Pandurang Narayan Jawalekar

Vs

State of Maharashtra

Criminal Appeal No. 191 of 1972

(P. N. Singhal, Syed M. Fazal Ali JJ)

27.02.1978

JUDGMENT

FAZAL ALI J. -

1. This is an appeal under the provisions of the Supreme court (Enlargement of Criminal Appellate Jurisdiction) Act. 1970 against an order of the High Court dated September 15/16, 1971 by which the High court set aside the acquittal of the appellant under Section 302 I.P.C. and convicted him under Section 302, I.P.C. and sentenced him to imprisonment for life. He was also convicted under Section 324, I.P.C. and sentenced to two years. The facts of the case have been briefly summarised in the judgment of the High court as also that of the Sessions Judge and it is not necessary to repeat the same. The dispute in the instant case appears to have taken place on the sharing of water with the help of an electric motor installed by one of the co-sharers. It appears that the accused was not pleased with the rate charged by the owner of the engine and wanted to pay less. Thereafter there was an exchange of abuses on which the deceased Gena intervened and asked the parties not to fight. This appears to have enraged the appellant Pandurang who took hold of an iron bar and gave a blow on the head of the deceased as a result of which the deceased fell down and died. The occurrence took place at about 8.30 p.m. on December 21, 1968 and an of F.I.R. was lodged by Balbhim alias Dagadu PW 6 at 11.30 p.m. The deceased died on December 23, 1968 in a hospital. After the usual investigation the police submitted a charge-sheet against the appellant and other accused, who were, however, acquitted by the Sessions Judge but convicted by the High Court as indicated above.

2. Mr. Ganpule, learned counsel for the appellant raised three points before us. In the first place he submitted that this was not a case in which the High Court to have reversed the judgment of acquittal because the view taken by the Sessions Judge on the evidence led by the prosecution was reasonably possible. So far as this contention is concerned we have gone through the judgment of the Sessions Judge and that of the High Court and we feel that the High Court, in the circumstances was fully justified in reversing the order of acquittal. There were three main eye-witnesses to the assault, on the deceased, by the appellant, and they were PWs 6, 7 and 9. The Sessions Judge had vehemently criticised the evidence of PW 6, the informant, because there were some discrepancies between his statement in the of F.I.R. and his deposition in the Court. In the report this witness had stated that an axe injury was given by the appellant to PW 9 Hanmant and the iron bar injury was given to the deceased not by the appellant but by his uncle Narain (Al). In the Court, however, the informant modified his previous statement and stated that the deceased was assaulted by iron bar by the appellant. While there may be some justification for not placing implicit reliance on the evidence of PW 6, the informant, we see no reason whatsoever for discarding the evidence of PWs 7 and 9 which appears to be wholly consistent throughout. One of the main considerations which

weighed with the learned Judge in rejecting the evidence of PWs 7 and 9 was that the two witnesses were examined 4-5 days after the occurrence i.e., on December 26, 1968. On a reference to the record, we, however, find that so far as PW 7 Atmaram is concerned, he was examined on December 23, 1968 while PW 9 was examined on December 26, 1968, obviously because he was confined as an indoor patient in a hospital several miles away from the police station. The investigation officer may have thought it fit to record the statement of PW 9 when he went to the hospital. We have carefully perused the evidence of these two witnesses and we fully agree with the High Court that their evidence is worthy of credence. For these reasons, therefore, we are clearly of the opinion that the High Court was right in reversing the Order of acquittal passed by the Sessions Judge.

3. It was then submitted that the prosecution has not given any explanation for the injuries suffered by the accused. The informant in his evidence has admitted that two of the accused persons were in fact injured. The presence of injuries on the person of the accused in the circumstances of this case goes to prove their participation in the fight. In these circumstances, therefore, the contention of the learned Counsel before this Court must be overruled.

4. Lastly, it was submitted by the learned Counsel that this was a case which would not fall within the four corners of Section 302 of the I.P.C. It was submitted that according to the prosecution the appellant gave only one below on the head of the deceased and the likelihood that the fracture was due to the fact that the deceased fell on a stone (article 2) cannot be excluded. It was urged that as the blow was given by the appellant in a sudden fight without any premeditation the case of the appellant falls with in the purview of Section 304(1) of the I.P.C. We are, however, unable to agree with this contention. To begin with the Doctor, who examined the deceased while he was alive, viz., Balchandra, has clearly stated in his evidence that even if a person would have fallen on a stone like article 2 he would not have received the contusion as described in the injury report. On being cross-examined by the Court Pw 23, the Surgeon, who had performed the operation of the deceased, also said that the site of the injury indicated that such an injury could not be caused by a fall on a stone. At one place the Surgeon has no doubt said that if a man of 70 fails on a stone like article 2, such an injury is possible. In view of his contradictory statements we would prefer to rely on the evidence of Dr. Balchandra, who was the doctor who had examined the deceased while he was alive. Secondly the nature of the injuries shows that extensive damage was caused to the brain from one end to the other resulting in several fractures as would appear from the evidence of Dr. Rudramani. This shows that the appellant must have struck the blow on the head of the deceased with the iron bar with very great force. The deceased was an old man and was an innocent intervener who was asking the parties not to quarrel, and there was no justification for the appellant to have given such a serious injury to him resulting in his death. Moreover, before the provisions of Section 304, I.P.C. can apply, it must be shown that the Act committed by the accused was not a cruel one. In the instant case we are unable to find from the facts narrated above that the injury caused by the appellant was not a cruel one or that the accused did not Act in a cruel manner. For these reasons, therefore, the appeal fails and is dismissed. The appellant, who is on bail, must now surrender and serve out the remaining portion of the sentence imposed. One month's time is allowed to the appellant to surrender to the concerned authority.

</html