

Abdul Majid Abdul Rahman

Vs

State of Gujarat

Abdul Samad Amirmiya and Another

Vs

State of Gujarat

Criminal Appeal Nos. 197 and 249 of 1971

(R.S. Sarkaria, P.N. Shinghal JJ)

03.05.976

JUDGMENT

SARKARIA, J. -

1. These appeals under Section 2A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, are directed against a judgment of the Gujarat High Court whereby the acquittal of the appellants was set aside and converted into conviction. The facts are these.
2. The appellants, Abdul Samad, Abdul Vahab and Abdul Wajid, are original accused Nos. 1, 2 and 3, respectively. Accused Nos. 1 and 2 are brothers and accused No. 3 is the son of their sister. The deceased was one Maiyuddin who was dealing in mangoes in partnership with the acquitted accused Nos. 7 and 8 in the town of Mehmedabad. Differences arose and the partnership was dissolved. After that dissolution, the deceased and his former partners started their independent businesses. This business rivalry led to quarrels between the deceased and accused Nos. 1, 7 and 8.
3. On April 20, 1969 at 5.45 a.m., the three appellants along with five other (who may be referred to as A-4, A-5, A-6, A-7 and A-8) all residents of Mehmedabad, went in a body to Maiyuddin in the bazar. A-1 was armed with a gupti, A-2 with gupti and a hockey stick, A-3 was carrying a hockey stick; A-4 and A-6 had dharias; A-5 had hammerstick; A-7 and A-8 were armed with sticks.
4. A-2 and A-6 caught hold of the deceased, while A-1 gave him gupti blows on the chest. A-2 plunged his gupti into the abdomen of the deceased. Others also beat the deceased with their weapons.
5. Sikanderiya (PW 1), a brother of the deceased who was running a pan-bidi shop in the vicinity, saw the assault. When he came to the rescue of his brother, A-3 gave blows to him with the hockey stick on the head, knee and leg. A-7 and A-8 also dealt stick blows to Sikandar. The deceased somehow succeeded in extricating himself from the clutches of the assailants and moved to a nearby shop and sat there. Apart from Sikandar, the occurrence was witnessed by Amirmiya Saidmiya (PW 2), Mohmadhussain Abderehman Manzu (PW 3) and Kasimmiyan Ahmadmiyan (PW 9). Mohammed Mansuri brought a handcart and removed Maiyuddin, injured to the hospital which is at

a distance of about 200 yards from the scene of occurrence. Amirmiyan informed Abdul Rahman, and then. These two also reached the hospital. In the hospital the injured was removed to the operation table. The Medical Officer Dr. Shah Found the Condition of the patient critical. He, therefore, thought it fit to record the dying declaration of the patient. The deceased stated to the doctor that Samad (A-1) "and others" had caused him the injuries. The deceased could not state further anything intelligible. He went into a coma and died 4 or 5 minutes thereafter at 6.45 a.m.

6. Abdul Rahman and Sikandar then went to the police station and contacted Head Constable Chandubhai Dayabhai. They requested him to record the first information. Chandubhai Dayabhai express his inability to do saving that he was in charge of the police station. Chandubhai however informed Senior Jamadar Raju Mia who came and recorded the first information given by Sikandar at 8 a.m.

7. In the meantime the Medical Officer had sent an intimation about the death of Maiyuddin, injured in the hospital. Jamadar Raju Mia then went to the hospital and collected the dying declaration from Dr. Shah. Subsequently, Police Sub-Inspector Gohil, arrived and took over the investigation. He prepared the inquest report, EX. 18, and set the dead-body for post-mortem examination. Accompanied by Sikandar, he went to the scene of occurrence and prepared the panchnama Ex. 20. He found one chappal, a piece of hockey stick and a bloodstained plank of wood. He seized these articles. He recorded the statement of Amirmiyan. He deputed a constable to bring the accused to the police station. Accordingly, the constable brought A-1, A-4, A-5 and A-6 to the police station where the Sub-Inspector arrested them. He found bloodstains on the shirt of A-1. He seized the Shirt. A-6 gave a complaint to the Sub-Inspector, and complained of assault by Sikandar and four others. The Sub-Inspector sent A-1 and A-6 to the hospital for medical examination. He also sent Head Constable Chaturbhai to Anand town to search out A-2. He arrested A-1, A-4, A-5 and A-6.

8. On the preceding facts, 8 persons were sent up for trial by the Judicial Magistrate Mehmedabad before the court of session at Nadiad. The Additional Sessions Judge acquitted all the 8 accused. Against his order of acquittal, the State preferred an appeal to the High Court. The High Court set aside the acquittal of the appellants and convicted A-1 (Abdul Samad) under Section 302, Penal Code and sentenced him to imprisonment for life. A-2 was convicted under Section 326, Penal Code and sentenced to 10 years rigorous imprisonment. A-3 was convicted under Section 323, Penal Code and sentenced to six months' rigorous imprisonment.

9. Hence these appeals.

10. We have heard Counsel on both sides and examined the record carefully. The mainstay of the prosecution case was the ocular account of the four eyewitnesses viz., Sikandar, Amirmiya, Mohd. Hussain Mansuri and Kasimmiyan. In addition, there was the dying declaration, Ex. 37, recorded by the Medical Officer, Dr. Shah between 6.35 and 6.37 a.m. in the hospital.

11. The trial Judge did not rely on the evidence of Dr. Shah, and rejected the dying declaration on three grounds : Firstly, he doubted, if the deceased could have at all made any statement before he expired. Secondly in this statement the deceased had not, apart from accused No. 1, named any other assailant. The trial Judge read something sinister in the Words "and others" which, according to Dr. Shah, had been stated by the deceased while referring to "accused No. 1, and others" as his assailants. Thirdly, Dr. Shah did not, even after recording this dying declaration, disclose to the persons present there that the deceased had denounced A-1, as one of his assailants.

12. The High Court found and we think rightly, that this reasoning was wholly puerile. There was absolutely no basis for doubting the integrity and veracity of Dr. Shah. We have examined the statement of Dr. Shah. We are in entire agreement with the High Court, that Dr. Shah's statement discloses "a picture of straightforwardness and forthrightness". There is absolutely nothing in that statement which could raise a suspicion that the deponent was biased in favour of the prosecution or ill-disposed towards the accused. The doctor was the best person to opine about the fitness of the deceased to make the statement, he did. The doctor found that life was ebbing fast in the patient. There was no time to call the police or a magistrate. In such a situation the doctor was justified - indeed, he was dutybound - to record the dying declaration of the deceased. He was a disinterested, respectable witness. The trial Judge was therefore wholly unjustified in rejecting the evidence of the Medical Officer.

13. The reasons given by the trial Judge for not relying on the testimony of the eyewitnesses were equally flimsy. He discarded the evidence of Sikandar on these grounds : that the presence of Sikandar at the scene of offence at 5.45 a.m. was "improbable"; that even though PW Mansuri removed the deceased to the hospital in the handcart of Safi from the scene of the incident, Sikandar did not assist Mansuri in the process; that there was inordinate delay on the part of Sikandar in lodging the first information with the police and getting himself medically examined; that there was reason to suspect that the FIR had, in fact, been recorded at 10 a.m. and not 8 a.m. as alleged by the prosecution; that the evidence of Sikandar was in conflict with the medical evidence : Sikandar had attributed 3 Gupti blows received by the deceased, to A-1 and 1 gupti blow to A-2, while Dr. Shah found seven incised penetrating wounds on the deceased, none of which could have been caused with a dharia; that Sikandar had disowned all knowledge about the cross-complaint filed by A-6 against him and others and had failed to give any explanation of the injuries found on the accused persons.

14. These so-called "reasons" were manifestly untenable. Indeed they were no reasons. They were, as the High Court has rightly observed, "mere frivolities" simulated as 'reasons'. Each and every one of the grounds has been considered threadbare and squarely dispelled by the High Court. Sikandar was an injured witness. His presence at the time and place of occurrence could not be doubted. He was running a panbidi shop in the vicinity. It is thus impossible to support the finding of the trial Judge that his presence at the scene of occurrence was 'improbable'. The delay in making the FIR was fully explained. As a matter of fact, Sikandar had reached the police station without loss of time at about 7 a.m. Head Constable Chandubhai, owing to ignorance or otherwise, did not record his report, and for full one hour while awaiting the return of Senior Jamadar, Chandubhai kept Sikandar under interrogation in the police station. There was no real conflict between Sikandar's evidence and the medical testimony. As a matter of fact, Sikandar's version to the effect, that A-1 had stabbed the deceased in the chest, twice, and A-2 in the abdomen, was confirmed by the medical evidence. Doctor G. B. Shah, PW 16, opined that these were three stab wounds in the chest and one stab wound in the abdomen of the deceased and these wounds were caused with sharp cutting penetrating instrument, like guptis. These injuries were individually and collectively sufficient to cause death in the ordinary course of nature.

15. The reasons given by the trial Judge for throwing overboard the evidence of the other eyewitnesses were equally fanciful. The trial Judge said Amirmiya was related to the deceased; that his conduct in not using his own handcart and instead borrowing the cart of Safi PW, for removing the deceased to the hospital was unnatural; that Amirmiya did not talk about this occurrence to anyone till his statement was recorded by the police at about 2 or 3 p.m. the same day; that he was a chance witness whose presence at about 6 a.m. at the crossroads was not probable; that this witness

did not state before the police that A-6 had also received any injury in the melee; that the witness had the temerity to deny the fact of the presence of his son in the court when he was giving evidence at the trial - a fact which he subsequently admitted.

16. These "reason" were again figments of imagination, phantoms conjured out of very nothing.

17. Grounds on which the testimony of Mohd. Mansuri and Kasimmiyan was rejected were equally grotesque. So far as Mohd. Mansuri is concerned he was neither related to the deceased, nor could his evidence be called as of a partisan character. True, he had some grievance against A-7, but the fact remains he had no animus whatever against the appellants or even against the acquitted accused Nos. A-4 and A-6, who were nephews of A-1 and A-2. It was Mohd. Mansuri who had removed the injured in a handcart to the hospital.

18. In our opinion, the approach of the learned trial Judge could not be said to be a judicial approach. Prepossessed by suspicion, he smelled something sinister in the evidence of each and every witness examined by the prosecution. Instead of logical ratiocination, he depended for his conclusion on speculation and conjectures. This is apparent from his repeated observations that he was not impressed by the demeanour of the witnesses, although he did not make any note whatever of such demeanour. Even in his judgment he did not reveal with particularity, the nature of the "demeanour" that led him to doubt the veracity of the witness. We want to say no more. Suffice it to say that the view of the evidence taken by the learned trial Judge was not reasonably possible, and the High Court was fully justified in reversing the acquittal of the appellants.

19. The appeals fail and are dismissed.

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