

Ashok Narhari Naik

Vs

State of Maharashtra

Criminal Appeal No. 349 of 1975

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

11.01.1980

JUDGMENT

SARKARIA, J. –

1. This appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, is directed against a judgment, dated February 17/18, 1975, of the High Court of Bombay. It arises out of the following facts :
2. Ashok Narhari Naik, appellants herein, is the original accused 2. He, along with eight others, was tried by the Additional Sessions Judge Greater Bombay, for having committed offences under Sections 143, 147, 148, 323 read with Sections 149 and 302, Penal Code, or in the alternative under Sections 302 and 302/34, Penal Code.
3. On June 17, 1972, the deceased, Dindi, gave a beating to accused 1 who was, at all material times, a door-keeper in the Shreyas Cinema Theatre at Ghatkopar. On the following day when Dindi was going along with his cousin, Amrit Kumar, in the latter's car to the house of his friend, Ravindra, accused 1 was seen along with four or five others who administered threats to Dindi because of the previous day's incident. On June 19, 1972, accused 1 made a report at Ghatkopar Police Station against the deceased, Dindi, in respect of the beating administered to him by the deceased on June 17, 1972.
4. On July 5, 1972, Dindi deceased along with his friend, Ravindra (PW 6), went to Shreyas Talkies to see a picture at 3 p.m. At that time, accused 1 was the door-keeper on the ground floor of the upper stall of the said talkies. The deceased and PW 6 purchased balcony tickets for the show and went in to see the picture. This balcony was on the first floor. There are two staircases leading to this balcony, one on the north side and the other on the south. The Southern staircase is nearer to the Manager's room and the booking office, while the northern staircase is at the other end near the gents' lavatory. The southern staircase was used for going up to the balcony for the purpose of seeing the show and the northern staircase was used for coming down from the balcony after the end of the show. In order to enter the auditorium, there is a waiting hall on the ground floor. There is a similar waiting hall for the balcony on the first floor. The way to the balcony is through this waiting hall on the ground floor.
5. Kannan (PW 5), at the material time on that day, was the door-keeper at this main entrance to the waiting hall on the ground floor. All cinema-goers had to first enter this waiting hall through that door. This door-keeper used to allow only such persons who had tickets for the particular show. Accused 1 asked the door-keeper, Kannan (PW 5) to allow four or five person, who are said to be

the assailants of the deceased, to enter from that door into the waiting hall. The cinema show was over at about 6 p.m. and the cine-goers from the balcony started coming out. The deceased, Dindi, and Ravindra also came out into the waiting hall at the north-eastern corner at which there is a tea stall close to the staircase meant for coming down. There is also a gents' lavatory by the side of this staircase. On its left side, there is a passage between the auditorium and the gents' lavatory and other rooms nearby. According to the prosecution, the incident took place in this passage. When the deceased along with his companion, PW 6 came in that passage between the auditorium and the gents' lavatory, he was stopped by the appellant with a knife, while his companion fisted, slapped and dragged the deceased towards the lavatory. Dindi was trying to save himself. Ravindra went to the rescue of the deceased and raised an alarm. Thereupon, some of the assailants gave fist blows to Ravindra and then pushed him into the lavatory where he fell down bleeding. He then regained his composure, washed his face, went out to the Manager's room with his bleeding, swollen lips and told the Manager that he and his friend, Dindi had been assaulted by some persons. He also telephoned to Dindi's cousin, Amrit Kumar about the assault on him and Dandi. The Manager who had also been informed about the incident by some ladies, phoned to the police. Ravindra waited there for the arrival of the police, who came shortly thereafter. Ravindra and Dindi were taken in the police van to the police station and then to the hospital and immediately thereafter Ravindra's statement was recorded by the police.

6. Apart from Ravindra (PW 6), the occurrence was witnessed by one Sharad Kumar Sheth (PW 4), who had also gone to see the same show on that day. He was accompanied by one Pallan who has not been examined. Soon after the incident on the same day, accused 1 was apprehended by the police. Accused 1 pointed out accused 2 and 6 who were also arrested on the same night. Then accused 2 (appellant herein) in his turn, pointed out accused 7 who was also arrested. Accused 6 pointed out accused 5 and 3 and they were also arrested during the same night. Accused 5, in his turn, pointed out accused 4 who was also arrested the same night. All the accused were residents of Yogeshwari area. The blood-stained clothes of these arrested persons were also taken into possession by the police and sealed into parcels which were sent in due course for examination to the Chemical Analyser, who has reported that they were stained with human blood. The blood found on some of those clothes was identified as blood of Group 'B' which was the blood group of the deceased Dindi.

7. Since any of the persons who were arrested by the police in connection with this incident during the same night between July 5 and 6, 1972 were not previously known to PW 4 and PW 6, a test identification parade was held before a Justice of the Peace (PW 17) on the evening of July 7, 1972. At this parade, Sharad Kumar (PW 4) Kannan (PW 5) and Ravindra (PW 6) identified some of the accused, including accused 2 (appellant herein).

8. The learned trial Judge did not find it safe to convict any of the accused on the testimony of Sharad Kumar (PW 4) and Ravindra (PW 6), in the absence of independent corroboration. In his opinion the evidence of the test identification parade also, was not satisfactory. He, therefore, accorded the benefit of doubt to all the accused and acquitted them.

9. Against this order of acquittal, the State preferred an appeal to the High Court. The High Court reappraised, elaborately discussed the prosecution evidence and considered all the main reasons given by the trial Court in support of the acquittal. In its opinion, the evidence of the eyewitnesses and of the test identification parade was reliable and safe enough to convict Ashok Narhari Nair, accused 2. Accordingly, the appellant was convicted under Section 302 (as also under Sections 323/149, and 323/34 and 147, Penal Code), The appellant alone was found guilty of the capital

charge under Section 302, Penal Code, and was awarded the sentence of imprisonment for life. Hence this appeal.

10. The whole case hinges on the question of identification of the assailants. The High Court has convicted the appellant mainly on the basis of the evidence of the two eyewitnesses, Sharad Kumar Sheth (PW 4) and Ravindra (PW 6). According to the finding of the High Court, the occurrence took place in the passage; and that the prosecution story that both these witnesses had come to witness the show and were therefore, at the material time, going out after the show was over by the passage where the occurrence took place. The High Court further found that these two witnesses had ample opportunity to identify the appellant at the time when he was stabbing the deceased. According to it, the evidence of test identification held before PW 17 was also reliable and furnished valuable corroboration of the ocular account of the eyewitnesses.

11. Mr. Chitale, learned counsel for the appellant, has tried to assail these findings on the ground that the fatal injuries were caused to the deceased inside the lavatory and the witnesses were not in a position to see that assault from their respective places. In support of this contention, learned counsel has drawn our attention to the fact that the Investigating Officer found lot of blood in the lavatory. It is argued that the injuries on the person of Ravindra were not such that there could be profuse bleeding from them. It is further pointed out that the Investigating Officer found a trail of blood leading from the lavatory towards the place where the deceased lay injured in the passage. The inference which the counsel wants us to draw from these circumstances, is that after receiving the bleeding injuries inside the lavatory, the deceased ran out and dropped in the passage.

12. Such an argument was raised before the High Court also and was, in our opinion, rightly rejected. None of the eyewitnesses says that Dindi deceased was pursued into the lavatory. According to PW 4, who was a disinterested spectator, the whole of the assault on the deceased took place in the passage between the auditorium and the lavatory, and there was a sort of running struggle and the assailants, who had outnumbered the deceased were beating him and were dragging him in the passage. PW 6 also does not speak of any attack on the deceased inside the lavatory. The place where the deceased fell in the passage is not far from the entrance to the lavatory. The relative position of the assailants and the assailed in the said passage did not remain stationary, while the deceased was being dragged towards the lavatory he was resisting that attempt and struggling to free himself and get away from the clutches of the assailants. In this running struggle between the lavatory and the place where the deceased fell, he received more than 19 injuries, including five lacerated wounds and two incised wounds. Doctor Trikam (PW 18) who conducted the autopsy, has testified that the deceased must have bled from these lacerated and incised wounds. The deceased must have received some of these bleeding injuries when he had been dragged very close to the entrance of the lavatory. This accounts for the trail of blood leading from the door of the lavatory to the place where Dindi ultimately dropped.

13. In this connection the further point to be considered was whether the blood found inside the lavatory was of Dindi deceased or that of Ravindra (PW 6). Ravindra's version was that four or five of the miscreants surrounded Dindi and started beating him in front of the lavatory in the passage. Dindi was trying to extricate himself. He was dragged by those persons in the passage. The witness went to his rescue. Two of those assailants caught hold of the witness and made him stand in a corner. The witness saw one of the assailants whom he identified as the appellant, herein, stabbing Dindi on his back. The witness thereupon raised an outcry. Then, two of those assailants pushed him (PW 6) into the lavatory and assaulted him there. They gave him fist blows on his lips, chest and back. Blood came out from the mouth of the witness and fell in the lavatory. Within a short time, the

witness got up, washed his face, came out and saw Dindi lying in the passage in a pool of blood. Dindi was unconscious and groaning.

14. Dr. Parekh (PW 20), found one bleeding incised wound over the left upper lip and two more bleeding injuries on the lips of Ravindra (PW 6). Dr. Parekh further testified that the blood from the lips of Ravindra must have been dripping and it could be seen on his shirt (Article 2). According to Ravindra, on receiving these injuries and the beating, he had fallen down in the lavatory. These circumstances show that in all probability, the blood found in the lavatory was of Ravindra and not of the deceased.

15. As regards the knife found in the commode inside the lavatory, it is true that Ravindra does not say as to who threw it there. Since Dindi was assaulted in the passage close to the lavatory also, it was quite possible that after the stabbing, the assailant threw the knife through the door into the lavatory.

16. It is noteworthy that even the learned trial Judge did not hold that these two eyewitnesses were not speaking the truth inasmuch as they stated that the stab wounds were caused to Dindi in the passage and not in the lavatory. He did not find that these witnesses were wholly unworthy of credit. The main ground on which he acquitted the accused was that the evidence of these witnesses could not be safely accepted without corroboration by independent and reliable evidence as to the identity of the assailants, particularly the appellant. The trial Judge did not accept the contention canvassed on behalf of the accused that Dindi was stabbed in the lavatory and thereafter he came out and collapsed in the passage. On the other hand he accepted the position that there was struggle between the deceased and the assailants in the passage. Further, while upholding that no satisfactory explanation as to the presence of the blood was found in the lavatory, the learned trial Judge went on to observe that it was not of Ravindra. As rightly observed by the learned Judges of the High Court, these reasons were inconsistent and destructive of each other. In the face of the sworn testimony of Ravindra that he received the bleeding injuries inside the lavatory and had fallen there; and that Dindi was stabbed earlier, in his sight outside the lavatory in the passage, a fact which was clearly borne by the disinterested testimony of PW 4 also, there was no ground to hold that the blood inside the lavatory was of Ravindra and not of Dindi deceased.

17. Once it is held that the deceased was stabbed outside the lavatory in the passage, there is no escape from the conclusion that PW 4 and PW 6 both had a good look of the appellant while he was stabbing the deceased.

18. Another contention advanced by Mr. Chitale is that the appellant had catlike eyes and it was not difficult for the witnesses by noticing the typical colour of his eyes, to pick him out at the test identification parade which was held on the second day following the occurrence. Reference has also been made in this connection to the evidence of Kannan (PW 5), who stated that he had seen the accused before the test identification parade and had identified him because of his catlike eyes. On the basis of this statement made by Kannan, it is urged, that the appellant and his companions must have been shown to the witnesses after the occurrence and before the holding of the test identification parade, which, in consequence, was reduced to a farce.

19. This contention was advanced before the High Court also. The High Court discussed it threadbare and found no substance in it. Kannan, was a colleague of accused 1. Both were employed as door-keepers in the case cinema theatre. Indeed, it was Kannan who, according to his own version, had let in the culprits at the instance of accused 1. As rightly observed by the High Court,

the witness was not speaking the truth when he, in order to oblige the accused, introduced this story in cross-examination. The whole trend and tenor of Kannan's evidence betrayed his partiality towards the accused persons. As against this, PW 4 and PW 6, who were cross-examined by the defence at great length, consistently adhered to the fact that after the occurrence and before the test identification, they had never seen the accused persons. It may be recalled that at the test identification, Ravindra (PW 6) identified only accused 2 as the person who had stabbed Dindi and accused 8 as the person who had assaulted the witness. According to him, the only time he saw accused 2 and accused 8 after the incident was at the time of the identification parade held on July 7, 1972. A suggestion was made to him in cross-examination that when the police went in the company of accused 1 to apprehend accused 2 and others on the night between the 5th and the 6th the witness and PW 4 were accompanying the police. He stoutly denied the suggestion. We agree with the High Court that if the witness - as was suggested by the defence - had really been afforded opportunity by the police to see the accused persons carefully before the test identification parade, he should have identified all the seven persons, to wit accused 2 to 8, at the two different parades and not accused 2 and 8 only. This circumstance also lends assurance to the conclusion that the witness was a truthful witness and identified only those out of the assailants whom he could observe at the time of occurrence and whose mental impression remained stamped upon his memory. Since the appellant was the person who caused the fatal injury to the deceased and accused 8 was one of those persons who had assaulted the witness, it was but natural that their impressions should become more vividly etched - than those of the other co-accused in his memory. The test identification parade was not held after undue delay. The interval of about 42 or 44 hours between the occurrence and the holding of the test identification could not, by any reckoning, be said to be a long period of time having the effect of blurring, much less effacing, the mental images of accused 2 and 8 registered in their memory by the witnesses at the time of incident. We have, for reasons aforesaid no hesitation in holding, in agreement with the High Court that the evidence of test identification was reliable and furnished sufficient corroboration of the eyewitnesses PW 4 and PW 6, with regard to the identity of the appellant as the person who had inflicted the fatal stab wound on the deceased. The view of the evidence taken by the trial Court was manifestly erroneous while that taken by the High Court was correct. We are therefore, of opinion that the High Court was justified in overturning the acquittal of accused 2 (appellant herein) and converting it into a conviction under Section 302, Penal Code.

20. In the result, we uphold the conviction of the appellant for the murder of Dindi alias Devindra and dismiss this appeal. If the appellant is on bail, his bail bond shall be cancelled and he will be arrested and committed to jail to serve out the sentence of life imprisonment inflicted on him.

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