Shamu Balu Chaugule

Vs

State of Maharashtra

Criminal Appeal No. 186 of 1971

(P. K. Goswami, M. H. Beg JJ)

13.11.1975

JUDGMENT

BEG, J. -

1. The appellant before us was acquitted by the Additional Sessions' Judge of Kolhapur of the charges of murder. The State of Maharashtra had, however, succeeded in its appeal to the High Court. Consequently, the appellant was convicted under Section 302, Indian Penal Code and sentenced to life imprisonment. The High Court also convicted him under Section 25(1)(a) of the Arms Act and sentenced him to one year's rigorous imprisonment, the sentences running concurrently. The question before us is whether the trial Court's judgment and order of acquittal of the appellant was reasonably capable of being sustained so that, if two views were fairly open, the High Court ought not to have interfered.

2. The prosecution case was that the appellant had, at about 4 p.m. on October 31, 1966, committed the murder of Dattu Rama Patil in village Khochi by shooting him with a gun with the intention of killing him. The trial Court had considered the medical evidence in the case to be decisive. It referred to the post-mortem report which said :

17. Surface wounds and injuries :- Their nature, position, dimensions (measured) and directions to be accurately stated - their probable age and causes to be noted.

Surface wounds and injuries on the dead body of Shri Dattu Rama Patil.

(1) Linear lacerated wound 6" x 3 1/2" x brain deep on the right side head back and outer part 2" above the right ear.

(2) Oblique lacerated wound 2" x 1" x 1" on the right side arm inner and middle 1/3rd.

(3) Lacerated wound 1 1/2" x 1" x deep from front to back side of the right forearm middle. The back side injury was 2" x 1/2".

(4) Lacerated wound 1 1/2" x 1" x 1 1/2" on the right side mid-axillary the 3" from right axilla.

(5) Lacerated wound 1/2" x 1/2" deep up to intestine on the right side abdomen lower and outer part 5" from mid-line abdomen intestine was coming out of the wound.

(6) Lacerated wound 1/2" x 1/2" deep up to intestine on the let mid-axillary line 9" from the left axilla. The intestine was coming out of the wound.

(7) Lacerated wound 1" x 1/2" on the right side back upper 1 1/2" from mid-line back.

(8) Lacerated wound 1 1/2"x 1/2" x 1/4" on right side back outer just below right shoulder blade.

(9) Lacerated wound 1/2" x 1/2" x skin deep on the right side heel upper and outer part.

The above injuries were caused by gunshot except injury Nos. 7 and 9. They were caused by hard and blunt substance. The injuries were about 22 to 24 hours old.

3. This examination tool place on November 1, 1966 at 3.45 p.m. The occurrence was said to have taken place at about 4 p.m. in a tobacco field adjoining another field belonging to the deceased and his brother Tatoba, PW 2, in which jowar crop was standing. As soon as two gunshots were fired Tatoba got up and rushed into the field in which his brother Dattu Rama Patil was harrowing and preparing the filed for a tobacco crop. There he saw the appellant, standing with a gun in his hand, after having shot at his brother. As he tried to advance further, the appellant threatened to kill him if he came nearer. After firing two more gunshots at the deceased from a distance of about 15 ft., the appellant is said to have run away. A. D. Patil, PW 3, A. S. Ingale, PW 4, Y. R. Naik, PW 5, were alleged to have seen the occurrence from their respective fields nearby. Ingale, PW 4, A. D. Patil, PW 3, Y. R. Naik, PW 5, are said to have come to the place of occurrence after the appellant had left. But, this does not necessarily mean that they could not have seen the occurrence from their own fields.

4. It is also true that A. D. Patil, PW 3, was declared hostile as he stated that he could not see from his field what was happening because of an intervening road and hedges in between his field and those in which the deceased was found dead, lying in a pool of blood, after he had heard four gunshots fired. He also stated that there were some women working in that field. He was cross-examined and confronted with his statements before the police giving a different version. He denied having made them. It may be that this witness was unreliable. But, he support the prosecution case inasmuch as he stated that he had heard four gunshots and that he went and saw the deceased's corpse immediately after that. Ingale, PW 4, was also declared hostile because he denied having been heard the gunshots and said that he did not see Tatoba near the filed. He only said that he had seen women raising an alarm and running away. This witness appears to be quite untruthful inasmuch as he could not have failed to hear the gunshots fired if the was there at all. He too denied having made inconsistent previous statements before the police. Y. R. Naik, PW 5, who was in the company of Chaugule, an uncle of the appellant, had also to be declared hostile as he stated that he could not see anything due to intervening hedges in his field and the field in which Dattu Rama Patil was shot dead. But, he also stated that, on hearing gunshots, he rushed to the field in which lay the corpse of Dattu Rama Patil. He was also confronted by his statements to the contrary before the police. He denied having made them. He seemed to be trying to protect the appellant with whose uncle he was, apparently, on friendly terms.

5. It does appear that these witnesses had given contrary statements to the police, which were proved by the Investigating Officer, who had no axe of this own to grand. They must have been

induced to change their versions. But, Tatoba, the brother of the deceased, had stood firm. The real question in the case was, therefore, could Tabota, PW 2, alone be believed ? There was some background of hostility due to previous litigation over land. If motive to murder could be there, it could also provide a motive a implicate falsely. But, Tatoba had lodged his F.I.R. promptly. The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him. Moreover, it could also be explained by the fear which would possess a man who knows that he is named in the F.I.R. for such an offence.

6. The real test of the credibility of Tatoba's version was the medical evidence. If his version was corroborated by the medical evidence there could be no ground to discard his sole evidence just because he happened to be a brother of the deceased. On the other hand, if medical evidence contradicted the version of Tatoba, it was evident that the prosecution case could not succeed.

7. The trial Court, in arriving at the conclusion that the medical evidence contradicts the version of Tatoba, seems to have been impressed by the following points.

8. Firstly, that the doctor had not described the injuries other than injuries Nos. 7 and 9 as "gunshot" wounds when making entires about the individual injuries. This does not appear to us to be material as the doctor, at the end of his report, had stated that they were gunshot injuries. The Sessions' Judge guessed that this conclusion of the doctor was based merely upon the allegation conveyed to him that the deceased had been fired at. We do not think that a doctor would deliberately falsify a report merely because he is told that the injuries were inflicted by gunshots and not because he thought that this was really so. The cross-examination of the doctor might have elicited the errors, if any, in his views but the doctor was not even cross-examined on this point. So his testimony, recording his conclusion, could not be assumed to be incorrect.

9. Secondly, the trial Court thought that injuries Nos. 7 and 9 could not be properly explained by gunshots. The High Court had accepted the explanation that these could be caused by falling and movements of the body before death. We think that this is obvious explanation which the High Court had correctly accepted.

10. Thirdly, the trial Court had examined the description of "lacerated wounds" and quote from Dr. Modi's Medical Jurisprudence" that :

> The injuries produced by projectiles discharged from firearms may present the characteristics of lacerated wounds, but their appearances vary according to the nature of the projectile, the velocity at which it was travelling at the moment of impact, the distance of the firearm from the body at the moment of discharge and the angle at which it struck the part of the body.

We find nothing in this description to militate with the view that the injuries, other than Nos. 7 and 9 were really gunshot injuries. The High Court appears to us to be quite right in its conclusion on this question too.

11. Fourthly, the trial Court thought that a gunshot wound generally has an aperture of entrance and another of exit. He also cited the opinion :

When the wound of entrance is present, but not the wound of exit, it means that a bullet is lodged in the body, except in those cases where a bullet has been coughed up after entering the respiratory passages or lost in the stool after entering the intestinal tract and also where a hard bullet by coming

in contact with a bone is so deflected as to pass out by the same orifice as it entered.

The trial Court thought that it was a serious infirmity in evidence that the wounds of entry and exit could not be made out. It is not always possible for doctors to express a definite opinion about this. In a case where the shooting practically blows the brains out it would be idle to look for them. We agree with the High Court that this does not discredit medical evidence in the case.

12. Fifthly, the trial Court thought that it was inexplicable why no gunshots were detected either inside or outside the body. The High Court pointed out that the shooting, thought not from so close a range as to cause charring, was from close enough quarters for the shots to have gone through or fallen out and got mixed up and lost in the earth in the filed. The Investigating officer, who could not have realised the significance of it, did not, apparently, look especially for shots in the earth. There was, however, a piece of metal found inside the body too. We agree with the High Court's view that this was not enough to shake the effect of the medical evidence. We think that the correctness of the doctor's opinions is sufficiently established by good enough reasons to support them.

13. Sixthly, the trial Court thought that injury No. 1 being 6" x 3 1/2" brain deep on the right side of the head did not look like a wound resulting from gunshots. Apart from the fact that the doctor was not cross-examined on this aspect, we think that the High Court was correct in reaching the conclusion that, when numerous gunshots pound a portion of the skull with great force, a wound of this nature can result.

14. We, therefore, think that the High Court was quite correct in appraising the worth of the medical evidence much better than the trial Court was able to do it. We agree with the view of the High Court that there was no conflict between the medical evidence and the eyewitness account given by Tatoba.

15. Hence, we think that the trial Court, having adopted an erroneous test of the credibility of Tatoba, PW 2, had reached an obviously wrong conclusion. Two views on it were not reasonably open. The High Court had, therefore, rightly accepted the State's appeal.

16. The result is that we uphold the conviction of the accused and the sentence passed upon him and dismiss this appeal.

</html