

Dnyanu Hariba Mali and Others

Vs

The State of Maharashtra

Criminal Appeal No. 222 of 1967

(A. N. Ray, I. D. Dua JJ)

10.03.1970

JUDGMENT

RAY, J. -

1. This is an appeal by special leave against the judgment of the High Court at Bombay dated 26th June, 1967 dismissing in limine the appeal filed by the appellants against the judgment of the Additional Sessions Judge, Sholapur dated 6th February, 1967.
2. The appellants Dnyanu, Tukaram and Hariba were convicted under Section 302, read with Section 34 of the Indian Penal Code and each of them was sentenced to undergo imprisonment for life. The appellants were also convicted under Section 326, read with Section 34 of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for a period of one year. The appellants were also convicted under Section 323, read with Section 34 of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for a period of one month only. All the sentences were to run concurrently.
3. The prosecution case in short is as follows : There were criminal prosecution between the appellants and some members of the party of Dnyanuba Gadade. Dnyanuba and prosecution witness Panda Shingade appeared in those cases as witness against the appellants. On 3rd July, 1966 Dnyanuba went to the shop of one Gulab Kalawat at Taluka Sangda in Sholapur District for getting some grocery on credit. The shop-keeper declined to give him grocery and a quarrel ensued between the two. The prosecution case is that the complainant Narayan Balu, Panda Shingade, Yeshwant Patil, Gana Patil and Nana Gadade happened to be there casually and on the complainant's intervention the dispute was settled. Thereafter Hariba who is an old man of 75 arrived at the shop of Gulab and without any rhyme or reason started abusing Panda Shingade. Thereupon, Panda beat appellant Hariba with a Chappal and Dnyanuba beat him with fists. Again the complainant intervened and pacified the parties whereupon appellant Hariba left the place and went towards his flour mill.
4. Shortly thereafter appellants Tukaram and Hariba came to the shop of Gulab. Tukaram was armed with an iron pipe. Apprehending that the appellants might bear Dnyanuba and Panda, the complainant went ahead and entreated the appellants not to take up the quarrel which was already settled. The appellants then went to their farm house. Dnyanuba and his companions continued to sit at the shop of Gulab for more than an hour. Then the party of Dnyanuba thought it would not be safe to allow Dnyanuba to go alone, they all started going towards the house by foot track which passed through the land of one Narayan Mali. The appellants who were in their farm-house saw the party going along the foot track and they left the farm-house and went towards the approaching party.

Appellant No. 1 carried two spears in his hand, one of which he handed over to appellant No. 2 on the way. Then the appellants and the party of the deceased came across each other on the foot track in Narayan's fields. Then Dnyanuba requested the appellants not to beat him since the quarrel was settled. Disregarding this request at the instigation of appellant No. 3, appellant No. 2 stabbed Dnyanuba with a spear on his chest. Dnyanuba then collapsed. Thereupon Yashwant Patil fell on his person to save him and appellant No. 1 stabbed the hands of appellant No. 1. Injury was caused to the index-finger of the complainant's right hand. At the same time appellant No. 2 hit Nana Gadade with the handle of the spear. Then five members of the party of the deceased began to pelt stones at the appellants. The appellants sustained injuries.

5. The appellants denied the charge and pleaded a right of self defence. This defence was that the party of the deceased Dnyanuba which consisted of about 15 to 20 persons were the aggressors and were beating the appellants Nos. 2 and 3 with sticks and stones. Appellant No. 1 and his wife were coming to the place of incident. When they approached, the opposite party pelted stones at them and both of them sustained injuries. In the melee appellant No. 1 took out a knife and in self defence started using it against the aggressors as a result of which some members from the opposite party might have received injuries.

6. It will appear from the judgment of the Session Court that two of the main points which fell for determination were; first whether the accused in general, and accused No. 2 in particular, caused the injuries to Dnyanuba Gadade and three others in self defence, and, secondly, whether the accused caused the injuries in furtherance of common intention murdered Dnyanuba Gadade.

7. In the memorandum of appeal filed by the appellants before the High Court at Bombay, the principal questions raised by the appellants were these. First, that the trial judge failed to appreciate that considering the situation of the shop of Gulab Kalawat from where the deceased and his companions proceeded to go to their house towards the north they could not possibly have thought of going through Narayan's field when very close to Gulab's shop was a cart-track which took them straight to their houses. Secondly, that the trial Judge should have proceeded to consider and appreciate the respective versions of the prosecution and the defence as against the background of this position and the expected natural course of conduct on the part of the other party in proceeding towards their house by the shorter and the more convenient way of cart-track. Thirdly, that the defence version that the party of the deceased actually chased appellants Nos. 2 and 3 through the field of Narayan and assaulted them with sticks and stones in the field appears to be more natural and more probable and therefore by the prosecution to explain their meeting the appellant in the field of Narayan. Fourthly, that the deceased and his party were in an aggressive mood and that in view of the previous litigation they wanted to settle accounts with the appellants and with that view they chased appellants Nos. 2 and 3 and overtook them in the field of Narayan and assaulted them with sticks and stones and that the prosecution story put forward that stones were hurled at the defence by the prosecution. Fifthly, that if the only object of the opposite party was to scare away the appellants and prevent them from making further assault as soon as the opposite party started pelting stones at, on the appellant they would have run away and would not have sustained so many injuries as a result of stone throwing by the other party and that therefore in all probability the appellants sustained their injuries under the circumstances and in the manner alleged by them and not as alleged by the prosecution. Sixthly, that the trial Judge committed a serious error in referring to what the defence witness did not state before the police thereby allowing the statement of a defence witness under Section 162 of the Criminal Procedure Code to be used at the trial. Finally; the conflict between the complainant's first information report and his evidence at the trial was not appreciated.

8. Some of the important points raised by the appellants have been referred to above only to illustrate the arguable and substantial points raised by the appellants both as to fact and law.

9. The High Court dismissed the appeal with a one word order of dismissal. It is, therefore, not possible to know the reasons which persuaded the High Court to do so. This Court has, from time to time, stated that in dealing with appeals under Section 410 of the Criminal Procedure Code from sentences of Court of Sessions the High Court should give reasons for rejection of an appeal and if arguable and substantial points are raised, the High Court should not summarily reject the appeal. In *Siddappa Apparao Patil v. The State of Maharashtra* (1970 (1) SCC 547) reference has been made to a few decisions of this Court which illustrate as to what substantial and arguable points of law are. The right of self defence is an important one. The onus is on the accused. This right can be availed of by the accused only when circumstances fully justify the exercise of such a right. There is a right of appeal on fact as well as on law. It is desirable that if the appellants raise arguable and substantial points, the High Court should deal with it in the light of principles laid down by this court.

10. The appeal is allowed. The matter is remitted to the High court for fresh consideration hearing the parties.

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