

Kantibhai Dalsukhbhai Patel and Another

Vs

State of Gujarat

Criminal Appeals Nos. 217 and 353 of 1975

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

19.11.1979

JUDGMENT

FAZAL ALI, J. –

1. Criminal Appeal No. 217 of 1975 has been filed under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. The Appellant in this case was convicted by the trial Court under Section 304(1) IPC and sentenced to seven years' rigorous imprisonment. The State filed an appeal against the acquittal of the appellant under Section 302 and the High Court in appeal reversed the acquittal and convicted this appellant under Section 302 to imprisonment for life.
2. Criminal Appeal No. 353 of 1975 also arises out of the same case in which the trial Court convicted the appellant K. D. Patel who was A-1 before the trial Court under Section 302 and sentenced him to imprisonment for life. The High Court in appeal affirmed the conviction and sentence passed by the trial Court. As however the appeal of V. D. Patel (A-2) before the trial Court had been admitted by this Court, special leave was granted to A-1, K. D. Patel also.
3. We have heard counsel for the parties and have also gone through the records.
4. The occurrence appears to have taken place on October 6, 1978 over the breach of a bund as a result of which water was allowed to flow in the field of the accused. It appears that both in the fields of the complainant and those of the accused, paddy crop was ripe for harvest and as there had been some rains a day or two before the occurrence, both the fields were filled with water. The complainant had caused a breach in the bund in order to drain off the water from his field into the field of the accused. At this, A-2, V. D. Patel went to complainant and protested against his act but the complainant refused to listen and said that his field was at a higher level hence nothing could be done in the matter. Thereafter, it appears that the appellants along with others entered the field of the complainant which is survey No. 668 when the complainant and his party was harvesting the field and assaulted the two deceased namely Becharbhai and Chimanbhai with spears and axe. A-1, K. D. Patel is said to have given a blow on the chest of the deceased, Becharbhai and another blow to Chimanbhai, A-2 gave a blow with the back side of the pharsa on the head of Chimanbhai. Both Becharbhai and Chimanbhai died as a result of the injuries suffered.
5. The learned counsel appearing for the appellants submitted that so far as A-1 is concerned, there is a possibility that the might not have been present at the time of occurrence because whereas A-2 and others had some injuries, A-1 had no injury at all. It was also contended that A-1 had pleaded alibi. Both the courts below have disbelieved the plea of alibi taken by A-1 and have held that the

same had not been proved. The courts below also found that A-1 assaulted the deceased as alleged by the prosecution. Both the courts below have also believed the evidence of PWs 2, 4, 6, 7 and 20. Out of these witnesses 2, 4 and 7 were injured witnesses and therefore there could not be any doubt about their presence at the spot. We are unable to understand how the Sessions Court convicted V. D. Patel, A-2 under Section 304(1), IPC when the medical evidence clearly went to show that the blow given by him on the head of the deceased caused an intensive injury resulting in fracture of the skull and breaking of the bone into four pieces as a consequence of which the deceased died. In our opinion, therefore, the High Court was fully justified in setting aside the acquittal of the appellant, V. D. Patel under Section 302 and convicting him thereof to imprisonment for life. Mr. Desai, counsel, tried to raise certain questions of facts, but in view of the concurrent findings of the facts, we are not in a position to interfere in this case, particularly when the courts below have accepted the evidence of the eyewitnesses examined in the case at its face value. The result is that there is no merit in the appeals which are dismissed. Appellant A-2, V. D. Patel shall now surrender to his bail bond and serve out the remaining portion of sentence.

</html