

SUPREME COURT OF INDIA

Narsinbhai Haribhai Prajapati

Vs.

Chhatrasinh

CrI.A.Nos.392-393 of 1975

(Y. V. Chandrachud and P. K. Goswami, JJ.)

10.02.1977

JUDGEMENT

CHANDRACHUD, J.:-

1. These two appeals are by special leave against the judgment of the Gujarat High Court, acquitting the respondents of the charge that at about 11.30. a.m. on September 24, 1972, they, in pursuance of their common intention, committed the murder of one Bai Pashi in the village of Champur, District Surendranagar. Respondent No 1 was convicted by the learned Sessions Judge, Surendranagar, under Section 302, I.P.C. and was sentenced to death. All the respondents 1 to 4, were convicted by the learned Judge under S. 302 read with S. 34 of the Indian Penal Code and were sentenced to imprisonment for life.

2. We are prepared to assume in favour of the prosecution that the evidence in regard to the incident of the 23rd near the pond and the evidence in regard to the incident which took place near the Ota of the Pir shows that the respondents had some motive for committing the crime. We may also accept that blood-stained shirt and dhoti were seized from the person of respondent 1 and dharias were

seized from the houses of respondents 1 and 3. But those circumstances are in our opinion wholly insufficient for sustaining the charge of murder of which the respondents are accused.

3. The evidence of the two eye-witnesses Kantaben (P. W. 4) and Shantaben (P. W. 5) on which the judgment of the Sessions Judge principally rests cannot be accepted for the following reasons, amongst others, given by the High Court:-

(1) Both Kantaben and Shantaben speak in their evidence of two blows, one alleged to have been given by respondent 1 and the other by respondent 2. The evidence of Dr. Parikh who performed the postmortem shows that five out of the six incised injuries which were found on the deceased were caused by five separate blows.

(2) Though Kantaben was the next door neighbour of Bai Pashi and though she claims to have seen the murderous assault on her, she did not go to Bai Pashi's house and gave no information whatsoever to anyone as to the unusual incident witnessed by her.

(3) Not only that Kantaben did not go to Bai Pashi's home to give information of what she had seen but she did not disclose the incident to any person belonging to her own household. In fact, she has frankly admitted that she disclosed the incident for the first time when the Investigating Officer, Natwarlal, Veljibhai (P. W. 16) recorded her statement the next day.

(4) Though the Police arrived in the village on the evening of the 24th itself and though the Investigating Officer recorded the statement of several witnesses on that evening, the statements of Kantaben and Shantaben, who are alleged to be eye-witnesses to the murder, were recorded the next day.

(5) The First Information Report (Ex. 11) lodged at 4.00 p. m. by Narsinhbhai Haribhai (P. W. 2), the son of the deceased Bai Pashi, does not even indirectly refer to the presence of Kantaben and Shantaben at the scene of offence. It shows on the other hand that its author, Narsinhbhai, was the sole eye-witness to the incident. The Sessions Court placed no reliance on Narsinhbhai's evidence and the High Court has disbelieved him.

(6) The evidence of the Investigating Officer shows that neither of the two eye-witnesses stated before him when he recorded their statements on the morning of the 25th that respondent 2 (Takhatsinh) had given any dharia blow to the deceased. Both the witnesses significantly improved their story and implicated respondent 2 falsely by alleging that he also gave a dharia blow to the

deceased.

(7) The evidence of the two witnesses shows that respondents 3 and 4 came on the scene after the deceased was assaulted and in any event it is undisputed that the deceased had no stick injury on her person. In fact, it is not the case of the prosecution nor is it stated by either of the two witnesses that respondents 3 and 4 took any part in the assault of Bai Pashi or facilitated the commission of murder in any other manner.

4. The High Court was, therefore, justified in reversing the judgment of the trial Court and in acquitting the respondents Accordingly, we dismiss these appeal and confirm the judgment of the High Court. Respondents 1 and 2, who were arrested in pursuance of warrants issued by this Court, will be set at liberty forthwith.

Appeals dismissed.