

Darasing Dhyansing and Others

Vs

The State of Gujarat

Criminal Appeal No. 56 of 1970

(A.N. Ray, D.G. Palekar JJ)

25.11.1971

JUDGMENT

PALEKAR, J. -

1. The appellants were convicted by the learned Sessions Judge, Nadiad of the offences under Section 148 and Section 332, 342 and 326 r/w Section 149, IPC and sentenced to various terms of imprisonment which were made to run concurrently. Their appeal was summarily dismissed by the High Court of Gujarat. Their appeal by special leave has been admitted by this Court.
2. The principal contention of Mr. Dholakia on behalf of the appellants is that the High Court was not justified in summarily rejecting the appeal as it raised arguable and substantial points relating to the identity of the appellants. It is, therefore, necessary to mention the relevant facts.
3. One Shana Madha of Ram Nagar was engaged in a dispute with regard to a land with one Bai Suraj. Bai Suraj was claiming the land as the mortgagee in possession while Shana Madha was claiming that though the land had been mortgaged with possession, he was in possession under an agreement. During the course of this dispute, Bai Suraj and her Manager Ramanlal Sheth tried to dispossess Shana Madha by force. In this attempt they enlisted the services of some Shikh Rakhawalas, including appellants Darasing and Tarasing. Some days before the present incident which took place on May 29, 1969 a hut belonging to Shana Madha situated in that land was burnt and in that connection an offence under Section 436, IPC was registered. Appellants 1 and 2 were arrested by the police and they appear to have been enlarged on bail by the Sessions Court on May 27, 1969. A day later, Shana Madha's mother Bai Makor, was beaten up and an offence under Section 326, IPC was registered. For the investigation of that offence P.S.I. Chaudhari, attached to the Anand Rural Police Station, went to Ram Nagar on the morning of May 29, 1969 along with police constable Shanbhai Mathurbhai. After making some enquiries in the village, P.S.I. Chaudhari accompanied by constable Shanbhai Mathurbhai, went to the field of Shana Madha. Shana Madha arrived at about 11.00 a.m. and on his arrival P.S.I. Chaudhari started recording his statement. While the statement was being recorded the appellants and five others - who were all Shikh Rakhawalas - came to the spot armed with spears and Farsis and threatened Shana Madha not to involve them falsely. P.S.I. Chaudhari asked them to keep quiet and not to interfere with his duties. The appellants and their companions thereupon became excited and appellant 1 Darasing caught hold of the P.S.I. from behind, threw him on the ground and sat upon him. Appellant 1 then asked appellant 2 to remove the revolver which was attached to the strap worn by the P.S.I. Appellate 2 forcibly removed the revolver with the leather case from the strap and thereafter, at the instance of appellant 1, all his companions started beating Shana Madha with the stick portion of the spears and Farsis which they were carrying. Grievous hurt was caused to Shana Madha on his legs and hands and

thereafter the appellants and his companions ran away towards another village named Sarda. P.S.I. Chaudhari then asked constable Shanabhai Mathurbhai to sit in the field by the side of the injured Shana Madha and went to Ram Nagar village. He contacted the Police Patil and from there sent a telephone message to the Police Station for reinforcement. The Police Patil went to the scene with others and arranged to remove Shana Madha to the hospital. They brought him to the road side near the canal and placed him in a passing taxi. Just at that time, P.S.I. Chaudhari also came there and got into the taxi. The party then went to Anand. The P.S.I. got down at the Anand Rural Police Station and Shana Madha was taken to the Anand Rural Hospital. The Medical Officer in charge of that hospital was on leave. So Shana Madha removed to Nadiad hospital where, after some treatment, Shana Madha was removed to the S.S.G. Hospital, Baroda for further treatment. P.S.I. Chaudhari lodged his own complaint at the police station and in this complaint he specifically named the present appellants and stated that he would be able to recognize the other companions of the appellants also. After investigation, a charge-sheet was sent against eight accused-two of whom were shown as absconding.

4. There was no serious dispute that an incident, as alleged by the P.S.I. in his complaint, had taken place in the field. The defence was that it was not the accused before the Court who had taken part in the incident. The learned Sessions Judge on a consideration of the evidence held that more than five persons had formed an unlawful assembly with the common object of assaulting the P.S.I. and causing grievous hurt to Shana Madha and that the members of the assembly had been armed with deadly weapons like spears and Farsis. He also held that the appellants were members of this unlawful assembly. As regards the other three before the Court, he had a doubt as to whether they had been properly identified. The benefit of doubt was, therefore, given to them and the present appellants were convicted and sentenced.

5. The only question before the High Court which, according to Mr. Dholakia, was a substantial arguable point related to the identity of the three appellants. Mr. Dholakia contended that there were certain discrepancies and deficiencies in the evidence which deserved serious consideration by the High Court and hence the summary dismissal of the appeal was not justified. In our opinion there is no substance in this contention.

6. It has been pointed out by this Court in *Siddappa Apparao Patil v. State of Maharashtra* ((1970) 1 SCC 547) that normally the High Court should not summarily reject appeals if they raised arguable and substantial points. It was, therefore, necessary for Mr. Dholakia to show that such points are involved in this appeal. In this connection Mr. Dholakia pointed out that P.S.I. Chaudhari, after he came to the village Ram Nagar, had not disclosed the names of the appellants to the Police Patil, nor had he mentioned their names in the telephone message he had sent to the Police Station; and this part of the case deserved serious consideration. We do not think that any great importance can be attached to these points. The evidence of Chaudhari which is considered by the Sessions Court clearly goes to show that all the three appellants had been known to him since before, especially as the first two appellants were accused in the arson case and had been only recently released on bail. There was, therefore, no question of the P.S.I. making any mistake with regard to the identity of these persons because the incident had taken place in broad day light at 11.00 a.m. and P.S.I. himself was the victim of the assault. Moreover P.S.I. Chaudhari has stated in his evidence that when he contacted the Police Patil in the village he had mentioned the names to him though the Police Patil has now turned hostile in Court and refused to acknowledge that any such names had been mentioned to him. As to the telephone message it is true that it does not contain the names of the appellants. But then the P.S.I. was not making a report of an offence but he was only waning reinforcements from the Police Station. That same afternoon he filed his complaint at the Police

Station and it is not disputed that the names of all the three appellants have been mentioned in the complaint. The learned Sessions Judge accepted the evidence of the P.S.I. and constable Shanbhai Mathurbhai and of Shana Madha with regard to the identification of the appellants and the High Court, apparently agreed with the Sessions Court on the point. We cannot, therefore, say that there was any arguable or substantial point for closer and more detailed consideration at a regular hearing by the High Court.

7. Consequently the present appeal fails and is dismissed.

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