Hasan Ahmad Mai Isha and Others

Vs

State of Gujarat

Criminal Appeals Nos. 215 and 279 of 1973

(R.S. Sarkaria, O. Chinnappa Reddy JJ)

15.11.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. Hasan Ahmad Isha Mai and four others were acquitted by the learned Additional Sessions Judge, Broach, of offences under Sections 147, 148, 302 read with Section 149 and other cognate offence. On appeal by the State, the High Court of Gujarat convicted all the accused under Section 326 read with Section 149, IPC and sentenced each of them to suffer rigorous imprisonment for a period of five years. All the accused convicted under Section 135 of the Bombay Police Act and sentenced were also to suffer imprisonment for a period of one year. Accused 2, Sattar Mohmed Davood Dula, was also convicted under Section 302 and sentenced to suffer imprisonment for life. Accused 3, Kasamsha Subaratsha, was convicted under Section 325 and sentenced to suffer rigorous imprisonment for three years. Accused 4 and 5, Abdul Sattar Ahmed Isha Mai and Mohmed Alibhai, were convicted under Section 323 and sentenced to suffer rigorous imprisonment for one year. The accused have preferred these two appeals, Criminal Appeal No. 215 of 1973 by special leave and Criminal Appeal No. 279 of 1973 under the Supreme Court (Enlargement of Criminal Jurisdiction) Act, 1970. The case against the accused was briefly as follows : In the village of Sarod, there are two localities - Vanta and Tarpet. The agriculturists of the village engaged watchmen to guard the produce raised on their lands. Watchman residing Vanta are known as Vanta watchmen and are Hindus. The deceased Bhikhubhai was their leader. Watchmen residing in Tarpet are known as Tarpet watchmen and they are Muslims. Their leader was the first accused. The lands of one Bhadursinh and another Bhikhubhai were originally under the watch of Vanta watchmen. Because of a dispute between Bhadursinh and Babubhai, Bhadursinh transferred the watch to Tarpet watchmen. On that account, there was a dispute between the vanta and the Tarpet watchmen. On March 1, 1972 Rupsinh and Dolatsinh went to the field of Rupsinh to pluck cotton. At about 4 p.m. Bhikhubhai went there, had a smoke with them and started walking away from the fields of Rupsinh. The five accused were near the field of Bhadursinh. Bhikhubhai questioned them regarding their presence whereupon there was an exchange of words between Bhikhubhai and the accused. A-1 who was armed with a gun shot twice while A-2 gave two blows on the abdomen of Bhikhubhai with a spear. Bhikubhai fell down on the ground. Dolatsinh went near Bhikhubhai, took his stick and gave a blow with it on the head of A-2. Thereupon A-3, A-4 and A-5 beat him with stick and the blunt portion of a Dharia. Dolatsinh also fell down. Rupsinh who was at a distance of about 100 feet attempted to intervene when he was threatened by A-1. Thereafter, the accused filed the scene. Rupsinh went near Bhikhubhai and found him dead. Leaving Dolat there, he went to the village and informed Revaben, Bhikhubhai's wife about the occurrence. He also told Bhikhubhai's brothers about the occurrence. All of them rushed back to the scene of occurrence. Rupsinh and Dolatsinh then proceeded from the scene to Kavi Police Station where Dolatsinh gave a report Ex.

15 at about 8-45 p.m. Thereafter, the police proceeded with the usual investigation and finally the five accused were charged and tried for the offences under Sections 148, 302, read with Section 149 etc.

2. The case rested principally on the evidence of the two eyewitnesses Rupsinh and Dolatsinh, one of whom had also received injuries in the course of the occurrence. The learned Additional Sessions Judge was not satisfied with the veracity of Dolatsinh and Rupsinh and therefore gave the benefit of doubt to the accused. The High Court took a different view of the evidence of the two witnesses and convicted the accused as aforesaid. The question for our consideration is whether on the facts and circumstances of the case, the view taken by the learned Sessions Judge was not such a reasonably probable view as to warrant interference in an appeal against acquittal. The learned counsel for the appellants and the State read to us the judgments of the learned Sessions Judge and the High Court and the evidence of the principal witnesses. After considering the evidence and the view of the learned Session Judge and the High Court, we are of the opinion that there was no warrant for interfering with the order of acquittal.

3. One circumstance to which great importance was attached by the learned Sessions Judge was this : In the report given by Dolatsinh at the police station that night, Dolatsinh categorically stated that accused I fired his gun at Bhikhubhai and that the gunshot injured Bhikubhai in his abdomen. Immediately, another shot was also fired. The medical evidence, however, did not disclose any injury which could be ascribed to gunshot. The post-mortem examination of the body of Bhikhubhai disclosed five incised wounds but not one of which could even remotely be caused by gunshot. Faced with this situation, Dolatsinh and Rupsinh in their evidence tried to make out that A-I fired two shots but they did not hit Bhikhubhai. Having regard to the categoric assertion in the first information report, the learned Sessions Judge found it difficult to accept the version given by the witnesses in court. It transpired from the evidence that an empty cartridge was found at the scene of offence, and this was apparently responsible for the introduction by the witnesses, of firing of gun by A-1. According to the witnesses, the two shots were fired from a distance of about 12 feet. If the shots were fired from such a close range, the assailant could not have possibly missed his target. This was one of the circumstances which made the learned Sessions Judge doubt the credibility of Dolatsinh himself had received injuries in the course of occurrence. The High Court merely brushed aside the circumstance by the remark that this circumstance was not sufficient to destroy 'the evidentiary value of the witnesses'.

4. Another circumstances upon which the trial Court doubted the testimony of Dolatsinh and Rupsinh was their statements to the effect that they were not personally acquainted with the Tarpet watchmen who were ten in number, and that they knew the names of the five accused person only but not the names of the remaining five Tarpet watchmen. Rupsinh did not explain how he knew the names of the five accused but not the names of the remaining Tarpet watchmen. Dolatsinh attempted to (give) feeble explanation to the effect that he knew their names because they used to watch Kalibhoy lands where he also used to go for work. But he admitted that the remaining five Tarpet watchmen used to watch Goradbhoy lands and that he also used to go for work in Goradbhoy lands. There was thus no explanation for his special knowledge of the names of the accused and not the names of the other Tarpet watchmen. The learned Sessions Judge was naturally inclined to take the view that the names of the five accused must have been supplied to the witnesses by some interested parties like Bhadursinh. The learned Session Judge was reinforced in his conclusion by the evidence of Revaben, widow of the deceased, who deposed that Rupsinh did not tell her as to whom had murdered her husband. In fact, a reading of her deposition does not show that she was told by Rupsinh that he had witnessed the murder. The High Court thought that the witnesses had

sufficiently explained how they knew the names of the five accused persons. The High Court did not think that there was any merit in the submission that Revaben had not been informed the names of the accused by Rupsinh. We think that the view taken by the learned Sessions Judge that the witnesses did not know the names of the assailants land that those names were supplied to them by interested parties was a reasonable view to take on the facts and circumstances of the case.

5. We have referred to the two important circumstances which led the learned Sessions Judge to discredit the evidence of Dolatsinh and Rupsinh. We do not think that the learned Session Judge's assessment of the evidence and conclusions were so unreasonable as to warrant interference by this High Court in an appeal against an order of acquittal. Both the appeals are therefore allowed, the Judgment of the High Court is set aside and that of the learned Sessions Judge is restored. The bail bonds of the appellants will be cancelled.

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