

Asaram Vithalsingh Pardeshi and Another, Etc.,

Vs.

State of Maharashtra

Criminal Appeals Nos. 168 of 1967 and 48 of 1968

(S. M. Sikri, K. S. Hegde JJ)

16.09.1970

JUDGMENT

HEGDE, J. -

1. These appeals by special leave arise from Sessions Case No. 111 of 1964 in the Court of Additional Sessions Judge, Poona. In that case four persons namely Vijaysingh Ansaram Pardeshi (A-1); Ansaram Vithalsingh Pardeshi (A-2); Sitaram Vithalsingh Pardeshi (A-3) and Ramesh alias Ramakant Vishwanath (A-4) were tried for an offence under Section 302, read with Section 34, Indian Penal Code, for causing the murder of one Madan. Further A-3 was tried for an offence under Section 324, Indian penal Code, for causing an injury with a knife to witness Ambaji. The Trial Court acquitted A-2 and A-4 and convicted A-1 and A-3 under Sections 302/34, Indian Penal Code, for also convicted under Section 324, Indian Penal code, and for that offence he was sentenced to suffer rigorous imprisonment for four months. The two sentences imposed on A-3 were ordered to run concurrently. The convicted accused appealed to the High Court of Bombay. The State of Maharashtra appealed against the acquittal of A-2. The acquittal of A-4 was not challenged. The High Court dismissed the appeal filed by A-1 and A-3 and allowed the State appeal and convicted A-2 under Section 302/34, Indian Penal code, and sentenced him to suffer imprisonment for life. Criminal Appeal No. 168 of 1967 has been filed by Asaram Vithalsingh Pardeshi A-2 and Sitaram Vithal Singh Pardeshi A-3 and Asaram Pardeshi A-1.

2. A-2 and A-3 are brothers. A-1 is the son of A-2. A-4 is said to be a friend of A-1. P.W. 5, Shakuntala, is the sister of P.W. 11 Dnyanoba. Deceased Madan is said to be an intimate friend of Dnyanoba. At about other time of the occurrence P.W. 5 Shakuntala was staying in her parental house as she had come there for delivery. P.Ws. 5 and 11 were living with their parents in a tenement adjoining the house of A-2 in Poona City. It is admitted that there used to be constant quarrels between the families of P.W. 5 and that of A-2. The further case of the prosecution is that a few days before the occurrence, there was a quarrel between A-1 and his father and at that time attracted by the cries of A-2, P.W. 5 went near their room. Angered by the intrusion of P.W. 5, it is said A-1 came and slapped her. When she complained about this matter to her brother P.W. 11, he asked her to take it easy. On the date of the occurrence namely on August 7, 1964, the deceased Madan and A-4 came to the house of P.W. 5. At that time P.W. 5 complained to Madan about the conduct of A-1. Madan questioned A-1 about it. Then not words were exchanged between Madan and A-1. A little later A-3 came out and called out A-1 saying that the deceased Madan, P.W. 11 Dnyanoba and P.W. 7 Ambaji were near the urinal. On hearing that A-1 rushed out with a Barchhi in one hand and knife in the other. Seeing the commotion, P.W. 5 went out of the house. Near the urinal which was very near the house of P.W. 5, there was a fight between Ambaji and A-3. At that stage A-3 snatched the knife from the hands of A-1 and stabbed Ambaji on the buttocks. This was at about 10 p.m. Seeing

this incident Dnyanoba and Madan ran away from the place and it is said that the four Chowk. At that time A-1 stabbed Madan twice on his chest. On receiving these blows Madan fell down dead. Thereafter all the accused ran away from the place but on the way they were stopped by some police officers on petrol duty; A-1 to A-3 were taken into custody and later on produced before other Station House Officer. P.W. 5 on seeing that her brother and Madan were being chased is said to have followed them and saw the incident at Phulwala Chowk. After the accused ran away from the scene, she went near Madan and found him dead. At that time she found a Barchhi fallen in a pool of water. She picked up that Barchhi and proceeded to the police station directly and laid the first Information Report. The First Information Report in the case was laid at about 11 p.m. In the First Information Report the entire prosecution case has been set out. A-1 to A-3 were produced in the police station at about 11.15 p.m.

3. It is seen from the medical evidence that the deceased has sustained as many as six incised injuries. They are :

(1) Oval shaped penetrating injury measuring $4/4'' \times 3/10'' \times 8''$ deep transversely placed and clinched upwards, inwards and backwards situated $1\ 3/4''$ below and $1\ 1/2''$ medial to left nipple on left side of chest at 8 o'clock position to left nipple. Margin well defined, regular, clear-cut and retracted. Antemortem clots seen. This injury is continuous with the rupture of the heart and left lung.

(2) Over shaped penetrating injury $1'' \times 1/2'' \times 5\ 1/2''$ deep transversely placed and directed obliquely upwards, inward and backwards situated $3/4''$ below left nipple at 6 o'clock position to it over left side of chest and $1/2''$ lateral to injury No. 1. Margin well defined, regular, clear-cut and retracted. Antemortem clots seen. This injury is continuous with the rupture of the heart and left lung.

(3) Small incised wound $1/2'' \times 1/4'' \times 3/10''$ deep resented on right thigh upper back $1''$ below greater trochanter of right femur. Margin well defined, regular, clear-cut and retracted. Antemortem clots seen.

(4) Rectangular shaped abrasion measuring $2\ 3/10'' \times 7/20'' \times$ in cuticle deep present on the right shoulder top. Antemortem clots present.

(5) Obliquely directed incised wound from below upwards over left forearm upper third and inner back. Measuring $2'' \times 3/20'' \times$ skin deep. Margin regular, clean cut and retracted. Antemortem clots present.

(6) Abrasion $1\ 1/2'' \times 3/4''$ cuticle deep over left knee lower front. Antemortem clots present.

4. The prosecution witnesses have given consistent evidence in the case. The evidence of P.W. 5 is corroborated by the First Information Report given by her. The accused pleaded that they had not committed any offence though A-1 pleaded that P.W. 11, deceased Madan and P.W. 7 tried to assault him in front of the urinal.

5. There is consistent and reliable evidence as against A-1 and A-3. The prosecution witnesses - P.W.s 5, 7, 11 and 8 speak to the part played by them. According to P.W. 7 and 11, A-3 stabbed P.W. 7 near the urinal on his buttocks. Their evidence is corroborated by medical evidence which shows that P.W. 7 had sustained an incised injury on his buttocks. Hence the case against him under Section 324, Indian Penal Code, is fully established. The evidence of P.W.s 5, 7 and 11 and Bodhraj,

P.W. 8 clearly establishes that at that Phulwala Chowk A-3 caught hold of deceased Madan and A-1 stabbed him on the chest twice. The medical evidence corroborated their testimony. Further on an examination it was found that A-1 had sustained two small incised injuries which according to the medical evidence could have been sustained by him at the time he stabbed the deceased. Clothes of both A-1 and A-3 were found to have been blood-stained when they were taken into custody by P.W. 10. The learned Counsel for the appellants was unable to point out any circumstance in their favour. The only argument which was advanced in their favour was that the Barchhi when it was produced before the Station House Officer was found not to be blood-stained. As mentioned earlier P.W. 5 found that Barchhi in a pool of water. Her version is that on picking up she cleaned it. This version she has given in the First Information Report itself. We see no reason to disbelieve the evidence adduced against A-1 and A-3.

6. In the result Criminal Appeal No. 48 of 1968 which was filed by A-1 and the appeal of A-3, Sitaram Vithalsingh Pardeshi (appellant No. 2 in Criminal Appeal No. 168 of 1967), is dismissed.

7. Now coming to the appeal filed by A-2 (1st appellant in Criminal Appeal No. 168 of 1967) the father of A-1, as seen earlier he had been acquitted by the Trial Court and that acquittal was set aside by the High Court. This Court has repeatedly laid down that the presumption of innocence of an accused is not weakened by his acquittal by the Trial court and the appellate court should consider every one of the grounds taken into consideration in favour of the accused by the Trial Court before setting aside his acquittal and further bear in mind the fact that the trial judge had the benefit of seeing the witnesses.

8. The High court was impressed by the fact that the First Information Report in this case was laid very soon after the occurrence. That is undoubtedly a circumstance in favour of the prosecution. But the High Court overlooked a circumstance in favour of the prosecution. But the High Court overlooked the fact that in that First Information, it had been alleged that A-4 Ramesh alias Ramakant Vishwanath had instigated the other accused to kill Madan. As seen earlier A-4 had been acquitted by the Trial Court and as against that acquittal, the State did not go up in appeal. This circumstance to an extent weakens the probative value to be attached to the First Information Report.

9. The High Court was also impressed by the fact that P.W.s 5, 7, 8 and 11 have given consistent evidence against A-1 to A-3 and hence there is no reason to discard their testimony as against A-2. But the High Court lost sight of the fact that these witnesses have consistently spoken against A-4 and that testimony has not been believed by the Trial Court. Therefore as against A-2, all that we have is the oral testimony of P.Ws 5, 7, 8 and 11 corroborated by the fact that he was taken into custody by P.W. 10 very soon after the occurrence when he was in the company of A-1 and A-3. P.W.s 5, 7, and 11 belong to one group and that group is proved to be on inimical terms with A-2. P.W. 8 has only seen the incident when he was passing and that at about 10.30 in the night and the impression gathered by him may not be accurate as regards details. All that is said against A-2 is that when A-3 called out A-1, he followed his son and thereafter at the Phulwala Chowk he caught hold of the hand of the deceased Madan when A-1 stabbed him. After Madan fell down he ran along with A-1 and A-3. His following A-1 and A-3 when they chased P.W. 11 and Madan is not by itself an incriminating circumstance. It is nobody's case that he was armed. His running away, without more, after Madan fell down is also not an incriminating circumstance. Therefore the only question is whether it is satisfactorily proved that he caught hold of the hand of Madan when A-1 stabbed him. On this point we have only the oral testimony of P.W.s 5, 7, 8 and 11. Their evidence is not corroborated by any other circumstance. P.W.s 5, 7 and 11 are partisan witnesses. P.W. 8 must

have seen the incident for a few seconds.

10. We have earlier seen that the deceased had sustained about 6 injuries. According to the occurrence witnesses only two stabs were given to him. Therefore the deceased could have obtained the other four injuries only if he had tried to ward off the blows or had a struggle with his attackers. One of the injuries was on his hand and the other on the thigh. If A-2 had caught hold of him on the one hand and A-3 on the other hand, there would have been no occasion of warding off the blows or for him to struggle. The injuries sustained by the deceased do indicate that the deceased did attempt to ward off the blows. This circumstance militates against the prosecution story that A-2 caught hold of one of the hands of the deceased when A-1 stabbed him. It is strange that while A-3 who caught hold of the deceased was almost drenched with blood, there was not even a drop of blood on the person of A-2. This circumstance throws doubt on the veracity of the occurrence witnesses when they speak about the participation of A-2. The likelihood of these witnesses trying to rope in A-2 along with A-1 and A-3 as they sought to do in the case of A-4 cannot be ruled out. A-2 is an elderly person. It is not likely that he would have jumped into the fray. At any rate the case against him is not proved beyond reasonable doubt. The learned judges of the High Court did not take all the aforementioned circumstances into consideration while reversing the judgment of the Trial Court. We think that on the facts proved, the Trial Court was right in giving the benefit of doubt to A-2 Asaram Vithalsingh Pardeshi. We accordingly allow his appeal and acquit him. He shall be set at liberty forthwith.

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