

Kanbi Purshottam Ladha

Vs

State of Gujarat

Criminal Appeal No. 88 of 1973

(R.S. Sarkaria, P.N. Shinghal, O. Chinnappa Reddy JJ)

31.07.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. The sole appellant was acquitted of the charge of murder by the learned Sessions Judge of Jamnagar, but, on appeal by the State, he was convicted by the High Court under Section 302, Indian Penal Code and sentenced to suffer imprisonment for life. He has preferred this appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. The case of the prosecution was that there was enmity between the family of accused and the family of the deceased Laljibhai for various reasons. One of thereasons was that Laljibhai was alleged to have committed the murder of Hirji the brother of the accused. In fact on account of the disputes in the village, Laljibhai had moved to Jamnagar. About two days prior to the occurrence he had come to the village from Jamnagar for agricultural operations. On June 9, 1970 at about 11 a.m. he along with labourers, PWs 3, 4 and 32 went to his field from the village. At about 3.30 or 4 p.m. they started to return to the village from the field. The deceased and PW 3 were in the first cart which was being driven by PW 3. PW 32 was in next cart and PW 4 was in the last cart. They had to pass in front of the field of the accused. When the first cart came opposite to the field of the accused, the accused who was standing at the gate jumped into the first cart from behind and stabbed Laljibhai repeatedly. The oxen were startled and started bolting. The accused got down from the cart and ran towards his field. PW 3 tried to control the oxen and ultimately took the cart to the village gate. At the village gate he met Papatbhai and informed him that the accused had stabbed Laljibhai. Meanwhile Tulsidas (PW 12), brother of the deceased, came there and PW 3 told him bout the occurrence. PW 12 and his son Narottam (PW 16) arranged to take the injured to the hospital at Jamnagar in a bus. Curiously enough PW 16, obtained a certificate from the Talati of the village Panchayat that Laljibhai was injured in an accident and that it was necessary to take him immediately to Jamnagar for treatment. PW 16 explained that the conductor of the bus would not otherwise agree to take the injured to the hospital at Jamnagar. By the time the bus reached Jamnagar, Laljibhai expired. PW 12 gave a report PW 18, Deputy Police Head Constable who was on duty at the Irwin Hospital, Jamnagar, at about 8.30 p.m. This report again makes interesting reading. PW 12 stated in the report that PW 3 informed him that when the cart came opposite to the field of the accused, the accused and his brother Natha came from behind, got into the cart and both of them stabbed Laljibhai with knives. PW 12 also mentioned in the report that PW 3 further informed him that PW 16 had also come there at the time of the incident. The complaint PW 12 was registered and the police proceeded with the investigation. In the course of the investigation it transpired that Natha the brother of the accused was not present that day in the village and, therefore, he was dropped. PW 21, the Investigating Officer expressly stated so in his cross-examination. PW 12, the brother of the deceased, also admitted that after coming to know that the

brother of the accused was not in the village they gave up the name of the accused only.

2. It is thus seen that at the earliest opportunity, when the first information report was given, it was attempted to implicate both the brothers, namely, the accused and Natha, and to attribute identical acts to each one of them, and that Natha's name was subsequently omitted only because the investigation revealed that he was not in the village that day. Having regard to the circumstance that the case arose out of deep-seated enmity and there was a definite attempt at false implication at the very beginning, the learned Sessions Judge thought it unsafe to place any reliance on the evidence of the prosecution witnesses. In fact before the learned Sessions Judge the Public Prosecutor conceded that PW 4 was not a witness on whom any reliance could be placed. PW 32 was not examined at the trial but was later examined during the pendency of the appeal, because of an order made by the High Court. PW 32 did not support the prosecution case at all. Before the Sessions Judge the Public Prosecutor relied solely on the evidence of PW 3. As already mentioned, the learned Sessions Judge, thought that it was unsafe to act upon the prosecution evidence. The learned Sessions Judge further noticed the complication introduced by PW 16 the nephew of the deceased who obtained a certificate from the Talati that the deceased was injured in an accident. The learned Sessions Judge, therefore, therefore, acquitted the accused.

3. The High Court took the view that the evidence of PWs 3 and 4 could be accepted notwithstanding the circumstance that not only the accused but his brother had also been implicated in the first information report and attributed the same acts. The High Court took the view that the injuries found on the person of deceased lent assurance to the evidence of PWs 3 and 4 and that their evidence was also corroborated by the evidence of PW 11 who stated that he heard PW 3 declaring in the village that it was the accused that had killed Laljibhai.

4. We have been taken through the evidence of PWs 3, 4, 11, 12, 16, 18 and 32. We are unable to say that the learned Sessions Judge had taken an unreasonable view of the evidence. The outstanding fact was that the prosecution case began with a report in which one out of the two persons named as the assailants was admittedly falsely implicated. If in the face of that report the learned Sessions Judge felt himself unable to accept the present version of the prosecution we cannot say that he took an unreasonable view warranting interference by the High Court in an appeal against an order of acquittal. The High Court should not have reversed the order of acquittal merely because another view of the evidence was possible. We, therefore, allow the appeal, set aside the judgment of the High Court and restore that of the trial Court.

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