

Sampat Tatyada Shinde

Vs

State of Maharashtra

Criminal Appeal No. 184 Of 1970

(V. R. Krishna Iyer, R. S. Sarkaria JJ)

14.02.1974

JUDGMENT

SARKARIA, J. -

1. Appellant, Sampat Tatyada Shinde (27) was tried and convicted for an offence under Section 302, Penal Code, for the murder of his brother, Tukaram and sentenced to imprisonment for life by the Additional Sessions Judge, Greater Bombay. The appellant's appeal was summarily dismissed by the Bombay High Court without recording any reasons. He has come up in appeal by special leave to this Court. The prosecution story runs as under :

2. The appellant and his brother, Tukaram deceased were natives of village Patan in Taluka Satara. At the material time, the two brothers were employed in Simplex Mills at Bombay, and, in that connection, Tukaram deceased was staying with his brother-in-law, Anna Kadam, in Patra Chawl, Bombay, while the appellant was residing in the same Chawl in a different place. There was a dispute between the appellant and the deceased over the partition of the lands situate in the area of their village. The appellant was pressing the deceased to agree to partition but the latter was evading to give his consent. The appellant took a month's leave from his employer for seeing through the partition. For that purpose, he wanted Tukaram to accompany him to the village. Tukaram refused. Incensed by the intransigent conduct of the deceased, the appellant resolved to belabour him.

3. On October 25, 1968, in afternoon, the appellant assaulted Tukaram in front of a milk shop with an iron pipe (Art. A) which he had purchased earlier on the same day from the shop of Kurban Singh Hussanali. He inflicted a number of blows causing multiple injuries and fractures of bones. The appellant went away taking the weapon with him.

4. The occurrence was witnessed, among others, by P.W. Adam Khan who was working at the adjacent shop of Noor Mohd., Namdeo Pawar P.W. 3 and Abu Rehman P.W. 4. One Ashok Shankar Wakashe, saw the deceased lying in a pool of blood at the spot soon after the assault. He went to the Agripada Police Station and lodged that First Information Report. Thereupon, at about 2.35 p. m. Ram Rao Suryavanshi, Sub-Inspector of Police, accompanied by the informant, rushed to the spot in a police jeep. He found Tukaram lying unconscious. He immediately removed him to B. Y. L. Nair Hospital where he has declared dead.

5. Appellant was arrested by Vishwanatha Sawant on the night of October 25, 1968, while he was found sleeping on the platform at the Central Railway Dadar Station. A Railway ticket to Poona was found in his shirt pocket. His shirt and pyjama were found blood-stained and were seized. Subsequently, the appellant led the police in the presence of Panchas to the Municipal Compound

and produced therefrom the blood-stained iron pipe (Ex. Art. A). These blood-stained articles were sent for chemical examination. Human blood was found on the clothes which were seized from the appellant at the time of his arrest.

6. Post-mortem examination of the dead body was performed by Dr. Frankline who found numerous injuries including fractures of the skull, bridge of the nose and the jaws. All these injuries were, in his opinion, sufficient to cause death within half an hour of the assault.

7. Two identification parades of the appellant were held by Shri J. P. Deshmane. In the one held on October 26, 1968, P.W. Adam Khan correctly identified him. At the second held on October 27, 1968, P.Ws. N. D. Pawar and Abu Rehman correctly identified the appellant.

8. At the trial, Anna Kadam, (P.W. 6), the brother-in-law, and K. T. Shinde (P.W. 12), the brother of the deceased testified how on account of the dispute over partition of land, relations between the appellant and the deceased were estranged.

9. The mainstay of the prosecution was the evidence of the three eyewitnesses. P.W. 2, Adam Khan, P.W. 3, N. D. Pawar and P.W. 4, Abu R. Shaik. At the material time, Adam Khan, was working in the bidi shop of Noor Mohammad at a distance of hardly 10' from the scene of murder. N. D. Pawar, a hawker, was residing in Kasambhai Chawl, adjoining Mala Building, in front of which the occurrence took place. He was resting at his residence after lunch. At about 1.30 p.m., on hearing the noise he came out and saw the incident. P.W. 4, Abu R. Shaik was a butcher by occupation. The day of occurrence being a Friday, he was, as usual, observing it as an off day. He was residing in the first floor of Ghasletwala Building which is at a short distance from the scene of crime. The witness was standing on the footpath near the said building, when he saw the appellant assaulting the deceased with the iron pipe (Art. A).

10. Then, there was the evidence of P.W. 7 Lance Naik, Vishwanath Sawant, who with the assistance of Kisan Ramchandra Jadhav, located had arrested the appellant, same night at the Central Railway Dadar Station. P.Ws. 1 and 7 testified how a Railway ticket for Poona and blood-stained shirt and pyjama were removed and seized from the person of the appellant at the time of his arrest. P.W. 10 Deshmane, deposed to the test identification parade at which P.Ws. 2,3 and 4 had correctly identified the appellant. Dr. Frankline, P.W. 14 stated that the multiple injuries found on the deceased, could be caused with the iron pipe (Art. A). P.W. 13, Investigating Officer, gave evidence among other matters, about the recovery of the blood-stained iron pipe (Art. A) from the compound of the Municipality in consequence of the information given by the appellant. Kurbansing Hussanali P. W. 11, vouched that on the day of occurrence at about 12 noon, the appellant had purchased iron pipe (Art. A) from his shop.

11. Appellant admitted his arrest at the Railway Station, Dadar and the recovery of the Railway ticket from him. He denied all the remaining circumstances appearing in evidence against him.

12. Learned trial Judge found that the bickerings between the accused and the deceased on account of the dispute over land, could furnish a probable motive for the appellant to assault the deceased. He further found that the ocular account given by the eye-witnesses was trustworthy. With regard to the evidentiary value of the test identifications, the learned Additional Sessions Judge said :

"I may make it clear that I am not suspecting the identification parade in the sense that if the identification parade itself falls down, I should raise the inference that the

eye-witnesses were never at all present and the evidence they are giving is concocted evidence. On the contrary, I think that witnesses give evidence which is natural. They are not tutored. In a stricter identification also they could have been able to point out the right person. With these comments I would like to leave aside the evidence of the identification parade and would be desirous of finding corroboration for the account given by the eye-witnesses."

13. He then noted that the circumstance of leading the police by the appellant to the shop of Kurbansingh Hussanali and the latter's testimony that it was the appellant who had purchased the pipe only a couple of hours before the occurrence from his shop; the recovery of this blood-stained pipe (Art. A) at the instance of the appellant from the Municipal Compound and the human blood found on the clothes of the appellant at the time of his arrest, furnished sufficient corroboration of the evidence of the eye-witness relating to the identification of the appellant as the assailant of the deceased.

14. Mr. Vimal Dave, who assisted the Court as amicus curiae, contends that the entire case hinges upon the question of identification of the appellant as the assailant by the three eye-witnesses (P.Ws. 2,3 and 4). It is stressed that the identification parades held by Shri Deshmane were of little value because they were held within the precincts of the police station and prior to the parades, the police must have shown the appellant to the witnesses Reference has been made in this connection to the observations of the trial Court. It is maintained that if the evidence of the test identifications were excluded, the prosecution case would collapse.

15. We agree that in view of the infirmities noticed by the trial Judge, these test identifications were of little value. But that is not the 'be-all' and 'end all' of the case.

16. The evidence of test identification is admissible under Section 9 of the Evidence Act; it is, at best, supporting evidence. It can be used only to corroborate the substantive evidence given by the witnesses in Court regarding identification of the accused as the doer of the criminal act. The earlier identification made by the witnesses at the test identification parade, by itself, has no independent value. Nor is test identification the only type of evidence that can be tendered to confirm the evidence of a witness regarding identification of the accused, in court, as the perpetrator of the crime. The identity of the culprit can be fixed by circumstantial evidence also.

17. In the instant case, there were tell-tale circumstances which unerringly marked out the appellant as the assailant of the deceased. It was firmly established that the iron pipe (art. A) was the weapon with which the assailant had fatally assaulted the deceased. The Serologist found human blood on the pipe. It (art. A) was recovered from the Municipal Compound at the instance of the appellant. Further, it was the appellant who led the investigating officer to the shop of Kurbansingh Hussainali. The latter testified that it was the appellant who had on that fateful day at about 12 noon purchased this iron pipe from his shop. It is true that this witness was not asked to identify the appellant at the test identification parade. But this does not detract from the value of his testimony when the very fact of purchase of the pipe from his shop, was a fact discovered at the instance of the appellant. It is noteworthy that the appellant had in his examination under Section 342, Cr. P.C., stated that he had been taken by the police to the shop of P.W. 11. Dr. Frankline opined that the injuries found on the deceased could have been caused with this iron pipe. The three eye-witnesses not only identified the appellant but also the iron pipe (art. A) in Court as the assailant and the weapon of offence, respectively. Furthermore there were blood-stains on the clothes of the appellant at the time of his arrest. According to the Chemical Examiner these stains were of human blood.

The appellant did not give any explanation how this blood came on his clothes.

18. Mr. Dave further contents that the witness at the time of the occurrence, had seen only the back of the assailant and consequently, they were not in a position to identify the culprit at the time of the incident.

19. This contention was canvassed before the learned trial Judge and was rightly repelled by him. The witnesses saw the incident from a very close distance in broad daylight. While assaulting the appellant could not remain in a static posture. The witnesses do not positively say that did not see the face of the appellant.

20. Mr. Dave has further pointed out some discrepancies and contradictions in the statements of the eye-witness which, according to him, are a good ground for discarding their evidence in toto. These discrepancies pertain to the precise number of blows given by the assailant, the standing or lying posture of the victim at the time of the assault etc. Such discrepancies in matters of detail always occur even in the evidence of truthful witnesses. Such variations creep in because there are always natural differences in the faculties of different individuals in the matter of observations, perception and memorisation of details. They are hardly a ground for rejecting their evidence when there is consensus as to the substratum of the case.

21. The presence of all the three eye-witnesses (P.Ws. 2,3, and 4) at the time and place of occurrence was highly natural and probable. They had no animus whatsoever against the appellant. Their evidence with regard to identification of the appellant as the assailant of the deceased had been amply corroborated by the reliable circumstantial evidence of a clinching character. The medical evidence had testified that the injuries found on the deceased were sufficient to cause death in the ordinary course of nature. The trial Judge had therefore rightly held that the charge of murder had been fully brought home to the appellant by reliable and cogent evidence.

22. For all that has been said above, we dismiss this appeal.

23. Before we part with this judgment, we would like to record our inability to appreciate the summary manner in which the learned Judges of the High Court dismissed the appeal without recording a speaking order. Summary dispatch of an appeal in which debatable question of law and fact touching the guilt or innocence of a person arise is one thing, but justice is another. Time and again this Court has pointed out that an appeal which raises arguable question, either factual or legal, should not be summarily dismissed without recording a reasoned order. The latest decision of this Court on this point is *Sh. Mohd Ali v. Statue of Maharashtra*. The observation made therein may be studied with advantage.

24. In the ordinary course, we would have remitted the case to the High Court for re-writing a proper judgment. We have refrained from doing so because that would have meant further delay in the disposal of this case which is already more than five years old. We have taken particular care to go into the evidence in full for this very reason, which probably might have been unnecessary when exercising jurisdiction under Art. 136 had the High Court dealt with the evidence in some detail.

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