

Aher Rama Gova and Others

Vs

State of Gujarat

Criminal Appeal No. 135 of 1972

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

09.03.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a judgment of the Gujarat High Court convicting the three appellants Uka Gova, Rama Gova and Rama Sidi under Section 326/149 to five years' rigorous imprisonment.

2. As many as eleven accused were tried by the trial Court but all of them were acquitted on the finding that the prosecution case was not proved. The State thereupon filed an appeal to the High Court which after reviewing the evidence came to the conclusion that the case against the appellants was foolproof. The central evidence against the accused consists of the testimony of the eyewitness PW 3 Bai Mini, widow of the deceased Kane Naran. This evidence is corroborated by three dying declarations said to have been made by the deceased. One of the dying declarations which is oral is contained in the FIR itself and the other two were made later on : one to the Magistrate and another to a police officer. We have gone through the judgment of the High Court which has made a very cautious approach to this case and has held that in the circumstances of this case the High Court would rely on the evidence of PW 3 only if it is corroborated by some other evidence. The High Court relied on Ex. 77 which was recorded by a Taluka Magistrate. It is true that the original dying declaration was not produced before the Court but from the evidence, it is clear that the original was lost and was not available. The Magistrate himself deposed on oath that he had given the original dying declaration to the Head Constable where the Head Constable had said that he had made a copy of the same and given it back to the Magistrate. At any rate, it was clearly proved that the original dying declaration was not available. In these circumstances the prosecution was entitled to give secondly evidence which consisted of the statement of the Magistrate as also of the Head Constable who had made a copy from the original and testified that the copy was a correct one. Appearing in support of the appeal Mr. Mulla vehemently criticised the dying declaration on several grounds but the High Court has dealt with these grounds and after hearing Mr. Mulla, we are satisfied that the finding of the High Court regarding the veracity of the dying declaration is correct and does not call for any interference. We are also satisfied that the view taken by the High Court in convicting the appellant is fully borne out by the evidence on the record and does not need to be set aside by us.

3. Lastly, it was urged by Mr. Mulla that the ends of justice do not require that the appellants should be sent back to jail for an occurrence which has taken place ten years ago and after they had been on bail for a pretty long time. Having regard to the peculiar circumstances of this case, we feel that it will not be conducive in the interests of justice to send the appellants back to jail and the ends of

justice would be fully met if PW 3, Bai Mini the widow of Kane Naran is sufficiently compensated. For these reasons, therefore, we would, upholding the conviction of the appellants, reduce the sentence to the period already served. In lieu of the sentence remitted we shall impose a fine of Rs. 3000 on each of the appellants. In default one year's rigorous imprisonment.

4. Out of the fine, if realised, the entire amount should be paid to PW 3, Bai Mini. Six month's time is allowed to the accused to pay the fine. The appellants will be discharged from the bail bonds after the fine has been paid. The appeal is dismissed with the aforesaid modifications in the sentence.

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