Sakharam

Vs

The State of Maharashtra

Criminal Appeal No. 258 of 1968

(Bhargava JJ)

22.04.1969

JUDGMENT

BHARGAVA, J. -

1. This appeal, by special leave, is directed against a judgment to the High Court of Bombay, Nagpur Bench, summarily dismissing an appeal filed by the appellant Sakharam against his conviction and sentence of 5 years' rigorous imprisonment and 3 months R. I. for offences punishable under Sections 307 and 148 of the Indian Penal Code respectively awarded to him in a Sessions trial by the Sessions Judge of Yeotmal. With this appellant were arrays four other person who were convicted for an offence under Section 147, I.P.C., only and sentenced to pay a fine of Rs. 100/- each, in default, to suffer rigorous imprisonment for one month.

2. The prosecution case, which the Sessions Judge held to be proved, was that, on 5th September, 1967, Shamrao, who was accused No. 2 with the appellant in the Sessions trial, went to the hotel of one Kashinath alias Natha, son of Dayaram, at about noon with a bottle of liquor and demanded glasses for drinking liquor inside the hotel. Kashinath as well as his servant Rangnath refused to comply with his request. Shamrao felt aggrieved, abused both of them, and gave a threat to Kashinath. Next day, on 6th September, 1967, in the evening, the appellant, who was accused No. 1, Shamrao and two others went to the hotel of Kashinath's father Dayaram and abused Kashinath in his absence. They also gave threats saying that hey would cut Kashinath to pieces. Later, still in the evening at about 8.30 or 9 p.m., Kashinath happened to be near the State Bank square on Dhamangaon Road in the company of his servant Rangnath and two others person Ramnath and Vishwanath. They were going towards Mahadeo Temple beyond the Post Office. Rangnath was walking ahead, while the other three were behind him at a short distance. The appellant, who was concealing himself in the shadow of a 'neem' three, suddenly rushed out and with a sharp-edged weapon stabbed Rangnath in the abdomen. Rangnath cried aloud, whereupon his three companions Kashinath, Vishwanath and Ramnath tried to go to his rescue. The appellants then called out to his associates who were armed with sticks and, as a result 10 or 12 persons, including the four other accused who were arrayed with the appellant in the Sessions Trial, arrived and tried to assault the companions of Rangnath. The three companions of Rangnath ran away. Rangnath received a serious injury in the abdomen and his intestinal loops came out of that injury. The appellant and his companions ran away after inflicting this injury on Rangnath. Rangnath walked for a short distance and was then carried by two truck divers to a hut near the cotton market. One of those drivers Vishwanath Kute informed the police on the telephone that a person was lying injured there. The police arrived with a vehicle, took Rangnath to the Main Hospital at Yeotmal where Rangnath's statement was recorded by the police Sub-Inspector. A case was registered. Rangnath's condition was serious and, hence, his dying declaration was recorded by the Taluq Magistrate. He was first

examined by Dr. Bhoot and was, later, operated upon by Dr. Gogate. He remained in the hospital until the 4th October, 1967 when he was discharge. The injury received by Rangnath was found by the doctors to be dangerous one which, in their opinion, was sufficient in the ordinary course of nature to cause death. It was only fortunate that Rangnath received immediate treatment and survived.

3. The Sessions Judge discussed the entire prosecution evidence which was produced before him in support of this case and, believing the evidence given by the prosecution, held that the appellant was clearly guilty of an attempt to commit the murder of Rangnath and that he had also taken part in a riot while he was armed with a dangerous sharp-edged weapon Consequently, he convicted the appellant as mentioned above. When the appellant appealed to the High Court, the High Court dismissed the appeal summarily. This Court granted special leave to appeal to the appellant against this order of the High Court, limited to the question that the High Court was not justified in dismissing the appeal summarily. In these circumstances, the arguments that have been advance before us in this appeal have not been concerned so much with the merits of the conviction of the appellant, but with the question whether it was a fit case where the High Court should not have dismissed the appeal summarily, should have sent for the record, and written a full-reasoned judgment if the High Court was of the opinion that the appeal could not succeed.

4. It appears that the High Court adopted the course of dismissing the appeal summarily because, on perusal of the judgment of the Sessions Judge and on hearing arguments advanced before it at the preliminary hearing of the appeal under Section 421 of the Code of Criminal Procedure, the High Court was of the opinion that the judgment given by the Sessions Judge was clearly right hand did not require any scrutiny with the aid of the record. Learned counsel appearing before us on behalf of the appellant has urged that there were a number of aspects which the High Court should have carefully examined, so that the procedure adopted of dismissing the appeal summarily was not justified. He formulated five points in support of this submission which are as follows :

> (1) There was no motive for the appellant to stab Rangnath;
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> (2) The truth of the prosecution case depends upon evidence of eye-witnesses and it was necessary for the High Court to examine the question whether they were got up witnesses and whether their evidence was reliable;
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> (3) Apart from the evidence of eye-witnesses, there was no circumstantial evidence supporting the prosecution case, in view of the fact that the weapon alleged to have been used was not recovered and no blood stains were found by the police at the spot where Rangnath was alleged to have been stabbed;
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> (4) In any case the appellant could not be convicted for the offence under Section 307, I.P.C.; and
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> (5) In any case, the offence committed by the appellant could not fall under Section 148, I.P.C.

5. After hearing learned counsel, we are unable to find much substance in any of these points. On the first point, it is true that the prosecution version itself was that the quarrel initially began between Shamrao, an associate of the appellant and Kashinath; but the version given by the prosecution also shows that even Rangnath was also involved in those earlier incidents and that the

appellant was taking keen interest on behalf of Shamrao. On the 5th September, 1967, when Shamrao wanted glasses to drink liquor in the hotel, Rangnath had also refused to oblige him just as his master Kashinath had done. On the 6th September, 1967 before this incident of stabbing, the appellant had come in the company of Shamrao and others and had abused Kashinath and had given treats to him. It is true that, at that stage, hen giving the threats, the appellant and his companions did not mention Rangnath but it is clear that their grievance on behalf of Shamrao was against both of them. It is, therefore, not surprising that on 6th September, 1967, when the appellant came to punish those against whom grievance had arisen, he stabbed Rangnath who happened to be in the lead and was the person first available for being injured. Kashinath happened to be walking behind. The prosecution evidence shows that attempt was made to assault Kashinath also, but he and the other two persons Vishwanath and Ramnath ran away, so that they escaped unhurt. There seems to be nothing unnatural in the attack having been made first against Rangnath who was ahead and was the first person met by the appellant when he came for the attack.

6. On the second point we find that the Sessions Judge believe the evidence of Rangnath and the other three witnesses who saw this incident, and we are unable to find any cogent reasons in support of the submission made by learned counsel that these witnesses should not have been believed. The Sessions Judge himself accepted their evidence with caution, because he appears to have felt that they were all partisan and interested witnesses. The reason that the Sessions Judge gave for holding them to be partisan witnesses was that Rangnath was himself the injured person, while Kashinath was his master, and Ramnath and Vishwanath were his cousins. It appears to us that this close association between the witnesses was clearly no reason at all for doubting their veracity, because Rangnath as well as all of them must have been keen to see that the person who really stabbed Rangnath should be punished, and would not be parties to implication of innocent person in place of the real assailant or assailants. They would, therefore, be the best witnesses for giving evidence against the real culprits. The only point worth consideration, which learned counsel was able to urge before us was that the three witnesses, Kashinath, Vishwanath and Ramnath, according to their own evidence, ran away to the fields and spend the whole night in a sugarcane field instead of going into the town, informing the police or obtaining assistance from others. The conduct of the witnesses does appear to indicate, as stated by them, that thy were under great fear from the appellant and his companions and that was why they did not dare to come back to the town in the night. It has to be remembered that a threat had been given earlier in the day to Kashinath that he would be cut to piece and, even though Rangnath had been stabbed, Kashinath and the other companions could be under genuine apprehension that the appellant and his companions might still be on the look-out for them and might cause them serious injuries or even kill them. The conduct was, therefore, not so unnatural as is sought to be urged by learned counsel that the Session Judge had committed an error in treating the statement Ext. 16 of Rangnath recorded by the Police Sub-Inspector at the Hospital as the First Information Report, because, earlier, information of this incident had been received from Vishwanath Kute, the truck driver. The evidence however, shows that Vishwanath Kute gave no details and his telephonic message did not even indicate that a criminal offence had been committed. The only information he gave was that a person was lying injured; and that information given by him could not be treated as the First Information Report. Obviously, the First Information Report was drawn up on the basis of Ext. 16 which was the statement made by Rangnath to the Police Sub-Inspector. Learned counsel also urged that the High Court should have considered the discrepancies which appeared between the statements of various witnesses. These discrepancies were fully discussed by the Sessions Judge in his judgment and, if the High Court saw that the reasoning adopted by the Sessions Judge was correct, there was no need for the High Court to send for the record to arrive at the decision that the Sessions Judge was right.

7. As regards the third point, it is true that the weapon was not recovered; but that circumstance is quite immaterial when the medical evidence is clear that Rangnath received his injury from a sharp-edged weapon. The fact that the police, at the time of inspection, or unable to find blood stains at the place of occurrence was also fully explained by the Sessions Judge. Rangnath himself was seriously injured and, in the night, he was unable to show the place of occurrence to the police. The other three witnesses did not meet the police until next morning and it was only after the police examined those witnesses that it became possible to make a local inspection of the scene of occurrence. There was, thus, a delay of more than 12 hours between the incident and the inspection of the spot by the police. The Sessions Judge was quite right in saying that the disappearance of the blood stains, even if there were any, is explained by the lapse of time during which a lot of traffic must have passed over the place of occurrence which was on an important highway.

8. With regard to the fourth point, the argument made by learned counsel was that the appellant did not actually intend to stab Rangnath which should be inferred from the circumstance that the main grievance of the appellant was against Kashinath, and that Rangnath was stabbed only by a mistake, so that it could not be held that the appellant had intended to cause the death of Rangnath. It may be noticed that the Sessions Judge held that the appellant was guilty of committing an offence of attempted murder not because he intended cause the death of Rangnath, but because the evidence showed that he intended to cause such injury to Rangnath as was sufficient in the ordinary course of nature to result in his death. In this finding it would be immaterial whether that particular injury was sought to be given by the appellant to Rangnath or to Kashinath in view of the provisions of Section 301 of the Indian Penal Code. The inference that the injury intended to be caused by the appellant was sufficient in the ordinary course of nature to cause death follows from the fact that the appellant used a sharp-edged weapon and gave the injury in the abdomen which was a very vital part of the body. In fact, the medical evidence is that the injury was a dangerous one and was sufficient to cause death in the ordinary course of nature. The conviction of the appellant for the offence under Section 307, I.P.C., was, therefore, fully justified.

9. The last point relating to the conviction under Section 148, I.P.C., was based on the fact that, according to the Sessions Judge himself, it was not possible to give a definite finding whether the weapon used was a penknife, a knife, a dagger, a jambiya, or a spearhead. It seems to us that the absence of a definite finding is immaterial, because, whatever the weapon, it was certainly one which was sharp-edged and was capable of inflicting an incised injury 1/2" long, 1/2", wide and having a depth upto peritonial cavity. Such weapon would clearly be a dangerous weapon or at least as weapon which, if used as a weapon of offence, was likely to cause death. The conviction of the appellant under Section 148, I.P.C., was also, therefore, on the face of it, fully justified.

10. In these circumstances, we are unable to hold that the High Court committed any error in dismissing the appeal summarily. Of course, it would have been better in this case if the High Court, when dismissing the appeal, had dealt with each of the points urged before to by learned counsel who represented the appellant before that Court separately and given reasons for holding that none of those reasons given justified the course of sending for the record, giving notice to the State, and hearing the appeal on merits. The appeal fails an is dismissed.

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