

Bhim Singh Rup Singh

Vs

State of Maharashtra

Criminal Appeal No. 165 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

28.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. The learned additional Sessions Judge, Greater Bombay, acquitted the appellant of the charge that he had committed the murder of his wife's brother, Narayan. Setting aside the order of acquittal, the High Court of Bombay has convicted the appellant under Section 302, Penal Code, and has sentenced him to imprisonment for life. The main question which arises in this appeal by special leave is whether the High Court was justified in interfering with the order of acquittal.

2. The appellant was married to Lata, sister of the deceased Narayan in 1957. Towards the beginning of 1967 Lata came to Bombay and was staying with her parents at Bhandup. Appellant wanted Lata to go back to him and that led to disputes between him and the deceased. It is alleged that at about 5.30 p.m. on May 12, 1967, the appellant stabbed Narayan while the latter was sitting in a shop called Regal Stores owned by one Ramnath Aurora. Narayan died on his way to the hospital and it was a week later that the appellant was arrested at Rhishikesh.

3. Denying that he had committed the murder of Narayan the appellant contended that he was at Kharda, district Ahmednagar, on the date of the incident and that a few days thereafter he had gone to Rhishikesh where he was put under arrest.

4. The prosecution examined eight witnesses to prove its case, out of whom Ramnath Aurora (P.W. 5) and Bhanushali Parpia (P.W. 6) are alleged to be eye-witnesses to the occurrence. From out of the remaining witnesses, the only ones whose evidence is now relevant are Sumitra (P.W. 2) sister of deceased Narayan, Lata (P.W. 7) another sister of the deceased and the wife of the appellant, and a police Constable called Kevalaprasad Rai (P.W. 11).

5. The age-old controversy with regard to the width and scope of the powers of the appellate Court in an appeal against an order of acquittal must be taken as settled by the decision of this court in Sawant Singh & Ors. v. State of Rajasthan. ((1961) 3 SCR 120 : AIR 1961 SC 715 : 1961 (1) Cri LJ 766) It was held therein that the appellate court has full powers to review the evidence upon which the order of acquittal is founded and that the different phrases used in some of the judgments of this court like "substantial and compelling reasons", "good and sufficiently cogent reasons", and "strong reasons", were not intended to curtail the undoubted power of the appellate Court to review the entire evidence and to come to its own conclusion in an appeal against acquittal. It was, however, emphasised that in exercising this power the appellate Court, while dealing with an order of acquittal, should not only consider every matter on record having a bearing on the questions of fact

and the reasons given by the Court below in support of its order of acquittal but it must express its reasons in its judgment which led it to hold that the acquittal is not justified. Following this decision, this Court in Ramabhupala Reddy and Ors. v. The State of Andhra Pradesh, ((1970) 3 SCC 474 : 1971 SCC (Cri) 80) held that to the tests laid down in Sanwat Singh's case may be added another that the appellate Court must bear in mind the fact that the trial Court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal. Therefore, "if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court, should not disturb the findings of the trial Court". It is this additional test is applied to the instant case the conclusion is compulsive that the High Court has exceeded its powers in setting aside the order of acquittal recorded by the trial Court.

6. We will only refer to a few outstanding facts in order to demonstrate how, at any rate, two views of the evidence are reasonably possible in this case. It might even be possible to take a step further and say that the conclusion recorded by the trial Court is to be preferred on the facts and circumstances of the case. But this Court does not ordinarily embark upon a fresh assessment of evidence in these matters and therefore we will confine ourselves to showing why the High Court ought not to have interfered with the order of acquittal.

7. The main witness in the case is Ramnath Aurora in whose shop Narayan was done to death. Ramnath says that he saw the appellant stabbing Narayan on his chest, that he went to the rear of his shop and shouted that "Lata's husband has assaulted Narayan with a knife" and that immediately thereafter Lata and her sister Sumitra came running to the shop. Soon after the stabbing incident Kevalaprasad Rai, a police Constable attached to the Bhandup police station, reached the scene of offence. Ramnath Aurora says that his statement was recorded by the police in his shop between 6 and 6.30 p.m., that is, about an hour after the incident.

8. It was vital from the point of view of the prosecution to establish that Ramnath's statement was recorded immediately after the incident and Ramnath lent a helping hand by deposing accordingly in his examination-in-chief. He was, however, driven to admit under the stress of cross-examination that his statement was typed at the police station, which in the light of other evidence would mean that the statement was so typed at about 9.30 p.m. Ramnath found it hard to riggle out of the impasse which he had created by making irreconcilable statements on an important aspect of the case and the best he could do was to say that the statement which he made in his shop between 6 and 6.30 p.m. was taken down in hand while the one at the police station was typed out. Even as Ramnath was offering this explanation in the witness-box, the learned Public Prosecutor intervened to say that on the record of the case there was no hand-written statement. A note to that effect is made by the trial Court while recording the evidence of Ramnath.

9. Two possibilities arise out of the conflicting assertions made by Ramnath : one, that Ramnath made two different statements at two different points of time, out of which one is suppressed by the prosecution, and two, that Ramnath made only one statement, namely the statement which was typed out at night. Bhanushali Parpia who also claims to be an eye-witness has stated in his evidence that his statement was recorded at the police station at 10 p.m. and that he was called into a room when Ramnath's statement was being recorded. The High Court has dealt with this situation thus : "It is not difficult to visualise what must have happened. The Investigating Officer S. I. Khairnath must have interrogated Ramnath Aurora in his shop and must have made his notes. S. I. Khairnath did not then record a regular statement as such, presumably because S.G.S.I. Amirsingh was incharge of the investigation. We do not find any substance in the defence contention that the statement which Ramnath Aurora says was recorded in his shop was different from the one recorded

at the police station soon after 9 p.m. and the former statement is deliberately suppressed by the prosecution". The view taken by the High Court is not supported by any evidence on the record and indeed, as the very finding recorded by the High Court shows, it was attempting to visualise "What must have happened". S. I. Khairnath does not say in his evidence that he made any notes after interrogating Ramnath at the scene of offence. It must therefore follow either that Ramnath's statement was recorded in the shop but that statement was suppressed or in the alternative that his statement was recorded for the first time a few hours later at the police station. Before he was taken to the police station he had met a host of relatives of the deceased and his own evidence showed that he had some familiarity with them. There were disputes between Narayan and the members of his family on the one hand and the appellant on the other. On the record of the case is a complaint (Ex. 15) made by Laxmibai, the wife of Narayan against the appellant and a complaint (Ex. 20) lodged by the appellant against Narayan at the police station. The High Court has itself recorded a finding that the appellant bore a grudge against Narayan.

10. The appellant ordinarily resided in a place called Kharda in the district of Ahmednagar and therefore Ramnath could not have known him in the ordinary course. Ramnath, however, claimed that he could identify the appellant because the latter had stayed with Narayan for two or three days a few days before Narayan was murdered. Sumitra, the sister of Narayan, says specifically in her evidence that the appellant had not stayed with Narayan. The High Court noticed that "There is undoubtedly apparent conflict in the evidence of the two witnesses" and it resolved the conflict by saying that Sumitra was a school-going girl and that "she was out of the house at the material time". Granting that Sumitra was a school-going girl, we do not understand how she would not be in the house at anytime during the two or three days that the appellant is said to have stayed with Narayan. Sumitra's evidence remained incomplete on the previous day and on the next day she improved upon her version by saying that while in the witness-box she saw her brother's blood-stained clothes and being frightened and confused she made a wrong statement that the appellant had not come to reside with Narayan. This explanation is impossible to accept but the High Court thought : "After all she is a school-going girl and the explanation offered by her does not appear to be absurd or ridiculous". Lata, the other sister of Narayan and the wife of the appellant, also stated in her evidence that the appellant had never stayed with Narayan in May, 1967. The High Court overcame the difficulty arising out of Lata's evidence by saying that she was trying to save her husband after having lost her brother. We are unable to find any justification for the finding that Lata was trying to save her husband. She has spoken without reservation about the enmity between her husband and her brother and she has also deposed that Ramnath had shouted from his shop that her husband had caused a knife injury and had run away.

11. Bhanushali Parpia went to Ramnath's shop immediately after the stabbing incident had taken place and in fact he claims to be an eye-witness to the murder. He stated in his evidence that all that Ramnath told him was that Narayan was stabbed with a knife and that the assailant had run away. In other words, Ramnath had not told Bhanushali that the appellant had stabbed Narayan. In paragraph 17 of its judgment the High Court has noticed this important aspect of the evidence but it has made no comment on it. If Ramnath had identified the assailant, it is highly unlikely that he would not mention his name to Bhanushali. The fact that he did not disclose the name shows that he was not able to identify the assailant which in turn shown that Sumitra and Lata were right in saying that the appellant had not stayed with Narayan. Narayan's house is just behind Ramnath's shop and it seems obvious that an attempt was made to establish that the appellant had stayed with Narayan in order that Ramnath should be in a position to say that he had seen the appellant in Narayan's house.

12. In regard to Bhanushali there is more than one reason why the trial Court was justified in

rejecting his testimony. He says that he had to talk with anyone at the scene of offence, not even with the police Constable, Kevalaprasad Rai. Later he introduced an improvement by saying that he had given his name to Kevalaprasad as "Mithubhai". That is obviously his pet name and it is enigmatic how the police could have contacted him the very same evening without knowing his true name and address. His evidence that he chased the appellant but never shouted during the pursuit is too artificial to be accepted. He introduced in his evidence the episode of chasing for he wanted to lay the foundation for an opportunity to identify the appellant. The High Court has attached importance to the fact that Bhanushali and Ramnath had identified the appellant in the identification parade. The learned trial Judge rejected the evidence in regard to the identification because Bhanushali admitted that he and Ramnath were able to see the parade-room from where they were sitting. If they could see the parade-room they would be in a position to see the appellant being taken to that room from the lock-up. The High Court differed from the trial Court by saying that even if the parade-room was visible from the place where the witnesses were sitting, it does not necessarily follow that they could see what was going on inside the room. The point of the matter was that the appellant could be seen while on his way from the lock-up to the parade-room.

13. Thus the trial Court had good reasons for discarding the evidence of the alleged eye-witnesses. The reasons given by the High Court for taking a contrary view of that evidence are certainly not of the nature and character as would justify interference with the order of acquittal recorded by the trial Court. We will only add that for the various reasons discussed above the evidence of Ramnath and Bhanushali fails to impress us.

14. We therefore allow the appeal, set aside the order of conviction and sentence passed by the High Court and acquit the appellant. He shall be set at liberty.

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