

Bhimrao, Anna Ingawale and Others

Vs

State of Maharashtra

Criminal Appeal No. 349 of 1979

(A.D. Koshol, P. S. Pathak JJ)

02.04.1980

Judgment

KOSHAL, J. –

1. This appeal by special leave is directed against a Judgment dated September 27/28, 1977, of the High Court of Maharashtra upholding the conviction of the six appellants recorded by the learned Sessions Judge for two offences under Section 302 read with Section 149 and of one under Section 148 of the Indian Penal Code, the sentence awarded being imprisonment for life on each of the first two counts and of rigorous imprisonment for one year on the third with a direction that the sentences shall run concurrently.

2. The first appeal in the High Court was originally heard by Vaidya and Sawant, JJ., who differed with each other on the judgment to be rendered, Vaidya, J., holding that the appeal merited dismissal and Sawant, J., being of the opinion that it deserved acceptance in full. The case was therefore laid under Section 392 of the Code of Criminal Procedure before Apte, J., who concurred with Vaidya, J., so that the appeal stood dismissed by the impugned order.

3. Certain facts are not in dispute and may be stated at the outset. The occurrence took place on November 11, 1974, in village Kole to which all the appellants except Khashaba (appellant 5) belong, Appellants 1 to 1 and 6 live jointly in a house which abuts on a road 14 feet wide. Opposite that house lies the one belonging to the two unfortunate persons who lost their lives as a result of the occurrence which is said to have taken place in consequence of inimical relations between the accused and the opposite party. The waste water emanating from the house of appellants 1 had been flowing towards the other side of the road and seeping into the western wall of the house of the deceased. This was one of the factors leading to animosity between the parties, another being that the family of the deceased had earlier sold to a third person some land which they wanted to repurchase but were thwarted in their design by the accused who were instigating the vendee not to resell the land to the deceased.

4. The deceased were related to five of the eyewitnesses as would appear from the following pedigree-table :

Anandrao | ----- | | Abasaheb (eye-
Shripatiwitness PW 19) | ----- | -----
----- | | | | Nivas Balasaheb Bhimrao Uttam Jayakar(deceased) (deceased) (eyewit-
(eyewit- (eyewitnessLakshmi Droupadi ness PW 12) ness PW 13) not
produced)(eyewit- (eyewit-ness PW 10) ness PW 11)##

The relationship inter se between accused-appellants 1 to 4 and 6 is shown in the table below along with the weapons of offence said to have been wielded by each of them and an absconding accused during the occurrence :

# Bhimaro (appellant 1-axe) -----	Anna (appellant 2- Banda alias Maruti Kisanstick) (appellant 3-stick) (appellant 4- axe) ---
-----	Bhondiram Shamrao (appellant 6-stick) (absconding accused- stick)##

5. Khashaba accused 5 is said to be a friend of the family of the other accused and belongs to another village. He was said to be armed with a stick at the time of the occurrence.

6. The prosecution case may be stated thus. On the fateful day Nivas deceased left his house at about 10 a.m. for Karad where he wanted to have himself medically checked up. He returned home at about midday and told his wife that he had been driven back by Anna appellant 2. By then Balasaheb deceased also came to his house from the sugar factory where he was working. It was at this juncture that the two brothers heard abuses being hurled at them by all the accused and after emerging from their house picked up two small sticks and went towards the accused. A scuffle was imminent between the two contending parties when Bhimrao Kadam PW 20 who hails from another village lying about a mile away and who was then returning him from his fields, intervened, separated them, disarmed the two deceased and threw away the sticks which he snatched from them before continuing his journey.

7. At about 2 p.m. all the accused entered the house of the deceased, armed as aforesaid, dragged them out of it on to the road and started beating them with their respective weapons. Lakshmi PW 10 and Droupadi PW 11 intervened and received injuries at the hands of the accused. In the meantime Bhimrao PW 12, Uttam PW 13 and their brother Jayakar who had been working in their field and were informed by a boy about the assault on the deceased, came running to the place of occurrence but they too were beaten up by the accused who then made good their escape.

8. Jayakar brought a motor vehicle from Islampur and took his four injured brothers as well as the two ladies to the Civil Hospital there. In the meantime Bhimrao appellant 1 reached Police Station Islampur where he complained to the Police Sub-Inspector Pandurang that he (appellant 1) and his family members had been attacked by the party of the deceased. On learning that the opposite party had arrived at the local Civil Hospital, the Police Sub-Inspector reached the Hospital at about 8 p.m. and recorded the statement (Ex. 55) of Bhimrao PW 12 which forms the basis of the formal first information report registered at the police station.

9. Under the advice of the Medical Officer, Islampur, the injured left the same evening for the Civil Hospital at Sangli on the way to which Nivas and Balasaheb expired.

10. On return to the police station Pandurang PW 24 arrested Bhimrao appellant 1.

11. Lakshmi PW 10 was examined on the date of the occurrence itself by Dr. Bhaskar PW 17 and was found to have in the web connecting the right thumb and the index finger a muscle-deep incised wound having the dimensions 1" X 1/4". Droupadi PW 11 was examined by another doctor on the same day but he was not produced at the trial for the reason that he had in the meantime been transferred to Nagpur. She was examined again on November 18, 1974, by Dr. Shridhar PW 14 who found that on the mid-outer aspect of her left thigh was located a blue-black discoloration having a

probable duration of eight days.

12. Bhimrao PW 12 was examined by Dr. Kantilal Shah PW 16 on November 11, 1974, as the Civil Hospital, Sangli and was found to have suffered six injuries consisting of a scalp-deep incised wound located on the central parietal area and having the dimensions 3" X 1/4", two contused lacerated wounds located over the same area, two contusions and an abrasion. The same doctor examined Uttam PW 13 on the same day when the latter was found to have on his person five injuries consisting of two contused lacerated wounds located in the head and three contusions on other parts of the body.

13. Appellants 1 to 3 were examined by Dr. Shridhar PW 14 on November 11, 1974 at the Civil Hospital, Islampur. Bhimrao appellant 1 had on his person three injuries consisting of a contusion on the right forearm having the dimensions 8 cm. X 5 cm., a weal mark on the right shoulder-blade and an abrasion. Anna appellant 2 was found to have suffered eleven injuries consisting of six lacerated wounds, two contusions, two weal marks and one abrasion, only one of them, i.e., a lacerated wound, being located on a vital part (the head). Maruti appellant 3 had an incised and a lacerated wound on the head and another lacerated wound, two weal marks and a contusion on other parts of the body.

14. The injuries so far described and found on various members of the opposing parties were presumably all simple in nature.

15. Dr. Digambar Joshi PW 15 carried out the post mortem examination of the two dead bodies on November 12, 1974. Nivas deceased was found to have suffered four external injuries two of which were bone-deep contused lacerated wounds located in the head region. According to the doctor the scalp was all 'boggy' and the injuries were 'fresh'. The internal damage to the head, the doctor noted, consisted of an extensive haematoma on the scalp, multiple fractures of the left temporal and parietal bones, fracture of the right frontal blade, fracture of the middle cranial fossa on the right side and extradural haematoma on the right fronto-parietal region, the left temporal region and the left fronto-parietal region.

16. In the opinion of the doctor the deceased must have become unconscious immediately after the receipt of the injuries which were inflicted with force and were sufficient in the ordinary course of nature to cause death.

17. Balasaheb deceased was found by the same doctor to have suffered four external injuries two of which were located in the head region, one being a contused lacerated wound and the other an incised wound. The right temporal region, according to the doctor, was 'boggy' and the injuries were 'fresh'. The internal damage to the head, the doctor noted, consisted of an extensive haematoma under the scalp, numerous fractures of the right and left frontal bones, right and left parietal bones and the right temporal bone, congestion of the cortical vessels and bleeding in the brain substance. The right fronto-parietal region was found by the doctor to be soft and lacerated. The brain-matter, according to him, was coming out. He was categorical in stating that the death must have been instantaneous and that the injuries were individually sufficient to cause death in the ordinary course of nature.

18. Twenty-four witnesses were examined at the trial in support of the prosecution case. They included five eyewitnesses, namely, Lakshmi PW 10, Droupadi PW 11, Bhimrao PW 12, Uttam PW 13 and Abasaheb PW 19, all of whom gave substantially the same version of the occurrence as has

been set out above. Bhimrao Kadam PW 20 deposed that at about noon on the fateful day he was returning home from his fields which lie only at a distance of about 250 feet from the houses of the parties, when he found appellants 2, 3 and 4 exchanging abuses with the two deceased who were armed with sticks. According to the witness he disarmed the deceased and threw away the sticks on to the roof of their house. The witness claimed to have gone away after advising both the parties to settle their disputes amicably. He then testified to having met Bhimrao PW 12, Uttam PW 13 and their brother Jayakar when he returned to his field the same day. He further stated that they were running but were not armed. The rest of his testimony-in-chief may be summarised thus :

I again heard shouts from the houses of the parties. I again came back to the road in between their houses and saw that Nivas, Balasaheb, Uttam and Bhimrao had injuries and they were lying on the road. All these injured were unconscious and their clothes were stained, with blood. Lakshmi and Droupadi were by their side. The accused were not present at that time. This was at about 2.30 p.m. or 3 p.m.

When asked in cross-examination as to what was the exact place where he met the brothers of Nivas, he replied :

I immediately started to my field and I met them at a distance of about 50 or 100 feet. I again heard the noise after a very short time after reaching the field.

The witness was questioned about what he saw on reaching the place of occurrence for the second time and what transpired later. He stated :

Uttam and Bhimrao were lying on the road near the door of the house of the accused. Nivas was lying in the middle of the road opposite to the door of the accused. There were blood-stains on the road at the place. Jayakar was present at the scene of offence and I told him to inform the police at Islampur. Afterwards I went to the house of the accused. I found that there were injuries on accused 2 Anna and accused 3 Banda. Accused 2 Anna was lying unconscious. Banda told me that Nivas and all his brothers came to their house and assaulted them.

19. The last question put to him in cross-examination was whether it was true that Bhimrao PW 12, Uttam PW 13 and their brother Jayakar were armed with sticks and axes. He replied that they had something (in their hands) but that he could not say if they had sticks and axes.

20. The defence case may be summed up as follows. Feelings of animosity existed between the two opposing families for two or three years prior to the date of the occurrence as alleged by the prosecution. On that date there was an exchange of abuses between appellants 1 to 3 on the one hand and the deceased on the other when the latter were about to assault the former but could not do so on account of the intervention of Bhimrao Kadam PW 20. Soon afterwards the two deceased and their three brothers assaulted appellants 1 to 3 with sticks and axes at the latter's house when some of the assailants were disarmed and beaten back. Appellants 4 to 6 were not present at the scene of occurrence and had been involved in the case merely because they were related to the other appellants by ties of blood or friendship.

21. The learned Sessions judge was of the opinion that the incident in which the two contending parties exchanged abuses and which came to a close when Bhimrao Kadam PW 20 intervened provided the motive for the assault in which the two deceased lost their lives. While examining the

ocular testimony he arrived at the findings detailed below :

- (a) That part of the prosecution story according to which the two deceased were dragged out of their house by the seven accused was never put forward during the investigation and was concocted to serve as an improvement over the version given earlier.
- (b) The eyewitness had given details of the occurrence which were omitted from their statements made to the police but no significance could be attached to this aspect of the matter.
- (c) Lakshmi PW 10, Droupadi PW 11, Bhimrao PW 12 and Uttam PW 13 were certainly present at the occurrence as is made out from the fact that they were found to have injuries on their person immediately thereafter. Assurance to the presence of Abasaheb PW 19 at the time and place of occurrence is also available in the fact that his house adjoins that of the deceased.
- (d) The incident in which abuses were exchanged provided the motive for the party of the accused to assault their opponents rather than the other way round, because the deceased had really had an upper hand in that incident. It would also be natural, in this view of the matter, for appellants 1 to 3 to summon help and open a concerted attack. The participation of all the accused therefore in the occurrence was natural and probable.
- (e) The occurrence took place on the road lying in between the respective houses of the parties.
- (f) The circumstances that two persons from the side of the eyewitnesses lost their lives and that four other eyewitnesses belonging to the same family received injuries are sufficient to suggest that it was the party of the appellants who were the aggressors even though appellants 1 to 5 were also injured during the occurrence; and the fact that all the eyewitnesses were unreliable in relation to the dragging part of the prosecution story is immaterial, their testimony being otherwise credible. In this connection it has to be borne in mind that the party of the accused were able to inflict serious injuries on their opponents and themselves escaped with comparatively a minor beating. There was thus no right of private defence available to the accused.
- (g) Bhimrao PW 12 and Uttam PW 13 reached the place of occurrence after the fight between the party of the accused on the one hand and the two deceased on the other was already over and that in respect of the injuries caused to Lakshmi PW 10, Droupadi PW 11, Bhimrao PW 12 and Uttam PW 13 the party of the appellants had a right of private defence.

22. It was in these premises that the learned Sessions Judge convicted and sentenced the six appellants as aforesaid and acquitted them of the minor charges which had been framed against them in relation to the injuries caused by them to the four eyewitnesses just above-named.

23. In the High Court all the three judges who considered the appeal fully reappraised the evidence and while Vaidya and Apte, JJ., arrived at more or less the same conclusions as the learned Sessions Judge, Sawant, J., recorded diametrically opposed findings although he found Bhimrao Kadam PW

20 to be a wholly independent and therefore a reliable witness. Those findings were :

(i) There is no reliable evidence whatsoever to support the prosecution case that the accused were the aggressors. On the other hand, the following five circumstances point to the contrary :

(a) The concoction of that part of the prosecution story according to which the deceased were dragged out of their house by the appellants.

(b) During the incident in which abuses were exchanged, appellants 2 and 3 were merely sitting on the door steps of their house while the two deceased had gone there armed with sticks in an attempt to assault their adversaries.

(c) "Immediately after" that incident came to a close on the intervention of Bhimrao Kadam PW 20, the deceased were reinforced by their three brothers and the occurrence commenced "immediately thereafter".

(d) Bodies of the persons injured on the side of the deceased were found lying nearer the house of the accused than that of their opponents.

(e) Appellants 1 to 3 also received injuries which were sufficiently serious and numerous.

(ii) Merely because two of the opponents of the appellants died and the number of persons injured on their side was greater than on that of the appellants, it will not follow that the latter were the aggressors.

24. The case has been argued before us at great length by learned counsel for the parties and the two main questions requiring determination are :

(A) Has the prosecution proved beyond reasonable doubt that the party of the appellants were the aggressors and that it is not made out on the record that the latter may well have acted in exercise of the right of private defence ?

(B) If the answer to question (A) is in the affirmative, whether the participation of all the appellants in the occurrence is satisfactorily made out ?

25. On question (A) we have no hesitation in agreeing with the conclusion arrived at by the learned Sessions Judge and Vaidya and Apte, JJ., and we shall record our reasons briefly. The occurrence admittedly took place on the road in between the respective houses of the deceased and the appellants which is fully made out from the deposition of Bhimrao Kadam PW 20 who is no doubt a wholly independent and reliable witness. When he was attracted to the place of occurrence by a noise which reached him in his field after he had gone there subsequent to his witnessing the three brothers of the deceased running towards their house, he found that Bhimrao PW 12, Uttam PW 13 and their other two injured brothers were all lying unconscious on the road where Lakshmi PW 10, Droupaid PW 11 and Jayakar were also present. It is to be noted that the heads of Nivas and Balasaheb had been smashed to pulp so that in all probability neither of them could have moved a step before falling down after the receipt of the injuries which were detected on their dead bodies by Dr. Digambar Joshi PW 15. We have to take it for granted therefore that they were hit where they fell. The circumstance that their other two injured brothers were also found lying on the road lends

further strength to our conclusion that the occurrence took place on the road itself and not at the house of the appellants. It may also be safely assumed, apart from the fact that all the witnesses say so, that Bhimrao PW 12, Uttam PW 13 and Jayakar were not with the deceased at the inception of the fight and were, on the other hand, working in their fields. This follows from the testimony of Bhimrao Kadam PW 20 which bears repetition on the point. He stated that while he was returning from his house to the fields at 2.30 or 3 p.m. he found the three brothers of the deceased 'running' which obviously means running towards their house. It is the case of Bhimrao PW 12 and Uttam PW 13 that they were informed in their field by a boy named Mehar that their brothers were being attacked by the party of the appellants and that it was on that account that they ran towards their house. This assertion fully fits in with the narration of events by Bhimrao Kadam PW 20. Another very decisive circumstance is the nature of the injuries received by the two contending parties. If the party of the deceased were the aggressors and had made a concerted attack on the appellants who were taken unawares there is no reason why the former should have come out second-best in the combat. The fact that practically all the injuries received by the deceased were located in the head region and were inflicted with great force makes it highly probable that it was they who were taken unawares and had to bear the brunt of the attack which they had perhaps no means to repulse. The fact that their womenfolk were also injured during the occurrence makes it probable that the ladies had to intervene because the fight was unequal and their respective husbands found it difficult to cope with it. Another inference which may well be drawn from the consequences of the combat is that Bhimrao PW 12, Uttam PW 13 and their brother Jayakar probably reached the place of occurrence while their brothers were being belaboured and that it was at that stage that the three new-comers entered the arena and took up cudgels on behalf of their hapless family members. That is the only reasonable way, it appears to us, in which all the injuries suffered by the combatants on the two sides can be explained.

26. It is true, as pointed out by Sawant, J., as well as the learned Sessions Judge, that the eyewitnesses have improved their case at the trial over the story which they put forward at the investigating stage and therefore prove their unreliability in material particulars; but then they are corroborated in certain other material aspects of their testimony by unimpeachable evidence in the form of the injuries suffered by the two sides, the place where they were inflicted and the consequences which flowed from them, and, in those aspects we cannot but believe them. It is not unoften that improvements in an earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. But that does not mean that falsity of testimony in one material particular would ruin it from beginning to end. On the other hand the circumstance will be a good reason merely for the court to be put on guard and sift the evidence with extraordinary caution and to accept those portions of it which appear fully trustworthy either intrinsically or by reason of corroboration from other trustworthy sources. And that is how we have accepted the eyewitness account in part as stated above.

27. We may here frankly stated that the reason given by Sawant, J., in holding that the party of the deceased were the aggressors do not commend themselves to us. The fact that improvements were made by the eyewitness on the earlier study and the dragging incident was introduced at the trial stage has already been noticed by us but, without more, it cannot be taken to mean that it was the party of deceased who set the ball rolling. The incident in which abuses were exchanged between the two contending parties again does not lead to the inference that it was the party of the deceased who were guilty of aggression. That incident no doubt provided the motive for the occurrence but such motive was attributable to both parties and perhaps more so to that of the appellants who must have felt humiliated by the show of force indulged in by the deceased. It further appears to us that Sawant, J., misread the testimony of Bhimrao Kadam PW 20 when he remarked that the fight took

place "immediately after" the exchange-of-abuses-incident which had come to a close at the intervention of Bhimrao Kadam PW 20. It is no doubt true that that witness did state in answer to a question in cross-examination :

I immediately started towards my field and I met them at a distance of about 50 or 100 feet. I again heard the noise after a very short time after reaching the field.

28. The words "I immediately started towards my field" have no connection whatsoever with the incident in which abuses were exchanged. In this connection we may refer to that portion of the evidence of the witness in which he categorically stated that that incident had taken place about midday when he was returning home from his field, that he left after the incident and that he met Uttam, Bhimrao and Jayakar "while I was again going back to my field". The inference is clear that after the incident in which abuses were exchanged, the witness had gone home to his village which lies at a distance of about a mile from the place of occurrence and that he was again returning to his field when he met the three brothers of the deceased which was, according to the witness, 'at about 2.30 or 3 p.m.'

29. This misinterpretation of the evidence of Bhimrao Kadam PW 20 by Sawant, J., appears to us to have influenced the learned Judge in not a little measure in coming to the conclusion which he ultimately arrived at. But then he was also not right, in our opinion, in inferring aggression on the part of the party of the deceased from the circumstance that "the bodies of the injured were found nearer the house of the accused than the house of the deceased". It is true that Bhimrao Kadam PW 20 did assert :

Uttam and Bhimrao were lying on the road near the house of the accused. Nivas was lying in the middle of the road opposite to the door of the accused.

But from this no inference such as has been drawn by the learned Judge is reasonably possible. Admittedly the road has a width of only 14 feet and if two opposing parties, consisting in all of six to ten persons, engage themselves in violence against each other, the exact place where the member of each would be injured may not mean anything, especially if one of the parties is taken unawares and is unarmed. In any case the fact that the road was a narrow one makes the circumstance relied upon by the learned Judge wholly innocuous. The only other circumstance which he pressed into service in support of his conclusion that the accused appeared to have acted in exercise of the right of private defence was that they too "received injuries which were sufficiently serious and numerous" which does not appear to be an accurate statement of facts. The injuries referred to by him were no doubt as numerous as those suffered by the other party; but then they cannot be classified as 'sufficiently serious'. Except for one, none of them was located on vital part and all of them without exception were simple in nature, the injuries on the two deceased person being in contrast practically all deadly.

30. Thus, the consideration of the ocular evidence coupled with the testimony of Bhimrao Kadam PW 20 and the circumstantial evidence, especially the medical part of it, lead us to an answer in the affirmative to question (A) posed above.

31. On the question of the participation of the appellants in the occurrence we have again to proceed with extraordinary caution in view of the fact that the eyewitnesses are not only highly interested in exaggerating the number of the opposite party during the attack but have also been shown to have scant regard for truth when their selfish interests so demand. In this view of the matter we consider

it safe to hold that appellants 1 to 3 are proved beyond reasonable doubt to have taken part in the fight. They are not merely named in that behalf by the eyewitnesses but admit their participation in the occurrence which is further assured by reason of the fact that all three of them were found injured immediately thereafter. The same is not true of the other there who have denied their presence at the time and place of the occurrence and about whose participation in the fight no other assuring factor is forthcoming. It is true that according to Bhimrao Kadam PW 20, appellant 4 was present at the scene when the abuses were exchanged but that fact is no guarantee of his participation in the occurrence which took place about a couple of hours later. And no incongruity results from the exclusion of appellants 4 to 6 from the fight because the other three appellants would have as effectively caused all the injuries found on the two deceased and the two ladies all by themselves as if they were caused by them with assistance of appellants 4 to 6. In this view of the matter we are of the opinion that appellants 4 to 6 are entitled to the benefit of doubt in the matter of their participation in the occurrence. We therefore accept the appeal insofar as they are concerned, set aside the conviction recorded against and the sentence imposed upon them by the courts below and acquit them of the charge in its entirety.

32. The appellants were convicted by the learned Sessions Judge of an offence under Section 148 of the Indian Penal Code and of two offences of murder under Section 302 read with Section 149 of the Code. The first offence, namely, that under Section 148 of the Code, falls to the ground with the acquittal of appellants 4 to 6 and so does that under Section 149 thereof. It is however quite clear from the findings arrived at by us, especially those relating to the nature of the injuries suffered by the two deceased and the consequences resulting from them that the two offences of murder were committed by appellants 1 to 3 in furtherance of their common intention so that each one of them is liable to conviction on two counts under Section 302 read with Section 34 of the Indian Penal Code. We hold accordingly and sentence each of those three appellants to imprisonment for life on each count with a direction that the two sentences of life imprisonment shall run concurrently. Accordingly, the appeal fails insofar as they are concerned except in relation to the modification in the conviction and sentences as directed above.

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