

Vishwanath Shankar Beldar

Vs

State of Maharashtra

Criminal Appeal No. 95 of 1969

(V. Bhargava, K.S. Hegde, A.N. Ray JJ)

18.09.1969

JUDGMENT

HEGDE, J. -

1. This appeal was brought on the basis of the special leave granted by this Court on April 30, 1969; but the leave was limited to the question as to whether the High Court was justified in dismissing the appeal summarily.
2. The appellant and three others were tried for various offences including an offence under Section 302, I.P.C. by the learned additional Sessions Judge at Jalgaon. The appellant was convicted under Section 302 as well as under Section 307, I.P.C. For the former offence, he was sentenced to suffer imprisonment for life and the latter, 7 years rigorous imprisonment. The two sentences were ordered to run concurrently. The appellant appealed to the High Court of Bombay against his convictions. His appeal was summarily dismissed.
3. The question for our consideration is whether the High Court was justified on the facts of the case in summarily dismissing the appeal.
4. The prosecution case is that the offence in question took place at a fair and in the presence of a large number of persons, but in support of the prosecution case only two occurrence witnesses were examined, namely, Ramchandra Punjabi and Dipa Lahu. Admittedly both these witnesses were companions of the deceased. The deceased as well as these two persons were engaged in selling illicit liquor at the time of the occurrence. The question why no independent witness was examined required consideration.
5. It is seen from the judgment of the Trial Court that Ramchandra Punjabi's name did not find a place in the two reports sent by the police officers. According to the prosecution, Ramchandra Punjabi was present when the appellant was caught and produced before the police Patel, but the police Patel in his report, Exh. 7, did not mention that fact. Some time later, the appellant was handed over to the head constable Kulkarani. Thereafter he sent his report, Exh. 47. Even in that report, the name of Ramchandra Punjabi does not find a place. These circumstances again required consideration. The Trial Court had not accepted the evidence of Ramchandra Punjabi in certain important aspects. The evidence given by him so far as it goes against accused Nos. 2-4 does not receive support from the statement given by him under Section 162, Cr. P.C. and hence the learned trial Judge rejected the same. This means the trial Judge did not accept him as a wholly truthful witness. In fact, he remarked that a portion of his evidence was clearly an improvement. Under these circumstances, it was necessary for the High Court to consider his evidence afresh.

6. Now coming to Dipa Lahu, as mentioned earlier he is admittedly a close associate of the deceased. He was one of the persons who had sustained injuries at the time of the occurrence. A dying declaration from him had been recorded, Exh. 37. The facts stated by him in his dying declaration do not tally with the evidence given by him in the Court. There are material contradictions between the two versions. They were noticed by the Trial Court. Therefore, his evidence also required a fresh consideration at the hands of the High Court. It may also be mentioned at this stage that Dipa Lahu was a questioned by the I.O. immediately after the occurrence. His questioning took place after considerable delay. No explanation has been given for the same.

7. For the reasons mentioned above, we are of the opinion, that the High Court was not justified in summarily dismissing the appeal. Hence, we allow this appeal and remand the case to the High Court for a fresh consideration according to law.

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