

Jagannath vs State Of Maharashtra on 8 December, 1978

Equivalent citations: AIR1979SC1145, 1979CRILJ925, (1979)4SCC82, 1979(11)UJ109(SC), AIR 1979 SUPREME COURT 1145, 1979 CRILR(SC MAH GUJ) 26 (1979) SC CR R 213, (1979) SC CR R 213

Author: Jaswant Singh

Bench: Jaswant Singh, O. Chinnappa Reddy

JUDGMENT

Jaswant Singh, J.

1. This appeal by Special Leave is directed against the Judgment and Order dated April 1/2 of 1971 of the High Court of Judicature at Bombay confirming the conviction of the appellant under Section 302 of the Indian Penal Code and sentence of imprisonment for life passed thereunder for causing the death of one Padmakar, Kotwal of Trimbak aged about 35 years by drowning him in Moti Talao (tank) on the night intervening 30th November and 1st December, 1968, when the latter was heavily drunk.

2. Briefly stated the case as put forth by the prosecution is - 8 days prior to the date of the occurrence, the deceased sent Deubai (P. W. 12), an Adivasi married woman, whom he was keeping as his mistress for the last four years to get him a bottle of Liquor from the appellant who carried on the illicit trade of preparation and sale of Ghasta (country liquor). On getting the bottle of liquor Deubai gave one rupee note as price of the liquor to the appellant but instead of accepting the same, the appellant offered her a five rupee currency note and tried to induce her to leave Padmakar and stay with him. Deubai, however, spurned the offer and apprised Padmakar of the incident whereupon the latter who was standing at a short distance from the appellant's house rushed to the house and remonstrated with and scolded the appellant. At 8.30 p.m. on November 30, 1968 Padmakar took Deubai with him to see a play which was being staged in Trimbak. Shortly after the commencement of the show, Padmakar told Deubai that they would not see the play and would go back to their house. Much against her wish, Deubai left the theatre in the company of Padmakar with a view to return to the latter's house. On the way, Padmakar took Deubai to the one room tenement of the appellant where the appellant entertained both Padmakar and Deubai with Ghasta and himself also joined them by taking the same. After a short while, Deubai wanted to leave for her house but Padmakar did not allow her to do so and asked her to lie down and go to sleep. While Deubai thus lay asleep, Padmakar and the appellant continued taking Ghasta. All this happened in the presence of the appellant's son Motiram (P W. 4), a lad of about 11 years of age, While Deubai lay asleep and Padmakar was in a state of inebriation and unconsciousness due to excessive consumption of Ghasta, the appellant and his son Motiram went away to see the drama. After seeing

the drama, the appellant and Motiram returned to their house. On reaching the house, the appellant called out Padmakar and tried to rouse him up by shaking him but the latter did not respond as he was heavily under the influence of liquor. The appellant thereupon lifted Padmakar and took him to a nearby lavatory from where he shouted to Motiram to get him a Chaddar (bed sheet) from the house. Accordingly, Motiram took a Chaddar and handed it over to the appellant who used it for wrapping up Padmakar, carried him towards Moti Talao and threw him in the tank which was about 21 ft. deep with the result that he got drowned and died. On the morning of the following day i.e. December 1, 1968, the appellant left his house telling his son, Motiram, that he was going to Nasik. On the same morning, Padmakar's dead body was found floating in Moti Talao (tank). On hearing this news, Padmakar deceased's younger brother Dattatraya (PW. 16) rushed to the scene of the occurrence and after identifying the dead body to be of his elder brother Padmakar, went to the police station and lodged F.I.R. (Exh. 4). In this report it was inter alia stated by Dattatraya that the appellant had caused the death of Padmakar as he wanted Deubai to stay permanently with him. Thereupon Ramchandra Puranik, A.S.I. (P.W. 22) repaired to the tank, took charge of the dead body, held an inquest and stated investigating the cause of the death of Padmakar. Dr. H H. Mohsini, who performed the autopsy opined that the death of the deceased was due to asphyxia caused by drowning. It was after a vigorous search that the police was able to arrest the appellant on March 8, 1969.

3. On completion of the investigation, the appellant was proceeded against and tried under Section 302 of the Indian Penal Code.

4. In his statement under Section 342 Criminal Procedure Code, the appellant denied the charge that he caused the death of Padmakar by throwing him in the Moti Talao. He also denied that he administered Ghasta to Padmakar as alleged by the prosecution or that Padmakar had come to his residence along with Deubai. He further stated that he had gone to see a drama on the night in question and knew nothing about the death of Padmakar. He, however, admitted that he left Trimbak on the morning of December 1, 1968 but added that this was for the purpose of joining the Padyatra of Vishveshwar. The appellant further pleaded that the Trimbak police had falsely implicated him as he had submitted written complaints against it.

5. On a consideration of the evidence adduced in the case, the Additional Sessions Judge, Nasik held that appellant guilty under Section 302 of the Indian Penal Code and sentenced him to life imprisonment which has been affirmed on appeal by the High Court as already stated.

6. Although the prosecution has examined a number of witnesses in support of its case, there is not an iota of direct evidence bearing on the guilt of the appellant. To bring home the charge to the appellant, the prosecution seeks however to rely on the evidence of three of its other witnesses, namely, Motiram (P.W. 4), Deubai (P.W. 12) and Ramdas (P.W. 19). So far as Motiram is concerned, his testimony has not been believed by the High Court, and we think rightly so. We are, therefore, left only with the evidence of Deubai and Ramdas. A close scrutiny of Deubai's deposition shows that she is a woman of easy virtue who cannot be relied upon. Her statement that the appellant forcibly tried to commit sexual intercourse with her at the dead of night and threw her out on her putting up a stiff resistance cannot be believed in view of the fact that Motiram who was also

sleeping in the same one room tenement has not said a word about it. Had there been any truth in her allegation, she would have surely raised an alarm which would have certainly awakened Motiram & attracted the neighbours. Her statement that she returned from the house of the appellant at midnight is also belied by the statement of her landlord's daughter, Chandrabhaga (P.W. 14), who has stated that Deubai returned to the house at dawn. Deubai had also to admit that on the day following the night of the incident, police came to their room and seized some vessels cooked vegetables, loaves and an empty Dabba which smelt of Ghasta because they suspected some foul play. She also had to admit that the Havaladar did ask her as to whether she had poisoned Padmakar, and that she was taken to the Police Chowki, detained there for the night and kept on being interrogated. She had also to admit that she was given a few slaps by the police. It is, therefore, reasonable to infer that she has tried to implicate the appellant only because of the fear of the police.

7. The statement of Ramdas (P.W 19) that while returning at midnight from the theatre alongwith Shivaji (P W. 10) about seven months ago, he went on a round of his shop and thence proceeded to the first floor of his house and while he was still awake, he heard the appellant calling Motiram and saw the latter taking a piece of cloth and handing it over to the appellant through the chinks of his closed window it also hard to swallow. It would also be noted that Ramdas being a contractor of the police for supply of food to the persons who hauled up and kept in the police lock-up is its stock witness whose services it utilises as & when the occasion arises. He had to admit that 8 days prior to the date of the alleged murder, police seized a wrist watch from the possession of the appellant suspecting the same to be stolen property and that he signed the seizure-memo as a panch. There is, therefore, no evidence worth the name on the basis of which the conviction of the appellant can be sustained. The prosecution having failed to bring home the charge to the appellant the appeal has to succeed. Accordingly, we allow the appeal, set aside the aforesaid Judgments and Orders of the Courts below and giving benefit of doubt to the appellant acquit him of the offence with which he was charged and direct that he be set at liberty forthwith unless he is wanted in connection with some other case.