

Shivji and Others

Vs

State of M.P.

Criminal Appeal No. 265 of 1973

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

30.03.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, the appellants were convicted under Section 302/149 and the sections of the Indian Penal Code and have been sentenced under various sections of the Penal Code as indicated in the judgment of the High Court. Essential details of the prosecution case have been fully reproduced in the judgment of the High Court and that of the Sessions Judge and it is not necessary for us to repeat the same all over again. It appears that two main incidents took place in the course of which some of the prosecution witnesses were assaulted and the deceased was killed. In one incident, there was a mutual altercation between the prosecution witnesses and some of the accused persons in the course of which there was an exchange of brickbats as a result of which some grievous injuries were caused to witnesses Hazari, Bhanna, Dhanna and Bhima. Thereafter the complainant party wanted to go to the police station to lodge a report of this incident and whilst they were on the way, they were alleged to have been surrounded by the appellants. One of the appellants was armed with a gun and the object of the appellants appears to have been to prevent the other party from going to the police station. Despite a request made by the deceased not to assault them, Shivji is said to have fired at the deceased as a result of which he fell down and died. A FIR was lodge on the basis of which investigation was made. The case came up before the Sessions Judge who after considering the evidence, acquitted all the accused persons, and rejected the prosecution case. The State of Madhya Pradesh file an appeal before the High Court against the order of the Sessions Judge acquitting he appellants and the High Court accepted the appeal, convicted the appellants as mentioned in its judgment. We have heard learned Counsel for the parties at great length and have also gone through the judgment of the High Court and that of the Sessions Judge. We feel that this appeal must succeed on a short point. It appears from the evidence of the eyewitnesses that two of the accused persons i.e. Shivji and Bhodha had received injuries in the course of the occurrence. One of the injuries which Shivji received was of a grievous nature which resulted in the fracture of the scapula of the left shoulder. In the FIR no explanation regarding this injury seems to have been given by the prosecution though in the evidence it was suggested that in the course of the second incident, his shoulder was fractured, as he must have been assaulted by the prosecution witnesses in their defence. This fact is proved by the evidence of PW 1 and PW 6 both of whom have been believed by the High Court. So far as the main incident is concerned, there is no evidence at all to show that apart from the gunshot, any other injuries were inflicted on any of the witnesses.

2. Mr. Mulla appearing on behalf of the appellants contended that having regard to the evidence of the prosecution itself, it is impossible to believe that the appellant Shivji could have fired the gun in

the manner as asserted by the eyewitnesses. To begin with, PW 13 Dr. J. P. Dadhich clearly stated that on examination of Shivji, he found that the left shoulder of the appellant was fractured and the injury was of grievous nature. The doctor further asserted that having regard to the injuries sustained by Shivji on the shoulder, he could not handle the gun from his left hand, because he had suffered fracture of the spine of left scapula. He has further explained this statement by deposing as follows :

I have stated that Shivji could not handle gun (Art. G) on account of the fracture of the spine of the scapula by which I mean that he could not lift and fire the gun (Art. G) from his left hand.

Thus, the evidence of doctor clearly shows that it was not physically possible for the appellant Shivji to have fired the gun after he had sustained fracture of the scapula of the left shoulder. On the other hand, the evidence of the eyewitnesses clearly show that it was the habit of Shivji to fire a gun by placing it on the back portion of the left shoulder and by pressing the trigger from his right hand. In this connection PW 6 deposed as follows :

I know how to fire a gun. I had gone to jungle with accused Shivji for hunting and at that time I had seen him firing a gun. All the persons fire gun by holding the gun in left hand, by putting the back portion of the gun at the chest and by pressing the trigger by right hand.

Apart from this, PW 1 also had while deposing regarding the firing of the gun by Shivji, stated thus :

Accused Shivji had kept the barrel of his gun on his left hand discharged it.

In view of the medical evidence discussed above, it is manifest that having regard to the injuries sustained by the appellant Shivji, it was impossible for him to fire the gun as alleged by the prosecution witnesses. Thus, the evidence given by the prosecution is wholly inconsistent with the medical evidence. The prosecution deliberately concealed the manner in which the accused persons viz. Shivji and Bhonde had received the injuries, and have thus not come out with the true version of the occurrence. It may be that if the two injuries were received by the appellant Shivji and Bhonde in the third incident itself, the accused may have been justified in the right of private defence of person to fire at the deceased. In these circumstances therefore we are satisfied that the prosecution has not proved its case beyond reasonable doubt. Finally, when the Sessions Judge had acquitted the appellants and rejected the prosecution case, it could not be said from the nature of the evidence led by the prosecution that the view taken by the Sessions Judge was not reasonably possible. It may be that the High Court may have taken a difference view but the High Court has not shown that the view taken by the learned Sessions Judge was not reasonably possible. We have gone through the evidence ourselves and are of the opinion that the view taken by the Sessions Judge was the only view which could have been reasonably possible. The appeal is, therefore, allowed and the appellants are acquitted of all the charges framed against them. As appellant 7 is reported to be dead, appeal abates against him.

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