SUPREME COURT OF INDIA

Abdul Sattar

Vs.

State of Mysore

Crl.A.No.74 of 1954

(N. H. Bhagwati, T. L. Venkatarama Ayyar and B. P. Sinha, JJ.)

19.10.1955

JUDGEMENT

BHAGWATI J.:

1. This Appeal with special leave is directed against a judgment of the High Court of Mysore reversing the acquittal of the appellant by the Sessions Judge, Bangalore on a charge under section 302, Indian Penal Code.

2. The appellant, accused No. 1 was charged that he, on the night of 9th March 1949, at about 10 p. m. in the village of Kodihalli, Kankanahalli Taluk, shot one Abdul Lateef Sab with a gun and caused his death and thus committed an offence under section 302, Indian Penal Code. Accused No. 2 was his son and accused No. 3 his son's friend and the charge against them was that they were present and actively participated in the commission of that offence and were thus guilty under section 302 read with section 34, Indian Penal Code.

The learned Sessions Judge acquitted all the accused being of the opinion that the prosecution evidence was too insufficient to base of conviction thereupon. The State of Mysore took an appeal to the High Court and the High Court reversed the acquittal of accused No. 1 and convicted him of the offence with which he had been charged but in view of his old age coupled with peculiar circumstances of the case inflicted upon him a punishment of transportation for life. The acquittal of the accused Nos. 2 and 3 was confirmed.

3. There was very little direct evidence against the accused No. 1 but the prosecution relied upon circumstantial evidence which, according to it., pointed inevitably to the conclusion that the offence had been committed by him.

These circumstances were that there was ill-will between the accused No. 1 and the deceased, that accused No.1 was seen by several disinterested witnesses at the time and the place of the incident, that immediately after the incident the accused No. 1 was seen running away from the spot, that he was absconding and did not make his appearance till three months later, that the deceased made a dying declaration though incomplete at about 11-45 p.m. the same day, about an hour and a half after the incident, that this dying declaration was corroborated by the evidence of P. W. 20 Range Gowds, P. Ws. 14, 15 and 16, that a rag, M. O. 5 which was said to be smelling of gun-power, was picked up near about the hedge close to the scene of the incident and that they all led to the conclusion that the deceased sustained an injury by a gun-shot and that shot was fired by the

accused No. 1 that night.

4. The learned, Sessions Judge accepted the evidence in regard to the ill-will subsisting between the deceased and the accused No. 1 but was of the opinion that in cases of murder the motive for murder was in itself not sufficient though it may form one of the grounds.

The evidence of the witnesses was not felt by him to be conclusive enough to prove that the accused No. 1 must have shot the deceased and the dying declaration also was not considered by him as sufficient to base a conviction inasmuch as in his opinion that dying declaration had not been corroborated by any independent evidence. He was very much impressed by the fact that the gun itself which was alleged to have been used by the accused No. 1 was not traced, nor were any other articles used to shoot a beyond a small bit of cloth M. O. 5 said to have been smelling of gun-powder.

There was no evidence that the accused No.1 had ever touched a gun in his life-time or that he had the necessary skill, courage and capacity to shoot at the deceased from a distance of more than 4 to 6 feet behind a hedge and aim at him when he was moving on the road and thus shoot him accurately causing the injuries in question.

There was also the statement of the doctor who performed the post-mortem examination which showed that the injuries inflicted upon the person of the deceased proceeded from below upwards and in the absence of any evidence of a ballistic expert the learned Sessions Judge found it difficult to come to a conclusion that the accused No. 1 fired the shot from behind the hedge which was about three feet in height.

He thought that if the gun had been rested on the top of the hedge and fired from there the injuries inflicted would have only proceeded from above downwards and could not have been of the type found in the postmortem examination. Under the circumstances, he thought that the evidence was too meagre and was insufficient to prove the offence against the accused No.1 and further there was room for reasonable doubt for want of expert evidence in the case, the benefit of which should go to the accused No. 1.

He, therefore, disagreed with the unanimous opinion of the assessors that the accused No. 1 was guilty of the offence with which he had been charged and acquitted him.

5. The High Court, in appeal, was of the contrary opinion. It believed the evidence of the witnesses who deposed to the events prior to the incident itself. P. W. 21 the elder brother of the accused No. 1 himself had said that all the accused had gathered in the house of the accused No. 1 on the morning of that day at about 10-30 a. m. and that the witness had overheard them saying that the deceased had to be murdered.

About 7-30 p. m. the accused No. 1 was seen at the shop of P. W. 10 and at 8 p. m. he was seen moving towards the flour mill of the deceased by P. W. 16. He was further seen peeping into the mill premises at about 9 p.m. by P. W. 12. Besides this evidence in regard to the movements of the accused No.1 at or near the place of the incident, there was the evidence of Range Gowda, P. W. 20 who was in the company of the deceased till he reached his own house and who stated that he, all of a sudden, heard the report of a gun shot followed by the cry of the deceased "Sattar shot me off....I am ruined.....Please come Range Gowda".

Range Gowda then flashed his torchlight and proceeded towards the place where the deceased lay

and while he was proceeding there he saw the accused No. 1 running towards the masjid with a gun in his hand. P. W. 18 and 19 stated that they heard the gun-shot and saw accused No. 1 immediately thereafter running towards the tank. The evidence of these witnesses was corroborated by P. Ws. 14, 15 and 16 who stated that the deceased shouted after the incident that Sattar had shot him.

A piece of cloth, M. O. 5, said to be smelling of gun-power was seen close to the scene of the incident. Cloth of this type was employed as a wad to secure the muzzle of a gun before the shot was fired from the gun. There was also the dying declaration of the deceased which, though incomplete due to the weakness of the deceased definitely stated that it was the accused No. 1 who had shot him with the gun.

The deceased further stated : "I was going home. When I came near the house of Abdul Mazeed Sab Satar Sab shot me from the bush. He ran away. I saw". The incident was put by him at 10-10 p. m. and he stated that it was a distance of 15 yards from which he must have been shot. When asked who was with him he stated that Range Gowda came in his company and that he stood near his house. This was the dying declaration and the dying man was in no condition to answer further questions.

The evidence fill-will which was found as a fact by the learned Sessions Judge, the evidence of these witnesses who were considered independent by the High Court and the statements in the dying declaration of the deceased corroborated as they were by the evidence of Range Gowda P. W. 20 and P. Ws. 14, 15 and 16 were considered sufficient by the High Court to come to the conclusion that the deceased was shot dead by the accused No. 1.

6. The High Court also considered the nature of the injuries which were revealed in the post-mortem examination and negatived the contention urged on behalf of the accused No.1 that the mosque ground wherefrom the accused No. 1 was said to have fired the gunshot having been at a little higher level than of the road on which the deceased was walking, the tracts of the injuries would naturally have run from above downwards and not 'vice versa' as found in the post-mortem report. The High Court observed :

"It must be remembered that the hedge in that locality which is formed of the growth of lantana fence was found to have openings here and there according to P. W. 3 the Sub-Overseer, who prepared a sketch of the sense of occurrence.

As there is no evidence to show the exact position taken up by the assailant it is not impossible to conceive that the shot might have been directed in some posture through the crevices or openings in the lantana bush, so as to cause the injuries in question".

7. In regard to the absence of the ballistic expert's evidence, the High Court considered the argument as unrealistic and highly fanciful, observing:

"In the first place, it is not possible even for an expert to locate the exact position of the assailant and the victim at the time the shot was assailant and the victim at the time the shot was fired, and, in the second place, the distance of 15 yards from which the shot is proved to have been fired, sufficiently indicates the scattering of the pellets to answer the injuries in question".

8. Having regard, therefore, to the circumstances set out above, the High Court came to the conclusion that it was the accused No. 1 only who had been clearly established to have fired the gun-shot which resulted in the death of the deceased.

9. It was urged before us by the learned counsel for the appellant that the High Court was not justified in upsetting the order of acquittal passed by the learned Sessions Judge and that there were no compelling reasons why it should have interfered with the findings reached by him. We do not accept this contention.

The learned Sessions Judge laid undue emphasis on the necessity of expert evidence in cases of gun-shot injuries and entertained a doubt which he characterized as a reasonable doubt about the guilt of the accused No. 1 in the absence of such evidence. He minimized the effect of the evidence of independent witnesses and considered the same meager and insufficient to establish the guilt of the accused No. 1.

Even though he admitted the dying declaration of the deceased in evidence he wrongly came to the conclusion that the same was not corroborated by any independent testimony. We are not satisfied that the learned Sessions Judge considered the evidence and the circumstances of the case in their proper perspective.

We are in accord with the reasoning of the learned Judges of the High Court who considered that the witnesses were independent, that there was sufficient corroboration of the dying declaration of the deceased in the testimony of Range Gowda, P. W. 20 and of P. Ws. 14, 15 and 16 and who, on an appreciation of all circumstances attendant upon the transaction, came to the conclusion that it was the accused No. 1 who was responsible for inflicting the gun-shot injuries on the person of the deceased. In our opinion, the High Court was perfectly justified in setting aside the order of acquittal passed by the learned Sessions Judge in favour of the accused No. 1

10. It was urged on behalf of the appellant that the injuries which were inflicted upon the person of the deceased were not gun-shot injuries. Reliance was placed upon a passage from Modi's Medical Jurisprudence, 10th Edn., page 210, where a distinction is made between gun-shot wounds on the one hand and lacerated wounds, punctured wounds and incised wounds on the other and it was submitted that the wounds in the case before us were not gun-shot wounds but were either punctured wounds or incised wounds.

No such questions were, however, addressed in the cross-examination to the doctor who performed the post-mortem examination and the statements in his evidence; "I was of opinion that the death was due to shock and haemorrhage as a result of gun-shot wounds" and "all these injuries may be caused by a single shot" stood unchallenged. We are of the opinion that, on the evidence as it stood, it was not open to the appellant to urge that ground before us.

11. It was further urged on behalf of the appellant that the dying declaration of the deceased was an incomplete document and, therefore, could not be used against him.

Reliance was placed on the observations of the Privy Council in- Cyril Waugh v. The King', 54 Cal WN 503 at p. 507 (A), where their Lordship were of the opinion that "the dying declaration was inadmissible because, on its face, it was incomplete and no one could tell what the deceased was about to add" and also upon the observations of Mahajan, J., as he then was, in - 'Ram Nath v. State of Madhya Pradesh', AIR 1953 SC 420 at p. 423 (B), that

"it was not safe to convict an accused person merely on the evidence of a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion

and might well be drawing upon his imagination while he was making the declaration".

We are of the opinion that these observations do not help the appellant at all. In the dying declaration before us, even though the same was incomplete by reason of the deceased not being able to answer further questions in his then condition, the statement so far as they went to implicate the accused No. 1 in the affair were quite categoric in character and they definitely indicated that it was the accused No. 1 who had shot the deceased.

There was no question of any incomplete statement so far as that aspect of the case was concerned. The statement in regard to the accused No. 1 having shot the deceased was complete in itself and it could not be said that any further questions would have elicited any information which would run counter to the same. Under the circumstances, the dying declaration, though incomplete otherwise, was complete so far as the accused No. 1 having shot the deceased was concerned and could certainly be relied upon by the prosecution.

There was further the corroboration of the dying declaration in the evidence of Range Gowda, P. W. 20 and of P. Ws. 14, 15 and 16 and such corroboration invested the dying declaration with a stamp of truth which went a long way towards inculpating the accused No. 1.

12. These were the only contentions which could, on the record, be urged before us on behalf of the appellant, and for the reasons given, none of them can be accepted.

13. The result, therefore, is that the conviction and the sentence passed upon the appellant by the High Court will be confirmed and this appeal will stand dismissed.

Appeal dismissed.

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