

(1993) 01 AHC CK 0071

Allahabad High Court

Case No: Criminal Miscellaneous Bail Application No. 10617 of 1992

Nityanand Vishwas alias Nitto

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 29, 1993

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323

Citation: (1993) 17 ACR 170

Hon'ble Judges: M. Katju, J

Bench: Single Bench

Advocate: Subhash Kumar and Subodh Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

M. Katju, J.

The facts disclosed in this bail application have so shocked me that I am constrained to pass a detailed order while rejected it.

2. The first information report (translated in English) reads as follows:

The Station Officer,

P.S. Madhotadan

Distt. Pillbhit

Dated 25-5-92, 9.40 a.m.

Sir,

My daughter Smt. Maina was married about 6 months back to Nityanand Biswas s/o Pachanan Biswas who belong to my own village. A few days ago my son-in-law Nityanand became suspicious of my daughter's character about which he complained to me. On 25-5-92 my son-in-law Nityanand killed my daughter and buried her near a Khatiya, and told us that she had run away somewhere. We

searched for our daughter. On the evening of 28-5-92 a certain smell made us suspicious, and when the people of the village dug the ground the body of my daughter was found. Since it was night I could not come then to lodge this report.

Smt. Savita w/o. Puranchand
Mandal, r/o. Bhujia Khurd
Madhotandan, Pillbhit

The post mortem report discloses the following ante mortem injuries

1. Diffuse comminuted fracture of left side frontal bone and fracture occipital bone also fracture along injury. Lacerated wound 10 cm. x 8 cm. x bone deep on left side of forehead.
2. Lacerated wound 6 cm. x 4 cm. on left side of cheek with fracture of left jaw.
3. The approximate time since death mentioned in the post mortem report is 3 to 5 days.
4. In the bail rejection order passed by the learned Sessions Judge it is mentioned that during the police investigation the recovery of the murder weapon was made at the pointing out of the accused.
5. I do not wish to prejudge the trial, but I am constrained to say that I have been horrified by these disclosed facts. The head of the deceased was literally battered by the murderer. It seems that crimes against women have spurted up in recent years, and the time has now come when a clear message must be sent to these feudal minded men who think they can ill treat or kill their wives and get away with it that they are in for serious trouble at the hands of the law.
6. I think that the spurt in the crime against women in recent years is because we are living in a transitional society, and a large section of our men folk have not been able to mentally accept the idea that women are their equals. In traditional feudal society women were regarded as inferiors, and they accepted their fate as such. Girls were trained since childhood by their parents that when they get married they must obey their husbands and live with them and put up with whatever treatment they get. Thus in feudal society a woman would accept beating or abuses from her husband as her fate, and would continue living with her husband. Thus, in Sharat Chandra Chattopadhyaya's famous novel "Srikant", we find that Ananda went to live with her husband (who had become a snake charmer) although he had murdered her sister.
7. Today, however, times have changed. Many women have got educated, and they insist on being treated with respect and as equals and they are justified in doing so. A woman is not the private property of her husband. The feudal concept that a woman loses her legal identity on marriage, and it merges in the identity of her husband, is no longer acceptable today. In this connection I have recently delivered

a judgment in Crm. Misc. Application No, 879 of 1993 Maya Prakash v. State of U.P. decided on 12-1-93, and since most of the ideas contained therein are applicable in the present case also I am annexing a copy of the said judgment to this judgment. This will avoid repeating what has been said in that judgment. In my opinion the main goal of our nation is modernization and scientific thinking however, unless women are treated with respect and as equals our society will remain backward. Women are the backbone of the family, and if women are well treated it means that 50% of the society is released from feudal bondage. The child of a well treated woman sees respect for the weak and justice to the oppressed since his very birth. This puts a lasting influence in his mind, and makes him brave and courageous and a fighter against Injustice. On the other hand when his mother is oppressed by his father or his father's relatives he tends to develop a mentality of oppressing others or acquiescing in oppression. In my opinion, habitual ill-treatment of women, such as beating them or abusing them, is a grave social crime as it affects the mind of a child at the most impressionable age, and makes him either an oppressor or a coward. Thus it causes irreparable psychological damage to him. In a society where a large number of women are ill-treated a large section of the new generation is bound to be mentally sick.

8. Take, for example, the act of wife beating. This is an offence u/s 323 IPC punishable by imprisonment upto 3 years. However, when a husband beats his wife no action is usually taken against the husband, and many people regard it as a prerogative of the husband. The males regard it as a place matter, while the females accept it as their destiny. This makes the members of society oppressors or cowards, for if one cannot fight against injustice at home how can he fight against injustice outside.

9. To give another example, many mothers-in-law mistreat their daughters-in-law because they earlier had been mistreated by their mother-in-law, and they feel they are getting some sort of revenge for their past mistreatment in this manner.

10. I would like to give an example from the Mahabharat. Draupadi was a woman who by her training was accustomed to respectful treatment. When the Kauraves dishonoured her by dragging her by the hair and trying to publicly strip her she refused to put up with this insult and insisted on revenge. She said she would tie her hair only after washing it with Dushasan's blood. Similarly, Kunti conveyed a message to her sons that she did not mind loss of their kingdom or their forest exile, but she could not ever overlook the insult to her daughter-in-law Draupadi. Today we need women like Kunti and Draupadi who refuse to put up with insults or misbehaviour by men.

11. In the present case we find from the post mortem report that Smt. Maina's head has several fractures and lacerated wounds. Whoever assaulted her in this manner was obviously a monster with murderous intent. The recovery of the murder weapon at the instance of her husband Nityanand prima facie implicates him, and

hence I am not inclined to grant bail to him. In [Udaipal Singh Vs. The State of U.P.](#), the following facts were found against the accused (1) Motive for the murder (2) Opportunity to murder (3) Conduct of the accused. Similar seem to be the facts of the present case. The Applicant had motive and opportunity to murder. Also, his statement that his wife had run away was patently false. Thus there is a prima facie case against the Applicant. The bail application is therefore rejected. The observations made above, however, will not be binding on the trial court, and will not prejudice the trial.

12. Before parting with this case I would like to make three recommendations to the Legislature for amendment of the law:

- (1) Crimes of the nature such as in the present case should be made punishable by public hanging, so that it may have a deterrent effect;
- (2) The normal rule in such cases should be the death penalty, and life Imprisonment should be the exception.
- (3) Crimes against women should be treated as special crimes and given harsh punishment, as they outrage the modern conscience.

13. Let a copy of the judgment and its annexure be sent to the Chairman, Law Commission of India with the request that the Law Commission may examine these recommendations and propose suitable amendments to the law.