

SUPREME COURT OF INDIA

Gaya Prasad Ramlal

Vs.

State of Maharashtra

Crl.A.No.204 of 1968

(C. A. Vaidialingam and A. N. Ray, JJ.)

01.03.1971

JUDGEMENT

RAY, J.: -

1. This is an appeal by special leave from the Judgment dated 16 February, 1968 of the High Court of Bombay convicting the appellant under Section 302 read with Section 34 of the Indian Penal Code. The Sessions Judge tried the appellant under Sections 143, 147, 148, 302 and 306 read with Section 149 of the Indian Penal Code. The High Court convicted accused Nos. 1, 2 and 5 under Section 302 read with Section 34 of the Indian Penal Code and sentenced each of them to imprisonment for life. The High Court convicted accused Nos. 2, 3 and 6 under Section 326 read with Section 34 of the Indian Penal Code and sentenced each of them to rigorous imprisonment for three years. The sentence of accused No. 2 was to run concurrently.

2. Accused No. 1 Habib Ahmed, accused No. 2 Maksood Ahmed and accused No. 6 Mohmood Ahmed are brothers. Accused No. 3 Darogasingh. and accused No. 4 Chandra Shekhar are also brothers and their third brother was known in the locality as Phelwan. Phelwan was absconding

since the date of the offence. Gaya Prasad alias Chakkiwala, accused No. 5 was the owner of a flour mill and was referred to by all the witnesses as Chakkiwala. Accused No. 5 is the only appellant.

3. Accused No. 1 lived in a house Masjid Chawl at Khar in Greater Bombay. Rashidkhan the deceased in the present appeal along with a few other persons of the locality passed a resolution that accused No. 1 should not be permitted to live in a part of the Masjid. This led to hostility between accused No. 1 and Rashidkhan. About two months before date of the incident 16 August, 1965 accused No. 2, the brother of accused No. 1, borrowed a silver bracelet from Hanisuddin Saifulla. The bracelet belonged to Hanisuddin's wife. Wahidan Accused No. 2 borrowed the bracelet on the pretext that he wanted to make a similar bracelet for his wife. On 15 August, 1965, accused No. 2 called on Hanisuddin. He asked for the return of the bracelet. Accused No. 2 refused to return it and instead brandished a knife. Hanisuddin went to the police station and lodged a complaint.

4. On 16 August 1965 accused No. 2 again went to Hanisuddin's hut at about 9 p. m. Hanisuddin's reminded accused No. 2 of the bracelet. Accused No. 2 started abusing him. Wahidan was frightened and escaped by a rear door. She went to the police station and reported the matter. Hanisuddin came out and saw accused No. 1, Rashidkhan and Phelwan on the road. Hanisuddin told Phelwan that accused No. 2 was threatening him with a knife. Phelwan said that it was not likely because accused No. 2 had not been seen in the locality for two years. Rashidkhan told Phelwan that he had seen accused No. 2 in the locality that very day. Phelwan asked Rashidkhan to point out where accused No. 2 was. Phelwan, Rashidkhan and accused No. 1 went into a lane and thereafter to the room of accused No. 1. Accused No. 2 could not be found in the house of accused No. 1. Thereupon Phelwan, Rashidkhan and accused No. 1 went round the colony and entered a lane to the west of Rashid Chawl. In front of Rashid Chawl was another Chawl called Mulla Panwala Chawl. The incident happened in a narrow open space between the two Chawls.

5. Accused No. 1 returned to the open place with a knife in his hand. He was followed by the appellant accused No. 5 and finding that Rashid was standing in the open space between the two Chawls accused No. 5 gave a shout 'maro, maro'. Accused No. 1 then gave two blows with a knife on the buttocks of Rashid. Rashid turned and caught hold of accused No. 1. Phelwan caught hold of Rashid and threw him on the ground. Accused No. 1 sat on Rashid and gave two knife blows on Rashid's face. Phelwan also assaulted Rashid with a knife. Phelwan kept on saying that it was a matter of no concern if he was sentenced to a term of twenty years. Mehmoodkhan who saw the assault on Rashid, tried to go to his help. Sunder Anna another absconding accused engaged Mehmoodkhan in a struggle. While the struggle was going on accused No. 2 attacked Rashid with a knife. Accused Nos. 3 and 6 came on the scene and were armed with stripped stick and iron pipe respectively. They assaulted Mehmoodkhan repeatedly. So did accused No. 4 who was armed with a stick with a knob on. Accused No. 3 pulled out a pipe from the roof of Rashid's house and gave a blow on the face of Rashid with that pipe and Phelwan gave a final blow on his back.

6. Hanisuddin, who lied seen the entire incident went to the police station and on his way saw a

police jeep coming from the opposite direction Hanisuddin told the police Sub-Inspector that accused Nos. 1, 2 Phelwan and Sunder Anna the two absconders had killed Rashid.

7. Four eye-witnesses Mehmoodkhan Hamidkhan, Nazeemkhan Bashirkhan, Hanisuddin Saifulla and Abdul Sattar Badesaheb were examined by the prosecution Mehmoodkhan Hamidkhan was the principal eye-witness with regard to the attack with the pipe which resulted in the death of Rashid. The evidence of the eyewitness was that the appellant accused No. 5 shouted 'maro, maro' and immediately there upon accused No. 1 caused two knife injuries to Rashidkhan on the buttocks Phelwan then caught hold of Rashidkhan and threw him on the ground Accused No. 1 sat on the chest of Rashidkhan and gave him two knife injuries on the face. Phelwan and accused No. 2 stabbed Rashidkhan. Mehmoodkhan tried to go to the rescue of Rashidkhan. Sunder Anna grappled with Mehmoodkhan Accused Nos. 3, 4 and 6 started beating Mehmoodkhan. Accused No. 3 gave a blow with a pipe to Rashid on the face and Phelwan gave a fatal blow on the back.

8. Counsel on behalf of the appellant contended that the evidence that the appellant shouted 'maro, maro' was not free from doubt. It was also emphasised that assuming that the appellant was present, he did not carry any weapon and arms and he had no motive and on the facts it could not be said that between accused No. 1 and accused No. 5 there was any prior meeting for a pre-conceived plan and therefore there was no common intention. Counsel for the appellant relied on the decision of this Court in Pandurang. Tukia and Bhillia v. The State of Hyderabad, (1955) 1 SCR 1083 = (AIR 1955 SC 2163 in support of the proposition that care should be taken not to confuse same or similar intention with common intention and the common intention required a pre-arranged plan and therefore there must be a prior meeting of minds. That statement of law is indisputable. The evidence found by the High Court is that Rashidkhan and Mehmoodkhan were assaulted at a place which was a narrow open space surrounded by huts on all sides in the colony except for the two small openings in the east and the west. The attack on Rashidkhan was not unpremeditated. The suddenness is accentuated by the shout given by the appellant. The ghastly attack in the narrow space could not by combination of circumstances be preceded by any commotion.

9. As to the appellant there is the consistent testimony of each of the eye-witnesses that the incident commenced with the appellant shouting 'maro, maro'. There is evidence to show that accused No. 1 was armed with a knife and the lead which accused No. 5, the appellant gave establishes that accused No. 1 should commence the attack on Rashidkhan with a knife. The result is that accused No. 5, the appellant, shared in intention of accused Nos. 1 and 2 to commit the murder of Rashidkhan.

10. Accused Nos. 3 and 6 did not take any part in the assault on Rashidkhan and they in fact had gone to the scene of offence after the assault on Rashidkhan had commenced.

11. Accused No. 5 gave an alibi that he was treated as an outdoor patient from 14 August, 1965 at

Dr. K. C. Shah's Hospital The trial Court rejected the evidence of Dr. Shah and found that the doctor's record was unworthy of credence.

12. The appellant, It is true, was not armed with any weapon The witnesses spoke of the shout given by accused No B. the appellant At the time the police Sub-Inspector went to the place of occurrence the names of accused Nos. 1 and 2 and of the two absconding accused were mentioned. The High Court acquitted accused No. 4 on the ground that three out of the four eye-witnesses did not refer either to the presence or participation of accused No 4 and therefore accused No. 4 was given the benefit of doubt. As to accused Nos. 3 and 6 the High Court held that they were members of an unlawful assembly, because there was evidence to show that these two accused came on the scene after the attack on Rashid had commenced and therefore it could not be said that they were members of an unlawful assembly with the common intention to commit the murder of Rashidkhan. As to accused Nos. 1. 2 and 5 the High Court found that they were members of an unlawful assembly with the common intention to commit the murder of Rashidkhan. The shout of accused No 5, the appellant established beyond any doubt that he shared the common intention to commit the murder of Rashidkhan The judgment of the High Court is correct.

13. There is no merit in this appeal. The appeal fails and is dismissed.

Appeal dismissed.