

Akbar Shah Vs. State

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Court : Jammu and Kashmir

Decided On : Jun-09-1965

Reported in : 1965CriLJ771

Judge : S. Murtaza Fazl Ali and; J.N. Bhat, JJ.

Appellant : Akbar Shah

Respondent : State

Judgement :

J.N. Bhat, J.

1. Akbar Shah has been convicted by the learned Sessions Judge Srinagar under Section 302 RPC by his order dated 17-7-64 and sentenced to life imprisonment for having caused the death of a girl by name Sonam Chomu on 15-5-62 at Bahak Nala Kundat Tehsil Kargil. Against his conviction and sentence Akbar Shah has come up in appeal to this Court. The State has come up in revision against the order of the learned Sessions Judge with the prayer that the life imprisonment inflicted upon the accused-appellant be converted into death sentence. The record has been submitted by the learned Sessions Judge under Section 374 of the Criminal P. C. for confirmation of the sentence.

2. On presentation of the revision by the State a notice was served on the accused-appellant. This order will dispose of the appeal of Akbar Shah, the

revision preferred by the State as well as the proceedings for confirmation of the sentence of life imprisonment passed by the learned Sessions Judge.

3. The facts of this case are very simple. The prosecution story is that on 14th May 62 the accused Akbar Shah resided in the house of Cherring Stobdan, father of the deceased girl Sonam, at Bahak Nala Kundat Tehsil Kargil. In the morning after breakfast the accused left the house of Cherring Stobdan. Stobdan also left his house with the sheep to graze them and left behind his daughter Sonam to graze the cow. At about noon while Sonam was grazing her cow along with two other girls Bhutty and Dolma the accused Akbar Shah came and asked Sonam to accompany him to her house where he had forgotten a bag of fried flour (Suthoo). The accused had a knife in hand. Sonam refused to go with him. The accused threatened her to death; brandishing his knife and then forcibly dragged her to the house of her father. The two girls Butty and Dolma took fright and ran away to their houses.

Another lady Mst. Haira also saw the two girls fleeing and on coming to know from them what had happened, she also fled away. Hajira is an elderly lady and an employee of the father of Nawang Dolma. Cherring Stobdan came to his house in the ordinary course to have his meals, but when he entered his house he found the accused cutting into pieces the body of his daughter Sonam. The accused had already chopped off her head, cut her legs and the abdomen and the middle portion of her body. When the accused saw Cherring coming in, he got up with his knife in hand and ran after Cherring. The accused was pursuing Cherring when Nawang Ragbis witness arrived. The accused then took to his heels.

The matter was reported to Mohd. Ali Numberdar, Nawang Gyasto brother of the deceased was also informed of the occurrence. He was working as a coolie in the Military and on coming to know about this occurrence he lodged an FIR Ex. PA with the police station at Kargil on 17-5-62. The police reached the spot on 19th May and started investigation. The pieces of the dead body of the deceased were recovered from the house of Cherring Stobdan in the same condition as they were left behind by the accused on 15-5-62. They were seized by All Mohd. Head Constable by means of Ex. PE.

Ali Mohd. further prepared a sheet containing the condition of the deceased known as Fard Surat Hal (Ex. PB) and the injury statement Ex. PK. The mattress on which some pieces of the body of the deceased were lying were also seized. It had blood stains on it. On 21st May the house of the accused was searched and a knife EXPL was recovered, as well as the garments worn by the accused at the time of the murder. (Ex. PG). The different pieces of the body of the deceased were taken for post mortem examination. Dr. G. Mustafa Medical Officer Kargil performed the post mortem of the deceased on 21-5-62. He found the following injuries on her person:

1. Head was decapitated through the joints between upper ends of the spine and the base of skull by an almost circular transverse incised wound with clean cut and sloping margins of 12' circumference and 4' diameter.

2. Abdomen was opened by a vertical mid line incision about 10' long extending from lower end of the sternum to about 1' above the pubis.

3. All the abdominal organs excepting the uterus and the urinary bladder were removed in one lump and mass.

4. Thorax was severed completely from the lower trunk through the 10th thoracic intervertebral disc by a circular transverse incised wound.

5. Thoracic cage itself was completely cut into two halves by a vertical almost midline cut cutting the sternum over its junction with the cartilages in front and spine near its junction with ribs behind : each half carried its respective upper arm.

6. The lower limbs and the lower parts of the trunk in one piece.

4. In the opinion of the doctor the cause of death was the shock resulting from injuries to big blood vessels of the neck and the spinal cord,

5. In this case there is the direct testimony of Mst. Butty and Nawang Dolma who were grazing their cattle alongwith the deceased, Sonam who was tending her cow. In their presence the accused came and asked Sonam to go with him to her house for getting a bag of fried flour (Satoo). On her refusal to do so, he

threatened her with the knife which was in his hand and ultimately dragged her to her house. These girls fled out of fright and related the whole story to Mst. Hajira PW. That old lady also fled away. The matter was then reported to the village people and the father of Nawang Dolma who informed others.

6. The accused had cut the body of Sonam into three pieces : Her head had been chopped off; her legs had been cut off, and the middle portion of her body had also been cut away. While the accused was in the process of cutting the body of the deceased, Cherring Stobdan, father of the deceased, reached the spot and found the accused still in the act of cutting the body of the deceased into pieces. This evidence coupled with the statement of Nawang Rigbis P. W. who saw the accused running after Cherring Stobdan with his knife just immediately after the occurrence and on whose appearance on the scene the accused gave up the chase of the father of the deceased and ran away is sufficient to hold that the accused had cut the body of the deceased girl to pieces.

7. The accused did not lead any evidence in defence.

8. About the recovery of the pieces of the body of the deceased and the garments from the house of Cherring we have the evidence of Mohd. Ali Lumberdar and Ali Mohd. SHO. About the other recoveries from the house of the accused we have the evidence of Mohd. Daulat Numberdar, Ali Mohd. SHO and Fazal Ali PW. The garments and the knife recovered from the house of the accused were bloodstained. The accused, when he made a statement in the committing Court of the ADM Leh, admitted the whole occurrence, but later on denied it. In these circumstances we think it has been clearly proved that the accused-appellant butchered the deceased Sonam in a most merciless and brutal manner. He cut her body into different pieces and would have proceeded further in this process if the father of the deceased had not arrived on the scene.

9. The only criticism levelled by the learned Counsel for the accused appellant against the evidence produced by the prosecution is that neither the knife nor the mattress nor the garments had been got examined by a chemical examiner. In a far-flung place like Kargil where much of experience and efficiency is not expected of investigating officers, this lacuna of not getting the knife and the clothes

examined by a Chemical examiner is of no consequence in view of the overwhelming direct and circumstantial evidence produced by the prosecution. The learned Counsel as not been able to say a single word against the veracity of the PWs. Therefore in our opinion it is clearly proved that the accused has committed this murder and he has been rightly convicted under Section 302, R P C.

10. The important question to be decided in this case is the question of sentence. The learned Sessions Judge has at numerous places stated that the murder was Brutal. On p. 6 of his judgment he says:

The brutal manner in which the murder has been committed is manifest from the condition in which the body of the deceased was found cut into pieces, dismembered into parts and the head severed from the body.

On page 7 he further says:..also goes to show the manner in which this cold blooded murder has been committed.

On page 10 the learned Sessions Judge makes the following observations:

This is the first case of its kind that has come before me in which a man has gone to such a length in butchering another to pieces and I believe not many such cases have so far come before any Court in our part of the country.

The case as it stands and the manner in which this murder has been committed calls for extreme punishment that the law provided for such a case.

But just immediately after these observations he states that both the legs of the accused have thinned and dried. The bones are protruding. The accused cannot walk and stand, and he crawls like an animal. He therefore says that nature haying wreaked its vegeance against the accused, 'it would be neither human decency nor would the ends of justice demand to hang a cripple like the accused, although he fully deserved that extreme penalty imposed by law.

11. These are contradictory statements. As already stated the learned Judge has at numerous places described this murder as the most cruel and brutal. It is in fact so. But his only justification for imposing a lesser punishment of life imprisonment

upon the accused is that his legs have withered away and have lost flesh and the accused cannot walk. Even here the learned Judge says that the 'present condition of the legs of the accused may be due to lack of proper treatment available here and the conditions prevalent in the local lock up have also added to the condition of his legs....

12. We have given careful consideration to the matter of sentence. We are conscious of the pronouncement of their Lordships of the Supreme Court. In *Dalip Singh v. State of Punjab* : [1954]1SCR145 their Lordships have laid down:

In a murder case death sentence should ordinarily be imposed. But the trial judge has the discretion to impose the lesser punishment of transportation for reasons recorded by him and when those reasons are such that a judicial mind could properly find on them, the appellate Court could not interfere with that discretion. There must be strong reasons to entitle the appellate Court to enhance the sentence to death and it is not enough if the appellate Court feels that left to itself it would have awarded the greater penalty of death.

In that case none of the accused was convicted of his own act, but was being held vicariously liable for the acts of another or others.

13. We have tried to study the cases on the question of sentence, but no case has been cited before us where on the ground of such a defect in the accused as is found in the legs of Akbar Shah a lesser sentence of life imprisonment was inflicted. The criteria for inflicting a lesser punishment have been laid down as when the murder is the result of an action on the spur of the moment and actuated by anger, jealousy, pride or some sense of honour and the like. It has been consistently held that a murder that has been planned beforehand, and has been committed with cruelty or for a sordid purpose, and without the least trace of any spirit of fair play or sportsmanship, without giving a chance to the victim should be punished with the extreme penalty. See *Mojia Ratna Bhil v. State* : AIR 1961 MP10 .

14. Some times the extreme youth of the offender has been held to be an extenuating circumstance, but there is no uniform proposition that because of the

youth of the person the heavier punishment should not be imposed. Some men have committed murders under the influence of their elders; in such cases lesser punishment has been awarded. Where a murder is committed in the course of a sudden quarrel and without premeditation on the impulse of the moment, death sentence has not been passed. In cases of premeditated murder the sentence that is usually awarded is of death, unless the conduct of the deceased furnishes grave though not sudden provocation for the murder. It is not for a judge to ask himself whether there are reasons for imposing the death penalty but whether there are reasons for abstaining from doing so. *Crown v. Nga Tha Sin* 1 Low Bur Rul 216 (FB) and *Naresh Singh v. Emperor* AIR 1935 Oudh 265.

15. The view that a sentence of death should (not be passed unless there are aggravating circumstances is a wrong view. The correct view is that a death sentence should be passed unless there are reasons to the contrary. (*Vide Local Govt. v. Sitrya Arjuna* AIR 1933 Nag. 307).

16. Although the appellate Court should not interfere with the discretion of the trial judge in inflicting a lesser penalty, yet if the discretion has been improperly exercised as for example where no reasons are given and none can be inferred from the circumstances of the case or where the facts are so gross that no normal judicial mind would have awarded the lesser penalty, the appellate Court can easily interfere. It is only when some well-recognized ground is found to exist that the judge is justified in withholding the capital punishment (*Vide Gurdev Singh v. Emperor* AIR 1948 Lah 58.)

17. Applying these tests to the facts of the present case the murder in the words of the learned Sessions Judge himself is a most gruesome and brutal one, the like of which has never come before him and cases like the present according to the learned Judge may be very rare. The brutality of the murder is not mitigated or lessened by the emaciated legs of the accused. Even then the learned Judge is not himself sure how that condition of the legs of the accused has been brought about. According to the learned Judge it may be due to nature's retribution, lack of proper medical assistance or the conditions in the local lock up. All these are surmises and lead us nowhere. As already stated no case of this nature has been

brought before us where on account of the condition of the legs of an accused a lesser sentence of life imprisonment has been passed when the murder committed by the accused is gruesome. In our opinion the ends of justice will be met by sentencing the accused to death instead of life imprisonment.

18. The result is that the appeal of the accused fails. The revision presented by the State is accepted, and the reference of the Sessions Judge is disposed of by convicting the accused under Section 302 RPC and sentencing him to death. We direct that the accused be hanged by the neck till he is dead.

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