

Narayan Shankar Gaikwad and Others

Vs

The State of Maharashtra

Criminal Appeal No. 216 Of 1970

(M. H. Beg, Y. V. Chandrachud, R. S. Sarkaria JJ)

12.02.1974

JUDGMENT

BEG, J. -

1. This is an appeal by special leave against the judgment and order of the Bombay High Court allowing an appeal against the acquittal of the three appellants by the Sessions Judge of Poona from charges framed under Section 302 read with Section 34, Indian Penal Code.

2. It was alleged that, on November 18, 1966, at about 9 p. m. the three appellants, Narayan Shankar Gaikwad, Datu Mahadeo Dhume and Jagannath Baburao Hingmire, had murdered Jal Pirosha Khambata at a place below Swargate Canal Bridge behind Kirloskar Press Ltd., at Poona, by hitting him with stones. The body of the murdered man was discovered on the evening of November 19, 1966 by K. L. Lawangare, P.W. 5, who had gone out for a stroll with his friend Hanif Mohomad by the side of the Canal. It was partly submerged in water and a heavy piece of stone weighing about 20 kilos was found placed over the face which had been battered.

3. The deceased had left Bombay in August, 1966, with his belongings, for Poona, where he rented a room and tried his luck in dry fish business and in the ice-cream business. During this period he came in touch with the appellant Narain Shankar Gaikwad who was running a Tea stall at Fursungi Railway Station. On November 4, 1966 he moved into the house of Gaikwad near Fursungi. He had advanced him a loan to run his Tea stall business in which he was probably a partner. Gaikwad was also employed in a Metal factory near Swargate where accused J. B. Hingmire too worked. The appellant accused D. M. Dhume is the brother-in-law of the accused N. S. Gaikwad.

4. There was no eye-witness of the occurrence. But a great deal of evidence was led in the case to establish a chain of circumstances each of which was disbelieved by the trial Court but believed by the High Court after a careful scrutiny and discussion of the whole evidence. The following circumstances were found fully established by the Division Bench of the High Court against the appellant :

I. That the accused had motive as well as opportunity for committing the offence.

II. That accused Nos. 1 and 2 were last seen in the company of the deceased in Poona City during the afternoon of 18th November, 1966, prior to his murder.

III. That at about 10.00 p.m. and thereafter on 18th November, 1966, presumably after the murder of the deceased, the three accused were found together in Poona till

they slept at the house of witness Sitabai Dhume.

IV. That during this period the three accused went together to Kashinath Shigwan and pawned with him a wrist watch which must have been snatched from the dead body of the deceased.

V. That on or about the 21st of November, 1966, accused No. 1 represented to others that the deceased was stuck in Poona and tried to misappropriate some of the properties of the deceased.

VI. That when the accused were arrested on the 27th and 28th of November there were tell-tale injuries on their persons, their clothes were also stained with blood, and the blood was found on analysis to be human and of the same group as the blood of the deceased.

VII. That the wrist watch of the deceased was discovered as a result of statement made by accused No. 3 on 29th November and that the gold ring worn by the deceased was discovered as a result of statement made by accused No. 1 on 2nd December.

VIII. That the accused failed to give any satisfactory explanation of the above circumstances.

5. The High Court had fully considered each set of these circumstances and the evidence produced in support to establish them. The murdered man was a bachelor and was shown to have stayed at the house of the appellant N. S. Gaikwad on November 17/18, 1966. Dhume, the brother-in-law of Gaikwad, was shown to have been absent from work during November 9-22, 1966. Hingmire was a co-worker of Gaikwad. All the three accused were found moving about together and had telltale injuries on their persons with blood stained clothes when arrested. The grouping of the blood of these stains was that of the deceased although one of the accused Dhume, whose clothes also were found to have the blood stains of the same group 'A', claimed that the blood on his clothes was from his own injury. But his injury was only a contusion. There could be no blood coming from it. The other two accused could not explain the blood of group 'A' on the clothes they were wearing when they were arrested. The wrist watch of the deceased, which was recovered as a result of the statement of Hingmire, was identified by a number of witnesses : Torde, the landlord of the house in which the murdered man had stayed for more than 3 months, Samuel Barlie, another tenant in that house Rustumji Ardeshir, the maternal uncle of the deceased, and Nariman Khambata, the elder brother of the deceased. It is difficult to understand how the Sessions Judge could reject all this reliable testimony from various sources. Even the aunt of the appellant Sitabai Dhume had stated facts showing that the three appellants were moving about together before and after the murder when they came and stayed at her house for several days. The movements of Gaikwad and Dhume with the deceased in the course of purchases, such as that of a loaf of bread and cigarettes, and the meal they had at a restaurant on November 18, 1966, with the deceased were proved by unimpeachable evidence. The evidence could not be said to be concocted as every witness did not identify the photograph of the deceased. It was enough that, Narain Patel, a servant of Udipi Restaurant, and Vinilal Suratwala, from whom Gaikwad, appellant, used to purchase cigarettes, had identified the deceased from his photograph as the Parsi gentleman in the company of the two appellants. It was also fully proved that the three appellants were seen together late on the evening of the murder and had gone to Eknath Bhargude who supplied them with 'Dalda' (the code word for

illicit liquor) after the murder before pawning the wrist watch with K. Shigwan Curiously, the learned Sessions' Judge disbelieved Bhargude because he sold illicit liquor.

6. After having been taken through the judgment of the High Court and having examined the reasoning of the learned Sessions' Judge, in the light of the evidence in the case, we find ourselves in full agreement with the High Court. The learned Sessions Judge had committed gross errors in rejecting overwhelming evidence to prove all the circumstances listed above, for reasons which were irrelevant or perverse except those for doubting one piece of evidence about an attempt to sell one item of deceased's furniture for Rs. 300 to a railway porter who earned about Rs. 113 per month. The High Court had rightly found nothing to doubt the veracity of the rest of the evidence.

7. The appellants, far from advancing any acceptable explanation of their incriminating conduct and activities, had chosen to try to shelter behind false denials, No reason, whatsoever, could be made out for perjury by so many prosecution witnesses from various sources including a relation of Gaikwad and a cigarette-vendor from whom Gaikwad was in the habit of purchasing cigarettes. No possible motive for false implication could even be suggested against the witnesses produced who withstood the test of cross-examination well.

8. Therefore, in complete agreement with the High Court, we are of opinion that the incriminating circumstances established against the accused are not explicable on any hypothesis except that the three appellants, acting in concert, had committed the murder of the deceased and then tried to dispose off his belongings in an attempt to make illegal gains. Accordingly, we affirm the convictions and the sentences of life imprisonment passed by the High Court and dismiss this appeal.

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