

Mahadeo Ganpat Badavane and Others

Vs

State of Maharashtra

Criminal Appeal No. 268 of 1971

(P. N. Bhagwati, A. C. Gupta JJ)

22.04.1977

JUDGMENT

SHINGHAL, J. –

1. This appeal by five of the accused is directed against the judgment of the Bombay High Court dated March 30/31, 1970, upholding their conviction and sentences, along with those of three accused who have not appealed. There were fourteen accused in the case, of whom six were acquitted and eight were convicted. We shall refer to the accused by their serial numbers.
2. Appellant Mahadeo Ganpat Badavane (A-2). Rama Subhana Jagdale (A-3), Namdeo Satwaji Takmoge (A-4, Namdeo Yda Vharade (A-5), Gorakh Ganpati Badavane (A-6), Tulshiram Ganpat Mane (A-7), Shivaji Yeda Vharade (A-8) and Uddhay Ganpat adavane (A-10) have been convicted of an offence under Section 302/149 or, in the alternative, Section 302/34, IPC and have been sentenced to imprisonment of life. Of these A-4, A-5 (who have been convicted under Section 323, IPC also) and A-8 have not appealed to this Court. A-3 has been convicted of an offence under Section 148, IPC also, and sentenced to rigorous imprisonment for one year and a fine of Rs. 100 for that offence. While granting special leave to the appellants, this Court has ordered that it shall be "limited to the question regarding the nature of the offence" committed by the appellants. It will therefore be sufficient to state those facts which bear on the controversy.
3. The allegation of the prosecution was that there were two major factions in village Kumtha of Sholapur Taluka. One of these was led by Laxman Hariba Sapkale and the other by Brahmadeo Krishnat Mane who was accused 14 in the case. On March 25, 1968, Mahadeo, brother of Laxman Sapkale, was beaten by A-7, A-14 and two other persons near the shop of A-14. He received bleeding injuries on the head and lodged a report at the Taluka police station. Bhimashankar (PW 22) escorted Mahadeo and it is alleged that he was therefore beaten by A-2, A-3, A-4, A-6 and A-8. Laxman Sapkale wrote a letter to the Police Sub-Inspector the same day, at about 6 p.m. reporting the injuries received by his brother Mahadeo and asking for proper arrangements for their safety. The authorities concerned made an order for patrolling the village and, for that purpose, head constable Kokate (PW 18) and constables Laxman Shinde (PW 16) and Ramanna Sayabanna (PW 17) were sent to village Kumtha on the night between March 25 and 26, 1968, for patrolling duty. Head Constable Kokate (PW 18) went to the house of A-14 on the morning of March 26, 1968, and he also visited the house of Laxman Sapkale. He deputed constables Laxman Shinde (PW 16) and Ramanna Sayabanna (PW 17) to continue the patrolling duty. The constables went to the house of Laxman Sapkale and asked him to produce his gun at the police station. Ram Chandra Vithoba (PW 10) was present there at that time. The constables then left the house of Laxman Sapkale who left for Sholapur along with Ram Chandra Vithoba (PW 10). They took the route which was usually

taken by them almost every day. When they came near Bhau Vharade's house, they found him standing at his door, and he followed them. Constables Laxman Shinde and Ramanna Sayabanna also started in the same direction on patrol duty, just behind Laxman Sapkale and Ram Chandra Vithoba. when they went a little ahead, A-4 and A-5 armed with sticks emerged from alone in the north, which was at right-angles to the Sholapur road. It is alleged that they abused the deceased and Ram Chandra Vithoba, and asked him to stop. There was a scuffle between them, and the constables asked them not to quarrel. A-14 thereupon asked A-5 to catch the policemen. A-5 beat the constables. As one of the constables caught hold of the stick of A-5, he pushed him and threw him on the ground. A-4 beat the fallen constable. While that scuffle was going on, A-6, A-10 and A-11 came along the Sholapur road from the north where they were hiding in hay Ram Chandra Vithoba and Bhau Vharade. A-14 hit Laxman Sapkale on the back with a stone. Ram Chandra Vithoba tried to save him. At that time A-1, A-2, A-3, A-7, A-8 and A-9 came the reform another direction. Of these A-3 was armed with a sword, A-8 with a stick and the other with stones. All the accused surrounded Laxman Sapkale and his companion Ram Chandra Vithoba and severely beat Laxman Sapkale. A-8 is alleged to have inflicted an injury on the right shoulder of Laxman Sapkale, A-4, A-5 and A-8 are alleged to have hit him on the head and the others beat him with stones. A-3 inflicted a sword blow which fell on the left leg of Laxman Sapkale. Constables Laxman Shinde (PW 16) and Ramanna Sayabanna (PW 17), who were present all through were blowing their whistles to attract other constables there. Head Constable Kokate (PW 18) heard the whistles, and when the accused saw him coming they ran away. The head constable stopped a passing car and took the injured persons to the Civil Hospital. He also informed the police station about the incident, on telephone. Laxman Sapkale was admitted in the Civil Hospital at about 10 a.m. but he succumbed to his injuries within half an hour. He was treated by Dr. S. N. Sanga (PW 13) and a post-mortem examination was conducted by Dr. K. P. Daga (PW 15). The police investigated the case and, as has been stated, prosecuted 14 persons, of whom five have come up in appeal to this Court.

4. The Sessions Judge of Sholapur convicted and sentenced the accused as aforesaid, but he acquitted A-1, A-9, A-11, A-12, A-13 and A-14. Appeals were preferred against the conviction as well as the acquittal, but as they have been dismissed by the aforesaid judgment of the High Court dated March 30/31, 1970, the five appellants have raised the controversy regarding the nature of the Offence committed by them to which the special leave has been limited.

5. We shall examine the controversy regarding the nature of the offence on the basis of the facts found by the High Court.

6. It was not in controversy in the High Court that there were "two major factions" in the village and that they were "bitterly opposed to each other". The appeals to the High Court were in fact examined on that "assumption". There were several criminal cases between the parties, and there were several a incident which had led to violence in the past. The High Court has therefor recorded the finding that this "very powerful motive which subsisted and which has not been disputed by either party must be taken into account". It has also been held that the accused were related to each other, and the exact relationship has been mentioned in the impugned judgment.

7. It will be recalled that on March 25, 1968, a day before the incident which resulted in the death of Laxman Sapkale, Mahadeo, the brother of the deceased, was beaten by the party of the accused, as a result of which he had received bleeding injuries on the head. Mahadeo lodged a report with the police, and the deceased also wrote to the police authorities for making the necessary arrangements for their safety.

8. Then on March 26, 1968, when the deceased and Ram Chandra Vithoba (PW 10) were proceeding to Sholapur in the morning, by the route which was usually taken by them, followed by Bhau Vharade, and constables Laxman Shinde and Ramanna Sayabanna, the accused emerged from three different directions. The High Court had recorded the finding that the accused allowed the deceased to go up to a point on the Sholapur road "at which point suddenly three distinct groups of accused persons converged on him from three sides and effectively trapped him". The High Court has gone on to hold that "it was certainly not accidental that persons so closely connected with each other by relationship and common political bond would converge on a particular spot on the same day at the same time where their common enemy was to be found". That has led the High Court to hold further that this was a clear indication of "a prior discussion between all these accused to trap Laxman at this particular spot and at this particular moment and beat him up".

9. The above facts and circumstances led the High Court to record a finding to the following effect :

We have not the slightest doubt in this case that all the accused, whose convictions we have upheld, partook of a common object of assaulting Laxman and Ramchandra who was accompanying him.

10. The above findings of the High Court are sufficient to prove beyond any doubt that the appellants were members of an unlawful assembly, the common object of which was to give a severe beating to the deceased Laxman Sapkale. It is also a significant fact that although two constables were following Laxman Sapkale at the time of the incident, the members of the unlawful assembly were not deterred by their presence and went ahead with their pre-arranged plan of beating Laxman Sapkale. It has been found by the High Court that while A-3 was armed with a sword, A-4, A-5 and A-8 were armed with sticks, and A-2, A-6, A-7 and A-10 were armed with stones, and that they all beat the deceased. The High Court has accepted the evidence of the two constables in this respect and has held that "all the accused persons gave a beating with sticks, stones and sword to Ramchandra and Laxman".

11. The injuries found on the person of the deceased are also relevant for the purpose of determining the offence of the appellants, Dr. K. P. Daga (PW 15) performed the post-mortem examination and he has stated that he found the following internal injuries on the dead body of Laxman Sapkale :

(1) Hamatoma under the scalp.

(2) Fracture of skull of frontal bone 2" X 1/2" just underneath the surface injury on the left parietal region. The fracture line extended to right orbit running 1/4" X 1/2" above superior orbital margin. The length of the fracture line was 3 1/2". Muscle over fracture No. 1 was lacerated.

(3) There was a fracture over left temporal and parietal region. A big piece of bone 4" X 2 1/2" had been depressed under the temporal muscle. That piece of bone had another linear fracture over the left pinna of the ear (2 inches in length).

The area of fracture No. 1 consisted of multiple pieces.

(4) Blood clots were seen under the dura on right side in parietal and temporal region. There was laceration of right temporal lobe of the brain and there was subdural hematoma on right side. Diffused hemorrhages were all over the brain.

He found several other injuries including an incised wound on the left leg which had caused a fibular fracture on the lateral side, and a punctured wound on the right leg. The injuries on the parietal region, left frontal region and the other injury on the scalp were sufficient to cause the death of the victim in the ordinary course of nature. It would thus appear that very serious injuries were inflicted on a highly vulnerable part of the body like the skull, and the intensity of the blows can be easily appreciated from the fact that as a result of the fracture over the left temporal and parietal region, a big piece of bone measuring 4" X 2 1/2" was depressed under the temporal muscle. As has been mentioned, Laxman Sapkale succumbed to the injuries in a short while. It is nobody's case, and has not even been urged before us, that the injuries which were inflicted on him were unintentional or accidental. The prosecution has therefore proved the facts that severe bodily injuries were present on the body of the deceased, and that those injuries were not unintentional or accidental. Then, as has been stated it has also been proved, that those injuries were sufficient to cause death in the ordinary course of nature. Thus, as has been held by this Court in *Virsa Singh v. State of Punjab* (1958 SCR 1495 : AIR 1958 SC 465 : 1958 SCJ 772) been proved to bring the case under Section 300, thirdly, of the Penal Code. The appellants, as has been stated, committed the offence in prosecution of the common object of their unlawful assembly or, at any rate, they knew that offence was likely to be committed in prosecution of their common object, for there can be no doubt that they knew that in the prosecution of their common object it was likely that Laxman Sapkale might be so injured as to die as a result of the injuries which had been inflicted on him. They were therefore all guilty of committing the offence under Section 302/149 of the Penal Code, and the High Court rightly held them guilty of that offence. Reference in this connection may be made to *Hukum Singh v. State of Uttar Pradesh* (1962) 1 SCR 601 : AIR 1961 SC 1541 : (1961) 2 SCJ 586 : (1961) 2 Cri LJ 711).

12. There is no controversy before us regarding the conviction of Rama Subhana Jagdale (A-3) for the offence under Section 148, IPC.

13. So as we find no reason to disagree with the High Court regarding the nature of the offence committed by the appellants, the appeal fails and is hereby dismissed.

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