

NANAVATI FAILS IN APPEAL

SUPREME COURT JUDGMENT

LIFE SENTENCE CONFIRMED

(FROM OUR CORRESPONDENT)

NEW DELHI, Nov. 24.

The Supreme Court to-day confirmed the sentence of life imprisonment passed on K. M. Nanavati, a former Commander in the Indian Navy by the Bombay High Court, for the murder of Prem Bagvandas Ahuja, a Bombay businessman.

The judgment running to 117 pages was unanimous and was read by Mr. Justice K. Subba Rao.

The Court dismissed the appeal preferred by Nanavati against the judgment of the Bombay High Court, which had, on a reference made by the Sessions Judge, Bombay, disagreeing with the verdict of "not guilty", returned by the Jury, convicted him of murder and sentenced him to life imprisonment.

The Court held that Nanavati killed Ahuja deliberately. The death of Ahuja was not by accidental shooting.

DELIBERATE ACT

The Court rejected the story of struggle between Ahuja and Nanavati and remarked that Nanavati was an experienced naval officer and not a sentimental hero of a novel. He had killed the deceased to wreak vengeance on him. The conduct of Nanavati clearly showed that he entered the bed-room of Ahuja with deliberate intention to kill him. The nature of injuries also sufficiently proved that the death was not by accidental shooting.

The Court therefore agreed with the High Court's decision convicting him for murder under Section 302 I.P.C. and sentencing him to life imprisonment.

The division bench consisted of Mr. Justice S. K. Das, Mr. Justice Subba Rao and Mr. Justice Raghubir Dayal.

At the outset Mr. Justice Subba Rao said: "This appeal presents the commonplace problem of an alleged murder by an enraged husband of a paramour of his wife; but it aroused considerable interest in the public mind by reason of the publicity it received and the important constitutional point it had given rise to at the time of its admission."

Considering the evidence in the case. His Lordship said that the circumstances under which the confession of unfaithfulness by Sylvia, wife of Nanavati, was alleged to have been made did not appear to be natural.

It was most improbable, even impossible that a husband, who had been deceived by his wife, would voluntarily go to the house of his wife's paramour to ascertain his intention and to ask him to take charge of his children.

His Lordship observed: "We cannot visualise Nanavati as a romantic lover determined to immolate himself to give opportunity to his unfaithful wife to start a new life of happiness and love with her paramour after convincing him that the only honourable course open to him was to marry her and take over his children."

"Nanavati was not ignorant of the ways of life or so gullible as to expect any chivalry or honour in a man like Ahuja. He is an experienced naval officer and not a sentimental hero of a novel. The reason, therefore, for Nanavati going to Ahuja's flat must be something other than asking him for an explanation and to ascertain his intention about marrying his wife and looking after the children."

REFERENCE TO HIGH COURT

On behalf of Nanavati it was argued before the Supreme Court that under Section 307 Cr. P.C. the High Court should decide whether a reference made by a Sessions Judge was competent only on a perusal of the order of reference made to it and it had no jurisdiction to consider the evidence and come to a conclusion whether the reference was competent or not. Secondly, under Section 307 (3) Cr. P.C. the High Court had no power to set aside the verdict of a jury on the ground that there were misdirections in the charge made by the Sessions Judge. Thirdly, there were no misdirections at all in the charge made by the Sessions Judge, and indeed his charge was fair to the prosecution as well as to the accused. Fourthly, the verdict of the jury was not perverse and it was such that a reasonable body of persons could arrive at it on the evidence placed before them. Fifthly, in any view the accused shot at the deceased under grave and sudden provocation, and therefore even if he had committed an offence, it would not be murder but only culpable homicide not amounting to murder.

Dealing with the first argument, Mr. Justice Subba Rao said that the competence of a reference made by a Sessions Judge depended upon the existence of two conditions namely (1) that he disagreed with the verdict of the jurors, and (2) that he was clearly of the opinion that the verdict was one which no reasonable body of men could have reached on evidence; after reaching that opinion, in the case submitted by him, he should record the grounds of his opinion.

If the case submitted His Lordship said showed that the conditions had not been complied with or that the reasons for the opinion were not recorded the High Court might reject the reference as incompetent, the High Court could also reject it if the Sessions Judge had contravened Section 307(2) Cr. P.C. If the case submitted showed that the Sessions Judge had disagreed with the verdict of the jury and that he was clearly of the opinion that no reasonable body of men could have reached the conclusion arrived at by the jury and he disclosed his reasons for the opinion Section 307(3) of the Code came into play and thereafter the High Court had an

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obligation to discharge its duty imposed thereunder.

His Lordship said that under Section 307(3) of the Code, the High Court had to consider the entire evidence and, after giving due weight to the opinions of the Sessions Judge and the jury acquit, or convict the accused. The High Court might deal with the reference in two ways namely (1) if there were misdirections vitiating the verdict, it might after going into the entire evidence, disregard the verdict of the jury and come to its own conclusion and (2) even if there were no misdirections, the High Court could interfere with the verdict of the jury if it found the verdict perverse.

Dealing with the question whether the High Court was right in holding that there were misdirections in the charge to the jury, Mr. Justice Subba Rao, after examining the six misdirections pointed out by the High Court, said it was clear that there were grave misdirections in the case, affecting the verdict of the jury and the High Court was certainly within its right to consider the evidence and come to its own conclusion thereon.

On a consideration of the entire evidence, His Lordship said, the following facts emerge. Ahuja seduced the wife of Nanavati. She had confessed to him of her illicit intimacy with the deceased. It was natural that Nanavati was enraged at the conduct of Ahuja and had, therefore, sufficient motive to do away with him. He deliberately secured the revolver on a false pretext from the ship, drove to the flat of Ahuja, entered his bedroom unceremoniously with a loaded revolver in hand, and in about a few seconds thereafter came out with a revolver in his hand. Ahuja was found dead in his bathroom with bullet injuries on his body.

It was not disputed, Mr. Justice Subba Rao said, that the bullets that caused injuries to Ahuja emanated from the revolver that was in the hand of Nanavati. After the shooting, till his trial in the Sessions Court, he did not tell anybody that he shot Ahuja by accident. Indeed, he confessed his guilt to the Chowkidar, Puran Singh, and practically admitted the same to his colleague Samuel. His description of the struggle in the bathroom was highly artificial and was devoid of necessary particulars. The other circumstances brought out in the evidence also establish that there could not have been any fight or struggle between Nanavati and Ahuja.

"We, therefore, unhesitatingly hold," Mr. Justice Subba Rao said, "agreeing with the High Court that the prosecution has proved beyond any reasonable doubt that the accused had intentionally shot the deceased and killed him."

His Lordship said that they also agreed with the High Court that on the evidence adduced in this case, no reasonable body of persons could have come to the conclusion which the jury reached in this case. For that reason also the verdict of the jury could not stand.

NO SUDDEN PROVOCATION

Dealing with the argument that Nanavati had shot Ahuja while deprived of the power of self-control by sudden and grave provocation, Mr. Justice Subba Rao said that the conduct of Nanavati clearly showed that the murder was a deliberate and calculated one. When Sylvia confessed to her husband that she had illicit intimacy with Ahuja the latter was not present. They might assume that he

had momentarily lost his self-control. Between 1-30 p.m., when he left his house and 4-20 p.m., when the murder took place, three hours had elapsed, and, therefore, there was sufficient time for him to regain his self-control even if he had not regained it earlier.

The judgement said that the Attorney-General (who appeared for the State of Maharashtra) had contended that if he was right in his contention that the High Court could consider the evidence afresh and come to its own conclusion, in view of the misdirections, the Supreme Court should not in exercise of its discretionary jurisdiction under Article 136 of the Constitution interfere with the findings of the High Court (adds PTI).

"There is force in this argument", His Lordship observed. "But, as we have heard the Counsel at great length, we propose to discuss the evidence."

On Sylvia's evidence, the judgement observed: "We have no doubt that her evidence, not only in regard to the question of marriage, but also in regard to other matters, indicates that having lost her lover, out of necessity or out of deep penitence for her past misbehaviour, she is out to help her husband in his defence."

The Defence theory of a ricocheted bullet hitting the skull "is highly imaginary and cannot be sustained on the material available to us", His Lordship observed. "We accept the evidence of the ballistic expert and that of Dr. Jhala in preference to that of Dr. Baliga."

Briefly the facts of the case as they came to the Supreme Court were: Nanavati was charged under Section 302 I.P.C. as well as under Section 304, Part I and was tried by the Sessions Judge, Greater Bombay, with the aid of a Special Jury. The Jury brought in a verdict of "not guilty" by eight to one under both the Sections; but the Sessions Judge did not agree with the verdict of the jury, as in his view the majority verdict of the jury was such that no reasonable body of men could, having regard to the evidence bring in such a verdict. The Sessions Judge thereafter submitted a reference to the High Court under Section 307 Cr. P.C.

A Division Bench of the High Court which heard the reference held that Nanavati was guilty of the offence of murder under Section 302 I.P.C. and sentenced him to undergo life imprisonment. Thereafter Nanavati came in appeal to the Supreme Court by virtue of special leave granted by it under Article 136 of the Constitution.

The prosecution case was that Nanavati at the time of the murder was second in command of the Indian Navy ship, "Mysore." He married Sylvia in 1949 in England and they had three children by the marriage. At the time of the murder, Nanavati was living in Bombay and the deceased, Ahuja, was doing business in automobiles and was residing along with his sister in a building called "Jeevan Jyoti" in Setalvad Road, Bombay.