

Vishvas Aba Kurane

Vs

State of Maharashtra

Akaram Bhairu Kotwal

Vs

State of Maharashtra

Civil Appeals Nos. 166 of 1971 and 201 of 1973

(Jaswant Singh, V. D. Tulzapurkar JJ JJ)

19.01.1978

JUDGMENT

JASWANT SINGH, J. -

1. Vishvas Aba Kurane, appellant in Criminal Appeal 166 of 1971 and Akaram Bhairu Kotwal, appellant in Criminal Appeal 201 of 1973 (hereinafter referred to for the sake of brevity as 'Vishvas' and 'Akaram' respectively) who were charged and tried along with three brothers of the latter viz. Mahadev Bhairu Kotwal, Shiva Bhairu Kotwal, and Maruti Bhairu Kotwal, and another person named Ibrahim Sayyad Nalband (hereinafter referred to as 'Mahadev', 'Shiva', 'Maruti', and 'Ibrahim' respectively) for various offences have on an appeal filed by the State of Maharashtra been convicted by the High Court of Bombay for an offence falling under Section 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life instead of the offence under the Section 304 Part I read with Section 34 and 149 of the Indian Penal Code for which they were convicted and sentenced by the Sessions Judge, Sangli. The High Court has found that the appellants intentionally caused the death of Raghunath Sidu Nikam (hereinafter referred to as 'Raghunath') aged 23, brother of Shankar (PW 2) and Jaywant (PW 6) in furtherance of the common intention shared by them with Mahadev who has not appealed against the conviction and sentence. Vishvas, appellant and his brother Mahadev have also been individually convicted by the High Court under Section 302 of the Indian Penal Code for the murder of Raghunath and sentenced to imprisonment for life. The sentences imposed on Vishvas, appellant and Mahadev under the aforesaid two counts have been ordered to run concurrently. The High Court having on appeal reversed the order of acquittal of the appellants as indicated earlier and sentenced them to imprisonment for life, they have come up in appeal to this Court under Section 2(a) of the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act, 1970.

2. The facts and circumstances leading to these appeals are : On May 17, 1968 i.e. two days prior to the incident which has given rise to these appeals, Jaywant (PW 6) had gone to see a movie which was to be screened in a local cinema at Shirala in Sangli District. Before the commencement of the show, one Abdul Ghani (PW 15) pelted a stone at a representative of the film distributors which hit Akaram who was standing close to the representative of the film distributors. A scuffle thereupon between Akaram and Abdul Ghani in which Jaywant intervened on the side of Abdul Ghani. In the

course of that scuffle, Jaywant and Akaram set upon each other with 'chappals'. The combatants, however, took their seats as the show started. The tussle which had ceased with the commencement of the show was renewed during the interval when Raghunath deceased, Dinkar, Maruti and Ramchandra Gayakwad (PW 3) who were also present in the cinema hall intervened and separated Akaram and Jaywant. On May 18, 1968, another fracas between Maruti and Dinkar, the brother of Shankar (PW 2) took place which did not, however, assume a grave turn because of the mediation of a few persons including the brothers of Dinkar. On the fateful evening of May 19, 1968, Jaywant left his house for his field to keep a vigil. On the way, he went to the shop of Babu Ranadive (PW 5) to have a 'panpatti'. While he was proceeding ahead after making the said purchase, Mahadev and Ibrahim made their appearance armed with sticks and mauled Jaywant who somehow managed to extricate himself and run towards the well which was at a distance of few paces to the north of the shop of Babu Ranadive. On reaching near the well, Jaywant cried out that beating had been administered to him. After thus raising an alarm, Jaywant turned back and asked Mahadev and Ibrahim who had by then got near 'Shivaji Stores' as to why they manhandled him. Thereupon, Ibrahim tried to assault him with a stick but before he could do so, Jaywant lifted him bodily and threw him on the ground. In the meantime, Ramchandra Gayakwad (PW 3) who was close by rushed to the scene and wrested the stick from Ibrahim. At this stage, Vishvas reached the spot armed with an axe and accompanied by Akaram, Shiva and Maruti who were armed with sticks, and administered an axe blow on the shoulder of Jaywant who thereupon tried to run away to his house but could not escape as Vishvas and Mahadev gave him a blow each with axe and stick on his right fore-arm and head respectively on receipt whereof he became unconscious and slumped in front of the Central Bank building which lies at a distance of nearly 100 feet to the north of Shivaji Stores. Meanwhile on hearing the shouts of some unidentified boys that Jaywant had been assaulted by Mahadev and Ibrahim, Raghunath deceased and his brother, Shankar (PW 2) rushed to the Bazar Peth to find out what the matter was. On reaching there and noticing a crowd near the Central Bank building, they hastily moved in that direction. As they got near the bank premises, they saw Jaywant lying on the ground and Mahadev and Ibrahim near him. On seeing Raghunath and Shankar approaching, Vishvas, Mahadev, Akaram, Shiva and Maruti dashed towards them. Apprehending that they might also be assaulted, Raghunath and Shanker turned back and started running towards their house. Their attempt to escape was however foiled by the accused who overtook them near to post office which is situate just opposite to the pan shop of Babu Ranadive. On getting close to Raghunath and Shankar, Akaram caught hold to Raghunath while Vishvas and Mahadev whipped out knives and inflicted injuries therewith on his fore-head, back and right thigh. Vishvas and Shiva also caused injuries on the person of Shankar with a knife and stick respectively. Thereafter a scuffle ensued between Raghunath and Shankar on one side and Vishvas, Mahadev, Akaram, Shiva and Maruti on the other in which Shankar picked up a stick which was lying nearby and used it against some of the accused. Ananda, a cousin of Raghunath, who had arrived at the scene by then was also assaulted by some of the accused. Thereafter all the accused decamped on being told by Vishvas that they had achieved their object. As Raghunath had become unconscious due to the injuries inflicted on him, he was removed by Shankar and Ananda for treatment to the local Government dispensary where he succumbed to his injuries at 9.45 p.m. while he was being examined and treated by the Medical Officer. Stricken by grief Shankar immediately went to the local police station with a view to make a report about the occurrence. On arriving at the police station, he found that Shiva had already reached there along with his mother, Jijabai with a view to forestall him and had lodged information (Ex. 57) alleging that while he was near the pan shop of Babu Ranadive on that very evening at about 8.00 p.m. he was assaulted with sticks by Raghunath and his two brothers, Jaywant and Shankar. As the information given by Shiva, accused did not disclose the commission of any cognisable offence, he was directed by the P.S.I. to approach a

Criminal Court of competent jurisdiction for redress.

3. After recording the Vaidi (Ex. 9) given by Shankar, the P.S.I. registered a case against all the aforesaid six accused, took Shiva, Mahadev, Akaram and Maruti into custody and seized the clothes worn by them which bore stains of blood. As the aforesaid four accused who were arrested that very night had also some injuries on their person, the P.S.I. sent them for examination and treatment to the Medical Officer of the Government dispensary. During the course of investigation, the other two accused were also arrested, knife (article 20) produced by Mahadev and two sticks (article 23 and 24) produced by Akaram which bore blood stains were seized by the police and sent for chemical examination to the Chemical Analyser. On completion of the investigation, the accused were proceeded against in the Court of competent jurisdiction and committed for trial to the Court of Session where all the accused pleaded not guilty to the charge. In the course of his statement, Akaram admitted the incident which happened at the cinema house on the evening of May 17, 1968. In respect of the incident on the evening of May 19, 1968, the defence of the accused, excepting that of Mahadev was one of total denial. Mahadev asserted that on the evening of May 19, 1968, while he was at his house, he learnt that his brother, Shiva was being assaulted in front of Shivaji Stores by Nikams, which is the surname of Raghunath deceased and his brothers; that he thereupon repaired to the place and noticed Shankar, Ramchandra, Tukaram Gayakwad, Jaywant and Dinkar assaulting Shiva; that on inquiring from the accused as to why they were assaulting his brother, he was himself assaulted with a stick on account of which he fell down on the ground when several persons who had collected there intervened and rescued him. Akaram, Shiva, Maruti and Ibrahim, accused stated that they also received injuries on the evening of May 19, 1968 at the hands of some persons in the crowd which had collected in the Bazar Peth. Mahadev and Shiva also admitted that their clothes were blood stained. Mahadev however denied that he produced the blood stained knife. Likewise Akaram also denied that he produced the two blood-stained sticks.

4. To bring home the charge to the accused, the prosecution examined a number of witness. On consideration of the evidence adduced in the case, the trial Court found that Raghunath died as a result of the injuries inflicted on him; that simple hurts were sustained by Jaywant and Shankar on the evening of May 19, 1968 and that Jaywant was twice assaulted by Mahadev and Ibrahim, accused as alleged by the prosecution. The trial Court however, took the view that after the first assault on him, Jaywant turned to Mahadev and Ibrahim with a view to retaliate and since he bodily lifted Ibrahim, accused and threw him on the ground, the accused had acquired a right of self-defence and, therefore, the injuries which were caused to Jaywant were caused by the accused in exercise of the right of self-defence. The trial Court accordingly held that there was no question of the formation of any unlawful assembly by the accused till that time. The trial Court, however, held that since all the accused except Ibrahim thereafter started pursuing their fleeing victims viz. Raghunath and Shankar with the object of assaulting them, they formed an unlawful assembly and it was in prosecution of the common object of the assembly that fatal injuries were inflicted on Raghunath by Vishvas and Mahadev; that in so doing, the accused exceeded the right of private defence which they had earlier acquired as against Jaywant. The trial Court further held that the accused assaulted Raghunath in the heat of the moment and in the course of sudden fight. In this view of the matter, the trial Court held that the offence committed by the accused was one of culpable homicide not amounting to murder which fell within the ambit of Section 304 Part I on the Indian Penal Code. Regarding the injuries inflicted on the person of Shankar, the trial Court took the view that the accused were protected by a right of self defence. In the result, accused 1 to 5 were convicted and sentenced as indicated earlier. The State of Maharashtra preferred an appeal against the order of the Sessions Judge acquitting Vishvas, Mahadev, Akaram, Shiva and Maruti, accused of the offence under Section 302 read with Section 149 of the Indian Penal Code. The State also filed a

revision petition for enhancement of the sentences imposed on these accused by the trial Court for the offences of which it found them guilty. Both these matters were heard together and disposed of by a common judgement of the High Court which allowed the State appeal as stated earlier.

5. Appearing in support of the appeals, M/s. Wad and Rana have urged that the story of Raghunath's murder as put forth by the prosecution is entirely false and concocted; that the conviction of the appellants cannot be sustained on the sole testimony of Shankar (PW 2), who is the real brother of Raghunath deceased and as such is highly interested witness; that the change of venue of the alleged murder by the prosecution and its theory that the appellants and their confederates chased their fleeing victims viz. Raghunath and his brother Shankar and overtook them near the post office was clearly an improvement upon the earlier version and was manifestly faked to tighten the noose round the neck of the appellants, that the acts attributed to the accused were done in exercise of the right of self-defence, and that in any event it was not a fit case in which the High Court should have differed from the trial Court in the appreciation of evidence.

6. The High Court have interfered with the order of the Sessions Judge, we have examined the evidence adduced in the case with care but find ourselves unable to accede to the contentions of the learned Counsel appearing for the appellants. It is no doubt true that Shankar (PW 2) is a full brother of the deceased and is a solitary eye-witness of the occurrence but these factors can hardly constitute sufficient grounds for setting aside the impugned conviction which has been recorded by the High Court after a careful appraisal of the evidence. The evidence of Shankar (PW 2), the injuries found on whose person by Dr. B. T. Akkole lend assurance to his presence at the time and place of occurrence has, in our opinion, a ring of truth and cannot be easily brushed aside despite the carping criticism to which it has been subjected by the learned Counsel for the appellants. His deposition receives ample corroboration from the medical evidence as also grow the circumstantial evidence. Dr. B. T. Akkole who examined Raghunath when he was brought to his dispensary and made strenuous though fruitless efforts to save the latter's life and later conducted the autopsy on his dead body has clearly stated that besides other six injuries, he observed the following two notable injuries on the person of the deceased :

(1) A penetrating wound 1 1/2" x 1/2", brain deep, on left side of forehead, above the eyebrow;

(2) A penetrating wound 1 1/4" x 1/2" lung deep, on left side of the back, below the scapula on the ninth inter-costal space which had perforated the left pleura.

7. The above mentioned first and second injuries were, according to the ocular testimony of Shankar, inflicted with knives by Vishvas and Mahadev respectively when the deceased was held by Akaram. Though after detailing the injuries observed by him on the person of Raghunath, Dr. Akkole has deposed in general terms that the death of the deceased was due to haemorrhage and shock on account of the injuries sustained by him, he has categorically stated that each of the two aforesaid ante mortem penetrating wounds which appeared to have been caused by a sharp pointed and cutting instruments was by itself sufficient in the ordinary course of nature to cause death. The trails of blood found at a distance of 7 feet from the middle of the square (which lies at a distance of 355 feet from the Central Bank building) to the west on the Kumbhargalli Road upto 31 feet by the side of the post office also lends strong corroboration to Shankar's ocular testimony and show that the defence plea that the venue of the offence has been deliberately changed by prosecution to suit its purpose has no real basis. The knife (article 20) recovered on May 20, 1968 at the instance of Mahadev which bore stains of human blood according to the Chemical Analyser is another valuable

piece of circumstantial evidence which supports the prosecution story. The conclusion arrived at by the High Court that Raghunath and Shankar were chased by the appellants and Mahadev and it was near the post office that Akaram, appellant caught hold of Raghunath and Vishvas, appellant and Mahadev caused injuries on his person with knives in furtherance of their common intention which resulted in his death is reasonable and legitimate.

8. The defence plea that in any event in causing the death of Raghunath, the appellants acted in exercise of their right of private defence cannot also be accepted. It is well settled that to claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The appellants have manifestly failed to discharge this burden. They have not all been able to establish that Raghunath and Shankar came to the Bazar Peth from their house armed to wreak vengeance on them or that they made any assault on them or on Mahadev, their confederate. The evidence on the record does not show the existence of any circumstance on the basis of which the appellants and Mahadev could have any reasonable apprehension in their mind that any bodily harm extending to either death or grievous hurt would be caused to them if they did not act in time and cause the death of Raghunath. On the other hand, the unrebutted testimony of Shankar (PW 2) which does not suffer from any infirmity and has been rightly relied upon by the Courts below clearly establishes that the appellants and their confederate were themselves the aggressors and they mercilessly dealt with Raghunath and the witness both of whom had hastened to the Bazar Peth not with any sinister motive but in their natural solicitude for Jaywant who according to the information in their possession had been assaulted by the party of the appellants. If Shankar and Raghunath had any intention assaulting and causing any bodily harm to the appellants, they would have surely come armed with some weapons. The fact that they came unarmed and took to their heels on seeing the appellants and their confederate pursuing them in an excited mood knocks the bottom out of the plea of right of private defence vainly tried to be advanced on behalf of the appellants. In the circumstances, the accused cannot be said to have even a semblance of the right of private defence.

9. The theory of free fight sought to be adumbrated on behalf of the appellants is also devoid of merit, for it is well settled that in a free fight, no right of private defence is available to either party and each individual is responsible for his own acts.

10. As earlier observed, the facts and circumstances proved in this case establish beyond any shadow of doubt that while Akaram, appellant held Raghunath deceased, the other two, viz. Vishvas, appellant and Mahadev slew him with knives without any provocation or justification. The manner in which the appellants and Mahadev acted unmistakably shows that they shared the common intention of causing the death of Raghunath. The High Court was, therefore, right in interfering with the order of the trial Court and is convicting the appellants and Mahadev for committing the aforesaid offence of murder in furtherance of their common intention and we see no reason to interfere with the same. Accordingly, the appeals fail and are hereby dismissed.

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