

Chandrakant Luxman

Vs

State of Maharashtra

Criminal Appeal No. 120 of 1970

(S. N. Dwivedi, Y. V. Chandrachud JJ)

19.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. The learned Additional Sessions Judge, Greater Bombay, acquitted the appellant of a charge under Section 302 of the Penal Code for having committed the murder of one Arjun Daya on the evening of December 11, 1966. In an appeal filed by the State of Bombay High Court, Bombay, set aside the order of acquittal and convicted the appellant of the offence of which he was charged. This Court granted to the appellant special leave to appeal from the judgment of the High Court.

2. On the morning of December 11, 1966 a quarrel took place between the appellant and one Govind Sajan, the nephew of the deceased Arjun. Arjun intervened in that quarrel which was resented by the appellant.

3. At about 4.30 p.m. the same day Arjun Daya had gone to the fish market accompanied by a boy called Sunder. Arjun met the appellant in the market and that revived the memories of the morning incident. The two started abusing each other and during the quarrel the appellant is alleged to have picked up a Mogri (a wooden hammer normally used for cutting ice) and to have given a blow with it on the back of Arjun's head. As a result of that blow Arjun fell down.

4. The case of the prosecution is that one Kana Bhika and the boy Sunder saw the assault. One Mohan Babu wrapped a handkerchief around the injury received by Arjun and reached him to his house.

5. Sunder narrated the incident to his mother, Nanbai, who sent a word to Arjun's wife Ratanbai. Arjun is said to have told his wife that the appellant had assaulted him. Arjun is also alleged to have given the same information to Nanbai.

6. Arjun and his wife then went to the Bandra Police station at about 6.15 p.m. P.S.I. Baig who was in charge of the police station did not record Arjun's complaint and directed him to go to the Podar Hospital for treatment. Dr. Narendra Dixit, who treated Arjun wanted to admit him as an in-door patient but Arjun declined to be admitted to the hospital. He went back to the Bandra Police station when P.S.I. Baig asked the Assistant Station House Duty Officer Bhaskar Sawant to take down Arjun's complaint, treating it as a non-cognizable complaint. Arjun then went back to his house.

7. Although P.S.I. Baig treated the offence as non-cognizable, the appellant was put under arrest on the 11th itself under section 151 of the Code of Criminal Procedure and was detained at the Police

Station. On the next day, i.e. the 12th Arjun's condition became worse and therefore he was taken to the Podar Hospital once again. He died on the morning of the 14th.

8. The appellant denied that he assaulted Arjun. According to him he was taken to the police station on the evening of the 11th and was detained there at the instance of Arjun. The appellant stated that the witnesses examined by the prosecution had implicated him due to previous enmity.

9. The prosecution examined Kana Bhika and Sunder Govind to depose to the actual incident; Ratanbai and Nanbai to depose to the dying declaration made by Arjun; Govind Sajan to depose to the morning incident; and Mohan Babu who, immediately after the incident, had taken Arjun to his hours. The evidence of these witnesses was placed before us by learned Counsel for the appellant but we, are unable to see any reason for interfering with the order of conviction recorded by the High Court.

10. The learned trial Judge disbelieved the evidence of the eye-witnesses Kana Bhika and Sunder Govind almost wholly on the ground that the version of the incident given by them was not consistent with the earlier version recorded at the Bandra Police station, on the evening of the 11th. In coming to this conclusion, the learned Judge overlooked that the officer in charge of the police station adopted an unduly light-hearted attitude to the complaint which Arjun wanted to make and in fact in a departmental proceedings taken against the officer a fine was imposed on him for remissness in the discharge of his official functions. Counsel for the appellant is right that the benefit of what the High Court terms a "highly defective" investigation cannot go to the prosecution. If it were to appear that the story narrated by Arjun immediately after incident was in material particulars different from the evidence of the eye-witnesses the benefit of such an infirmity would have gone to the accused, but if on a proper evaluation of the various facts and circumstances it transpires that the apparent inconsistencies in the case of the prosecution are solely the result of remissness on the part of the investigating officer and not of any improvement or prevarication on the part of the prosecution witnesses, there would be no justification for discarding the accusation.

11. The High Court has discussed the evidence led by the prosecution, particularly the evidence of the eye-witnesses, with some meticulousness and we see no justification for embarking upon a fresh appraisal of that evidence. The evidence of the principal eye-witness, Kana Bhika, of which the salient features were brought to out notice by the appellant's counsel and that of Ratanbai, who deposes to the dying declaration made by Arjun leaves no doubt that the conclusion to which the High Court has come is correct and must be upheld.

12. We therefore dismiss this appeal and confirm the order of conviction and sentence.

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