory. Worse still, they show an approach highly unjudicial and fraught with dangerous possibilities. Simply because a man has been warned against the possibility of robbery and still takes the risk, in a trial for his murder, this rashness or foolhardiness is not an extenuating circumstance for the accused. Similarly, even assuming that the appellant was desperately poor, certainly that

does not reduce the gravity of a murder of this brutal nature. Anyway, the question is of academic interest only as there is no appeal for enhancement.

27. In the result, I would uphold the conviction and sentence and dismiss the appeal.

V.R. Newaskar, J.

28. I agree.

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