

Shudhakar Bhanaji Chavan and Others

Vs

The State of Maharashtra

Criminal Appeal No. 33 of 1970

(I.D. Dua, K.K. Mathew JJ)

26.04.1973

JUDGMENT

MATHEW, J. -

1. The appellants were convicted of an offence under Section 302, read with Section 34 of the I.P.C. by the Sessions Judge for Greater Bombay and each of them was sentenced to imprisonment for life. They filed an appeal to the High Court against the conviction and sentence. The High Court dismissed the appeals in limine. This appeal, by special leave, is directed against the order of the High Court.

2. The prosecution case was as follows. The deceased Narain alias Babi, Laxman Dholam (P.W. 3) and appellants 1 to 4 were all residing in the Nariman Bhatnagar Zopadpatti at Prabhadevi. Relations between Babi Naresh (P.W. 4) on one side and the appellants on the other were strained on account of their support of candidates belonging to rival political parties in the municipal elections held in March, 1968.

3. There is a committee appointed by the hutmet dwellers to collect rent at the rate of Rs. 2 per month from the hutmet dwellers. Appellant No. 1 was a member of the committee and appellant No. 3 was its Secretary. The deceased Babi was in arrears of rent and the committee often demanded rent from him and on the night of the incident, i.e. September 12, 1968, Naresh and Laxman had abused the committee members at about 9 p.m. when they had gone to demand rent at the hut of Babi. On the same day, at about 9 or 9.30 p.m. Laxman Dholam was standing near his hut and talking with Babi. At that time Naresh came near the hut of appellant No. 2 and asked him why he was abusing him. Appellant No. 1 slapped Naresh but Laxman Dholam and Babi intervened and separated them. The appellants thereafter gathered together with deadly weapons and wanted to assault Naresh. At about 10.30 p.m. Laxman Dholam saw Naresh running towards building No. 17 and the appellants 1 to 4 following him. At the time appellant No. 1 had a Pharshi (axe), appellant No. 2 had a hockey stick, appellant No. 3 had a small Pharshi and appellant No. 4 had an open knife. They followed him up to building No. 17, but Naresh managed to escape them. While the appellants were returning from building No. 17, one of them said on the way that "Babi Dagadela Ghevuya" meaning "we should take Babi Dagade (deceased)". On hearing this Laxman Dholam went running to the hut of Babi and told him that he should not come out of the hut as the appellants were in search of him. Immediately the appellants came and pushed the door of the hut of Babi and opened it. They entered the hut with the weapons in their hands. At that time P.W. 5 Laxmibai was serving meals to her husband Babi. Two chimney lights were burning in the hut. Babi got up when he saw the appellants. Then appellant No. 1 gave him a blow with the Pharshi. Babi's wife intervened but she was pushed aside Babi ran outside and tried to climb the compound wall of the

Hindu Cemetery which is adjacent to his hut. While he was so climbing, appellant No. 4 gave two stabs with a knife on his back. Appellant No. 3 gave him another blow but it caused injury on the left hand of appellant No. 4. Thereafter the appellants threw Babi in the Hindu Cemetery and returned through the hut of Babi. Babi was carried into the hut by his wife and others Laxman Dholam lodged the first information report in the police station. The police came and saw Babi lying injured in a pool of blood in the hut. He was removed to the K.E.M. Hospital. Dr. (Miss) Subramanyam examined Babi at about 11.45 p.m. and found a stab wound. His general condition was poor. She has made an entry in the casualty register which is produced at Ex. 18. Dr. Michael Dequadres (P.W. 14) examined Babi and found the following external injuries :

- (1) Incised wound 7th space anterior about 6" from midline on the left side 1/2" x 3/4" x ? deep. Omentum sticking out.
- (2) Incised wound about 10th space 1 1/2" from midline on left side at the back 1" x 1/2" x ? deep.
- (3) Incised wound about 10th space 1" from midline on left side 1" x 1/2" x ? deep at the back.

in spite of the treatment Babi died at 1 o'clock. Dr. (Miss) Bhatia (P.W. 10) conducted post-mortem on September 18, 1969, and found three external injuries which are note above. Dr. (Miss) Bhatia opined that all these injuries were ante-mortem. The cause of death was due to traumatic perforation intestine haemopertomium, multiple injuries and shock. In her opinion, all these injuries were necessarily fatal.

4. A the trial, the appellants denied their complicity in the offence.

5. The learned Sessions Judge found that Laxman Dholam (P.W. 3) cannot be believed when he said that appellant No. 1 stabbed Babi on his abdomen with the Pharshi in the hut, as he was standing outside the hut and he could not also be believed when he deposed that appellant No. 4 stabbed Babi when he climbed the Cemetary wall as he could not have seen any one stabbing him on account of darkness. The Court, however, believed his evidence when he said that the appellants entered the hut. The Court believed the evidence of Laxmibai, the wife of the deceased, when she deposed that appellant No. 1 stabbed the deceased in the hut with the Pharshi. From the circumstances proved in the case the Court found that although there is no direct evidence as to who among the appellants stabbed the deceased while he was climbing the Cemetery. It must be one among the appellants who stabbed him and convicted the appellants of the offence.

6. The appellants had raised the following specific grounds in their memorandum of appeal in the High Court :

- (1) The trial court was in error in believing only one sentence of the entire evidence of Laxman Dholam, namely, that he saw the four appellants with some weapons in their hands entering the hut of Babi; when the witness was found prone to make false statements it was improper to have accepted one sentence from his evidence for the purpose of convicting the appellant.
- (2) The trial was in error in holding that the statement of Laxmibai in her evidence that her husband was stabbed by the Pharshi article is corroborated by medical evidence, as, in the cross-examination of the doctor, it was specifically stated that injury No. 1 could not have been caused by a Pharshi article.
- (3) The trial court went wrong in convicting the accused on the basis that it was one among them

who stabbed the deceased while he was climbing the Cemetery wall as it was pitch dark.

7. In *Narayan Swami v. State of Maharashtra* ((1968) 2 SCR 88, 91-92 : AIR 1968 SC 609 : (1968) 2 SCJ 179.), this Court said :

"There is no controversy, that the appellant, who has been convicted, on trial, by the Sessions Judge, had a right of appeal, to the High Court, under Section 410, Cr.P.C. The appellant was also entitled, under Section 418, Cr.P.C., to agitate, in his appeal, before the High Court, findings of fact, recorded against him as also question of law, available to him. No doubt, under Section 421, Cr.P.C., the Appellate Court may dismiss an appeal, summarily, if, on a perusal of the petition of appeal, and a copy of the judgment appealed from, it considers that there is no sufficient ground for interference. This section, has come up for consideration, before this Court in *Mushtak Hussein v. State of Bombay*, 1953 SCR 809. This Court has held, therein, that in a case, which, prima facie, raises an arguable issue, a summary dismissal of the appeal, may be justified, but, in arguable cases, a summary rejection order must give some indication of the views of the High Court, on the points raised. Again, in a case, where the High Court summarily dismissed an appeal, in one word 'dismissed', this court in *Shreekantiah Ramayya Muniballi v. The State of Bombay*, (1955) 1 SCR 1177, again reiterated the view expressed in the earlier decision, referred to above, and stated that summary rejection of appeals, which raise issues of substance and importance, was not justified. After adverting to the two decisions noted above, this court, again in *Chittaranjan Das v. State of West Bengal*, (1964) 3 SCR 237, laid down that there can be no doubt, whatever, that in dealing with criminal appeals, brought before them, the High Courts should not summarily reject them, if they raise arguable and substantial points. Bearing these principles in view, the question naturally arises as to whether the appeal file, by the appellant, before the High Court of Bombay, raised any arguable point, or whether the questions raised were substantial and important."

See also the recent decisions of this Court in *Pala Singh and Another v. State of Punjab* ((1972) 2 SCC 640 : 1973 SCC (Cri) 55.), *Jeewan Prakash v. State of Maharashtra* ((1972) 3 SCC 266 : 1972 SCC (Cri) 491.), and *Mustaq Ahmed Hussain and Another v. State of Gujarat* ((1973) 1 SCC 702 : 1973 SCC (Cri) 590.).

8. As the appellants have raised arguable issues which ought not to have been disposed of in a summary manner, we set aside the order of the High Court and remand the appeal to it for fresh disposal in accordance with law.

9. The appeal is allowed. We hope that the High Court will dispose of the appeal at a very early date.

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