

Yasin Gulam Haider

Vs

State of Maharashtra

Criminal Appeal No. 191 of 1975

(Syed M. Fazal Ali, A. D. Koshal JJ)

09.02.1979

JUDGMENT

Fazal Ali, J. –

1. This appeal by special leave is directed against the judgment of the Bombay High Court dated April 30, 1975 dismissing the appeal filed by the appellant before the High Court in limine. Mr. Bhasme appearing in support of the appeal has raised a short point before us. He contended that the Sessions Judge has disbelieved the fundamental part of the prosecution story because the witnesses examined to prove the charge against the appellant refused to support the prosecution and were declared hostile as having been gained over. The conviction is founded on the single testimony of PW Badada, a constable who is alleged to have seen the accused attacking the victim Namdeo with a sword near the Chhaya Talkies. At the outset we would like to observe that there were so many infirmities in the prosecution case that this was not at all a fit case which should have been summarily dismissed by the High Court so as to deprive the appellant of the right of appeal. The case involved arguable points that the evidence itself prima facie was full of contradictions. Hence, the matter undoubtedly required further investigation. It will, however, be futile now to send the case back to the High Court because four years have passed since and as the entire case rests on the evidence of PW Badada, we have decided to enter into merits of the case and we have gone through the evidence of PW Badada and we are clearly of the opinion that he is not a reliable witness. To begin with Badada has stated that on May 8, 1975 at about 11.45 p.m. he heard shouts near the Chhaya Talkies regarding the 'maramari' (scuffle). Thereupon, he along with Kulkarni set out towards Chhaya Talkies on bicycles. Although the witness was fully aware that some sort of altercation was going on there, he neither made any entry in the Police Chowki to which he was attached nor did he care to take any weapon, not even a stick, to protect himself or to arrest the assailants. In cross-examination the witness admits that he learnt about occurrence at about 11.45 p.m., which is the actual time when the occurrence took place. It is, therefore, obvious that by the time he reached Chhaya Talkies the assault must have been over in all probability. Having realized this the constable has put a different story in cross-examination that the accused Yasin reached the electric poll and was ahead of the witness by 20 to 25 feet. Yasin after assaulting the victim turned back and started running in the direction in which the witness was coming. This statement has obviously been made to make him a competent witness to identify the appellant. He further admits that to the side of Municipal Dispensary there was neither crowd nor 'mara-mari'. It is not understandable why after assaulting the victim with a sword, the accused did not try to run away towards the Municipal Dispensary in which case he could have completely escaped. Secondly, even assuming that the witness saw the murderous assault on the victim, he did not care either to go to the house of the appellant and arrest him nor did he even approach Namdeo, the victim, to find out who was his assailant and under what circumstances he was assaulted. He further admits that he did

not take any steps so as to send Namdeo to the hospital. It also appears that he made no entry in the Chowki mentioning the fact that he had gone to the Chhaya Talkies and saw a criminal offence being committed in his presence. Finally, the witness says that on May 9, 1975 he narrated the entire incident to Inspector Parab, PW 18. But PW 18 in his evidence does not say that the witness had narrated the incident to him. For these reasons, therefore, we are satisfied that the evidence of this witness is wholly unworthy of credence. Mr. V. S. Desai appearing for the respondent submitted that it appears that the name of the appellant came to light immediately when the victim was taken to the hospital and the doctor was told by Godabai, PW 8 that the appellant had assaulted Namdeo. Godabai when examined as a witness did not support the doctor. Thereafter the evidence of the doctor remains hearsay and, hence, inadmissible. Godabai resiled from her statement before the police and is, therefore, an unreliable witness. Her statement before the police could not be used to corroborate the prosecution or to convict the appellant. The most peculiar feature of this case is that the victim Namdeo who was inflicted many serious injuries by sword by the appellant has himself not chosen to implicate or identify the appellant as his assailant when he came to give his evidence before the Sessions Court. Having regard to the cumulative effect of these circumstances we are satisfied that the prosecution has miserably failed to prove the charge against the appellant beyond reasonable doubt. If the High Court had taken a little care in sending for the records, perhaps, we would have been spared the trouble of deciding this case four years after the appeal was dismissed by the High Court. It is true that the High Court has the undoubted power to dismiss an appeal summarily. But it must be realised that in a criminal case the accused has only one right of appeal and that should not be denied to him where arguable questions of fact are involved or a prima facie case for investigation is made out. We hope and trust that in future the High Court would be careful in exercising its discretion in dismissing appeals summarily and would not do so as a matter of routine. For the reasons given above the appeal is allowed, the conviction and sentence passed on the appellant are set aside and he is acquitted of the charges framed against him. The appellant will now be discharged from his bail bonds. Fine if paid will be refunded.

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