

Bhakla and Ramadhin and Others

Vs

State of Madhya Pradesh

Criminal Appeal No. 16 of 1969

(CJI J. M. Shelat, D. G. Palekar, S. N. Dwivedi JJ)

30.08.1972

JUDGMENT

PALEKAR, J. -

1. This is an appeal by special leave from an order of conviction and sentence passed by the Madhya Pradesh High Court reversing the order of acquittal recorded by the Court of Session, Raipur.

2. The appellants were charged for the murder of Moujiram who was formerly the Malguzar of village Puran, Tahsil, Baloda Bazar. At the time of the incident he was living with his wife in his wada in the village, his children being away. The appellants are residents of village Puran and they had a dispute with Moujiram over the waters of a natural stream flowing in the village. He had filed a suit in 1962, in the Court of the Civil Judge, Baloda Bazar, for a permanent injunction to restrain some 11 cultivators from diverting the water of the stream to their own lands. Some five or six of the accused were parties to the suit. The suit ended in favour of Moujiram and an appeal filed against that decision was pending in the District Court.

3. Moujiram had extensive cultivation in the village and on the day in question i.e. Friday, October 21, 1966, he had engaged three labourers in his land for the ploughing and sowing operations. There labourers were Panchram, P.W. 1, Dukhu, P.W. 2 and Sukhu, P.W. 3. In the afternoon of that day when these labourers were ploughing the field, Moujiram came there in order to supervise the operations. That was at about 3.00 or 3.30 p.m. After he had a talk with the labourers he went to the boundary of the field and sat below a Pipal tree which was on the Medh or bund. Shortly thereafter he was joined by Sadaram, P.W. 4 and the latter's son-in-law, Kartik. While they were chitchatting accused No. 1, Bhakla and accused No. 2, Sonsai came suddenly from behind the Pipal tree with sticks in their hands. Accused No. 1 gave a stick blow on the nape of the neck and when Moujiram turned to ask, who he was, accused No. 2, Sonsai gave a blow on his head with the result that Moujiram fell on the ground and rolled down to the field. In the meantime the other accused also came from the Eastern and Western directions and joined the first two accused in an attack with lathis. Sadaram, P.W. 4 and Kartik and so also the labourers begged the assailants not to beat Moujiram. But they were threatened. They were asked to go away instantly. Accordingly they went away. The labourers, however, first went to the ploughs because the bullocks had to be unyoked before leaving the place. As they ran away, they turned back to see what was happening. They saw the assault was going on and actually one of the accused namely accused No. 2 doing something near the neck of Moujiram with a sickle.

4. The three labourers first went to the Wada where they met Ratiram, P.W. 11 who was the head servant of deceased Moujiram. They told Ratiram what had happened and named all the accused as

the assailants of Moujiram. Ratiram had a trying time restraining Moujiram's wife from going to the scene of offence. He, therefore, asked Panchram to go to a neighbouring village named Risda which is about a mile away and call Harbhushandas Baba, P.W. 10 who was a friend of Moujiram. Panchram accordingly met Harbhushandas at Risda and told him what had happened. He also told him who the assailants were. Harbhushandas then collected a few people from his village and came to village Puran. It was by this time sun set. Harbhushandas tried to contact other relations in the village but no body was immediately available. Sometime later the brother of Moujiram, Ishwar, who was away from the village came to the Wada. They took a lantern and went to the scene of offence. They found Moujiram dead with numerous injuries on his person. Thereafter Harbhushandas sent Moujiram's Daroga and Kotwal along with Panchram to make a report at the police Station at Pallari. There is another Police Station at the Taluka place of Baloda Bazar which is about 4 or 5 miles away from the village, but the Police Station of Pallari which is about 8 miles away had jurisdiction over the village. They reached the Police Station at about midnight and the First Information Report was recorded at about 1.00 a.m. Habib Khan, Sub-Inspector of Police arrived in the village at about 6.00 a.m. on October 22, 1966.

5. In the meantime, it appears, the Circle Inspector Choubey, P.W. 18 heard a rumour at Baloda Bazar that Moujiram had been murdered. So he came to the village at about 9.00 p.m. He made enquiries and having learnt that the 10 accused were the assailants, he called them all and kept them in the Hospital where he was camping. After the Sub-Inspector of Police, Habib Khan arrived in the morning, they were handed over to him and the investigation proceeded. The clothes of the accused which appeared to have blood-stains on them were attached and at the instance of some of them an axe, a sickle and some lathis were attached. The dead body of Moujiram was sent for post-mortem examination. It was discovered that the deceased had as many as 29 injuries - most of them were either bruises, abrasions or incised wounds. There was only one penetrating wound over mid neck region which was likely to be caused by a sickle. The accused were charged for rioting and murder.

6. The Trial Court disbelieved the evidence on the whole and acquitted the accused. The High Court found that the appreciation of evidence by the learned Sessions judge was highly unsatisfactory and held that all the accused were guilty of murder under Section 302. read with Section 149, I.P.C. All have been sentenced to imprisonment for life.

7. The important evidence in this case is that of the alleged eye-witnesses Pancharam, P.W. 1, Dukhu, P.W. 2, Sukhu, P.W. 3 and Sadaram, P.W. 4. If these witnesses are regarded as reliable and their evidence is believed, there can be hardly any doubt that the conviction is correct. All these witnesses were cross-examined at great length and the learned Sessions Judge has observed that their evidence was substantially consistent and no material discrepancies and contradictions could be found in the evidence of these witnesses. And yet he decided to discard their evidence stating at one stage of the judgment that they were neither wholly reliable nor wholly unreliable and at a later stage that they were not at all reliable. The High Court noticed that the learned Sessions Judge was really unable to make up his mind about the reliability of these witnesses on grounds extraneous to the appreciation of their evidence on merits and therefore proceeded to appreciate the evidence for itself and came to its own conclusion. It is true that the High Court when reversing a finding of acquittal has to bear in mind that the accused have been acquitted by the Trial Court and unless the High Court finds such acquittal unreasonable it would normally not be justified in reversing that findings. The High Court must not only find that the view of the learned Sessions Judge about the evidence was unreasonable but must also give reasons why it does. In our opinion the High Court in this case has shown how the Session Judge was wrong in the appreciation of the evidence, his whole approach to the case being marked by vacillation and prejudice. Only one instance of prejudice may

be noted here. According to the evidence Sadaram and the son-in-law Kartik were sitting near the deceased when the attack took place. Sadaram has been examined in the case. Kartik, however, was not available because he committed suicide a few days after this incident. The suggestion on behalf of the defence was that Kartik committed suicide because he was pressurised to give false evidence and in order to escape torture by the Police he committed suicide. This suggestion made a considerable impression upon the learned Judge although there was no evidence whatsoever to hold that Kartik committed suicide because of any apprehended torture by the Police.

8. The High Court has accepted the evidence of the four eye-witnesses as substantially true. There is no dispute that Moujiram was done to death near his field under the Pipal tree at about 4.00 p.m. on Friday October 21, 1966. It is also not disputed that the operation of ploughing and sowing was going on in the field and in the ordinary course we must expect there would be labourers in the field. It is not also disputed that Panchram, P.W. 1, Dukhu, P.W. 2 and Sukhu, P.W. 3, were agricultural workers, the only difference between the two sides being that according to the prosecution they were temporary hired labourers but according to the defence they were regular servants of the deceased. Therefore, if these three witnesses were actually ploughing the field when the deceased Moujiram was sitting near the Pipal tree, there is hardly any doubt that they would see the assault. And since the accused are residents of the same village known to them, there could be no difficulty in identification.

9. In the second place there is no suggestion whatsoever that any of these three eye-witnesses were in any way hostile to the accused. The fourth eye-witnesses Sadaram, P.W. 4 was actually a supporter of the accused in the litigation. But it appears that after Moujiram got a decree in his favour, Sadaram along with some other cultivators withdraw their support to the other side and came over to Moujiram. The evidence shows that the dispute over the water course had divided the village into two groups - one group supporting the right of the Malguzar to the water and the other group denying him this right. The accused were members of the hostile group. The question which the High Court considered was whether it could be said that these eye-witnesses were so interested in the deceased or his relations that they should come forward falsely to implicate the accused against whom they had personally no hostility. The High Court has come to the definite conclusion that these witnesses especially Panchram Dukhu and Sukhu could not be said to be interested witnesses because they were only casual employees of Moujiram. We are in agreement with this finding. Panchram, P.W. 1 has stated in his evidence that he had joined the service of Moujiram 'only this year' and has admitted further that at the time of giving evidence he was serving his sons. Dukhu, P.W. 2 and Sukhu, P.W. 3 are brothers. They have stated that whenever they were hired for labour in the fields they used to go to Moujiram as day labourers. It was suggested to them that they were the nephews i.e., sister's sons of P.W. Sadaram. They denied that he was any relation of theirs. It appears that Sadaram who has an elderly man was addressed by the youngsters as Mama, but as everybody knows that is only a honorific used in the village by youngsters while addressing elderly people in the village. As already pointed out there is nothing in the evidence to suggest that these witnesses had any hostility towards any of the accused. The evidence also establishes that they were working in the field when Moujiram was assaulted close to them on the bund of the field and they had an opportunity to see the assault themselves. The High Court has accepted their evidence and in the circumstances of the case the reliability of these witnesses cannot be questioned. The learned Sessions Judge showed a degree of hesitancy in appreciating their evidence which, in our opinion, was not justified.

10. No corroboration was necessary for their evidence. It shows that when the assault was going on they all fled from the place because of the threat given to them by the accused. They first went

naturally to the house of the deceased where they met the head servant Ratiram, P.W. 11. They told him the names of all the accused as the assailants and Ratiram corroborates that fact. Ratiram then sent Panchram, P.W. 1 to the neighbouring village to inform Harbhushandas, P.W. 10. Panchram says that he told Harbhushandas about the assault and also named the assailants to him. That is corroborated by Harbhushandas, P.W. 10 also. Later Harbhushandas sent Panchram, P.W. 1 to the Police Station and it is important to remember that after Choubey, P.W. 18 the Circle Inspector arrived in the village, he made enquiries and on the information received by him, he rounded up these very 10 accused and kept them in this custody till P.S.I. Habib Khan, P.W. 16 came next morning. This sequence of events is also important to show that even before the First Information Report was lodged at the Police Station at about 1.00 a.m. the names of the accused were known as assailants and they had been taken into custody.

11. Mr. Phadke, appearing on behalf of the accused, argued that there were several details in the case which if carefully analysed would go to show that the evidence of the eye-witnesses cannot be believed. In the first place, he said that there was a delay in filing the First Information Report. The murder had taken place at about 4.00 or 5.00 p.m. in the afternoon but the actual report of the incident reached the Police Station at 1.00 a.m. This, it is contended, must have been the result of prolonged confabulation amongst various persons concerned. We may say at once that we do not think that there was any undue delay. The three labourers could not be expected to go to the Police Station on their own. They came to the house of Moujiram and informed the head servant. There were no other persons in the Wada who could have acted responsibly at the time Ratiram was after all a servant and he was busy preventing Moujiram's wife from going out of the Wada. In fact he had to keep a watch on her so that she may not escape. He had known that the other two brothers of Moujiram who are living in some other place in the village were away and so the utmost he could think of at the time was to send Panchram, P.W. 1 to call Harbhushandas, P.W. 10 who was a friend of the deceased and as an elderly man was also known in the locality as Baba or Maharaj. Panchram was sent obviously because he had seen the assault himself. Panchram went to call Harbhushandas on foot. He met him there and brought him to the village. By that time it was already sun set. Then they had to go to the field, see the dead body, make some arrangement to keep a watch over the body and thereafter at about 8.00 or 8.30 p.m. Panchram, P.W. 1 was sent to the Police Station along with two others. Harbhushandas did not ask them to go to the Taluka Police Station which was about 4 or 5 miles away but to the Police Station at Ballari which is about 8 miles away. The later Police Station had jurisdiction at the place. It was night time and they had to go through the fields perhaps in a zig-zag manner and in these circumstances it cannot be said that there was undue delay in filing the First Information Report. It was suggested that Panchram must not have left till after Choubey, P.W. 18 the Circle Inspector reached the village. Some support for this was sought in the cross-examination of Sadaram, P.W. 4 to the effect that after Choubey came he had called some of the witnesses to make enquiries and one of them was Panchram. We do not think that we can derive any assistance from the confused evidence given by Sadaram on that part of the case. Choubey stated that when he came, he learnt that some 2 or 3 persons had already left for the Police Station. It was not suggested to Panchram in his cross-examination that he had left the village only after Choubey reached the village. If as a matter of fact Panchram had not left for the Police Station, Choubey the Circle Inspector would have taken his first information and sent the same to the Police Station. If concoction was intended and Choubey had a hand in it, he would not have trusted a mere labourer like Panchram, P.W. 1 to give information in the manner he liked. He was a superior Police Officer. He could have acted as the Officer in charge of the Police Station and taken down the first information in the village itself. It is, therefore, clear that no confabulation or fabrication was possible because Panchram had already left. Thereafter there could be no possibility of a fabrication

in the village itself, for the obvious reason that Pancharam's statement recorded in the Police Station may very possibly be the undoing of the whole concocted story. Choubey stated that since somebody had already gone to the Police Station to lodge the F.I.R. he did not record any statement and that seems to be true. Choubey had come in for some criticism both at the hands of the Trial Court and the High Court, but we do not think that criticism is entirely appropriate. Since arrangements had already been made for lodging the First Information Report at the Police Station he could not record any first information on his own, and when the First Information Report is not there, he could not have recorded the statements of the witnesses. He admits, and there can be no doubt, that he made only enquiries and on the information received, he took the 10 accused into immediate custody. That is all he could possibly do under the circumstances and wait for the arrival of the P.S.I. Some suggestions were made in the cross-examination of some of the witnesses that Choubey had recorded statements of witnesses. It is obvious that the witnesses were not intelligent enough to understand the difference between oral enquiries and recording of statements. But we feel no doubt that Choubey could not possibly have recorded the statements of the witnesses unless he had in the first instance recorded the F.I.R. If fabrication was intended the easiest course for all concerned would have been to recall the persons who had left the village only a short time earlier to go to the Police Station and then record a first information in the manner the Police Officer and those interested in involving the accused desired. We do not find that there is anything suspicious either in the filing of the First Information Report or in the activities of the Circle Inspector Choubey after he reached the village.

12. Mr. Phadke then referred to the fact that the Police Officers made some discovery panchnamas which on the face of them were unconvincing. An axe and a sickle were lying not far away from the scene of offence though at two different places and a little search round about the scene of offence, he contended, would have been sufficient for discovering these two articles. The Trial Court was not satisfied about these discoveries and the High Court has also not relied on the same. Some irregularity may have been there in the manner in which these articles are supposed to have been discovered but it cannot be said that the police had fabricated any evidence. Assuming therefore, that there was some irregularity in the alleged discovery, we do not see how that will affect the evidence of the eye-witnesses.

13. Then it was contended by Mr. Phadke that the eye-witnesses could not have been the assault at all because in the F.I.R. filed by Panchram, P.W. 1 he had mentioned that the deceased was beaten to death with lathis or sticks. He had not referred to any sharp-edged weapons. The post-mortem shows that many injuries were caused by an axe and while there were many which had been caused by sticks, there was also a penetrating wound which could have been caused by the sharp end of a sickle or a knife. In other words, it is clear that out of the assailants there must be some who had used an axe and a sickle. If Panchram, had actually seen the assault, it is contended, he would not have failed to refer to these weapons. The evidence of the eye-witnesses is that while all the accused had sticks with them, accused No. 2 had also a sickle in his hand and accused No. 7 a Tangiya or an axe. The general impression that they got till they ran away from the scene was that these several accused were using their sticks. After they ran away and looked back just for a moment, they noticed that accused No. 2 had stopped down and was scratching near the neck of the deceased with the sickle. It is contended all this evidence was later invented to account for some of the incised wounds and the penetrating wound, noticed by Dr. Tiwari, P.W. 6 as recorded in the post-mortem examination. Panchram when questioned about this omission stated that he did tell the officer about the axe and the sickle and he could not say why the same was not mentioned in the F.I.R. So far as Dukhu, P.W. 2 and Sukhu, P.W. 3 are concerned, their statements had been recorded next morning after P.S.I. Khan came to the place. It is elicited in the evidence of Khan that Panchram, P.W. 1 had

not referred to the axe and the sickle in his diary statement and so also Sukhu had not referred to the same. However, this contradiction with regard to Sukhu, P.W. 3 was not put to him in his cross-examination. In respect of Dukhu, P.W. 2 no such contradiction was either put to him or proved. In this state of the evidence all that can be said is that they had a general impression of an attack by about 10 persons with lathis in their hands and they gave greater importance to the same. If more of them had been armed with sharp weapons like an axe or sickle, they could have perhaps noticed those weapons also. Moreover, they could not have stood there near the attack for any length of time. As soon as they were threatened, they must have run away, and even if the axe was used, they might not have seen it more particularly because the axe was a small one and was being used by one out of the ten assailants who must have surrounded the deceased. If the attack by lathis is true, it will be absurd to think that some others had come there with sickle and axe after the accused had left the place and caused the injuries. We do not, therefore, think that any great capital can be made out of the fact that in the First Information Report the two sharp-edged weapons namely the small axe and the sickle had not been mentioned. In this connection a further point was made by Mr. Phadke, with regard to the sickle which has been actually recovered in this case allegedly at the instance of accused No. 2. Dr. Tiwari, in his evidence was shown the sickle Article A which had been recovered at the instance of accused No. 2 and was asked whether injury No. 29 namely the penetrating wound could have been caused by this particular 'Hansiya'. He said it could not have been caused by this particular sickle because it did not have a very sharp point. He admits that a sharp pointed sickle could have caused the injury. If Dr. Tiwari is right in his opinion, it would only mean, that this injury might not have been caused by the particular sickle and though it was produced by accused No. 2, it may not have been the sickle which he had actually used at the time. The eye-witnesses who had been the scratching with a sickle at the neck from a distance could not possibly identify the particular sickle used. All they could say was that a sickle had been used. We do not, therefore, find anything in the medical evidence which goes to contradict the evidence of the eye-witnesses.

14. Finally it was contended by Mr. Phadke, that the High Court approached the case from a wrong angle. The accused had been acquitted and the State had gone in appeal and, therefore, it was the duty of the High Court to consider the evidence for the prosecution first and then the objections raised on behalf of the defence to that evidence. In the present case, however, Mr. Phadke contends, the learned Judges have reversed the process. It appears to us that this criticism is not justified. After stating the case and the findings of the learned Sessions Judge the High Court in Para 11 of the judgment started with the case put forward on behalf of the prosecution. Learned counsel for the prosecution criticised the Sessions Judge for the way in which he had dealt with the eye witnesses, after admitting that their evidence was consistent and nothing was shown from their cross-examination to cast doubt on their veracity. He, therefore, called upon the High Court to reappreciate the evidence as the judgment of the Trial Court was highly unsatisfactory. At this stage the learned Judges in Para 12 of the judgment mentioned the several points which the defence had raised by way of objections were not considered at this stage. In fact in Para 13, the High Court observed as follows :

"We, therefore, proceed to consider the evidence of prosecution in the light of the grounds raised by Shri Verma and the submissions made by Shri Rajendra Singh in reply to those grounds."

And then from Paragraph 14 onwards the prosecution evidence is considered. We do not think that in fairness to the court it can be contended that the High Court placed the onus on the defence to prove that they were not guilty.

15. In the result, we do not think that there is any justification for us to interfere with the conviction and sentence recorded by the High Court. The appeal is, therefore, dismissed.

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