

Babu Krishna Kamble and Others

Vs

State of Maharashtra

Criminal Appeal No. 13 of 1975

(P. S. Pathak, R. S. Sarkaria JJ)

15.04.1980

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against the judgment of the Bombay High Court dismissing the appeal of four appellants against their conviction and sentence under Section 302 read with Section 34, Indian Penal Code by a Sessions Judge and allowing an appeal by the State against the acquittal of the remaining two appellants and convicting and sentencing them under Section 302 read with Section 34, Indian Penal Code.

2. The prosecution case before the trial Court was that Ananda (the deceased) and Rama (appellant 4), although formerly friends, on account of certain disputes had become hostile towards each other. It was said that at midday on August 5, 1970 Baban (appellant 6) and Ranga (appellant 2) went to the house of Radhabai (PW 3) where Ananda was already present. The two appellants and Ananda left the house after a short while. Some moments later a gunshot was heard by Radhabai and Soma (PW 1), his wife Bayanabai (PW 2) and Kisabai (PW 4). The four rushed towards that direction and, it is alleged, saw Baban and Ranga giving blows with an axe on Ananda's head. Meanwhile, Rama (appellant 4) and Nama (appellant 3) also arrived, armed with an axe, and shortly thereafter Babu (appellant 1) and Sampat (appellant 5) reached the scene. The case is that all the five appellants except Rama struck Ananda with the axe several times. Ananda received serious injuries and lay in a pool of blood on the cart-track on a point lying between the houses of Radhabai and Kisabai. His brother Yeshwant (PW 6) arrived soon after and he was informed by the witnesses of the circumstances in which Ananda had been killed. Yeshwant sent his cousin Balu (PW 7) to the police station at Shirala and a first information report was lodged. The appellants who had run away remained absconding and were arrested subsequently on various dates at different places.

3. The appellants were charged with the offence under Section 302 read with Section 149, IPC, and also under Section 148, IPC. But, as the High Court has pointed out, the offence described as falling to be the offence under Section 302 read with Section 34, IPC. The learned Session Judge, Sangli who tried the accused held that Babu and Nama were entitled to acquittal, and he convicted the remaining accused under Section 302 read with Section 34, IPC, and sentenced them to rigorous imprisonment for life. The convicted accused filed an appeal before the Bombay High Court and the State filed an appeal against the acquittal of the two other accused. The Bombay High Court has by its judgment dated December 5, 1973 as mentioned earlier, affirmed the conviction and sentence of the four appellants, and it has allowed the State appeal against the other two appellants convicting them under Section 302 read with Section 34, IPC and sentencing them to rigorous imprisonment for life.

4. In this appeal we have taken through the evidence on the record by learned counsel for the appellants in support of his submission that the eyewitnesses were unreliable and there was no cogent material for convicting the appellant. It is urged that the prosecution case that a gun was fired cannot be believed because there is no evidence that anyone among the accused carried a gun and also because no empty or discharged cartridge was found on the scene. We are inclined to agree with learned counsel. The evidence in support of the case that a gun was fired is difficult to accept in the absence of concrete evidence. But we find ourselves unable to accept that there was no noise at all at the time. Evidently, there was the report of a loud blast which drew the attention of people towards the scene. And, as the High Court has rightly pointed out, it was caused by some contrivance to inform the other accused that they should gather on the scene as Ananda was in their power. It was thus we find the other accused come running to the spot. But, incidentally, it also brought to the scene a number of eyewitnesses. The testimony of three eyewitnesses, Soma Radhabai and Kisabai shows that they witnessed the assault. Their depositions have been carefully considered by us and we do not find any reason for not believing them. The evidence is clear and definite, and establishes the participation of the appellants in Ananda's murder, except that of the appellant Babu whose participation, it seems to us, has not been adequately established. It does appear that some noise attracted the attention of the three witnesses and that each of them clearly saw what followed. The High Court, on an analysis of the evidence, has come to the clear conclusion that the places at which they stood enabled them to witness the occurrence, and we are in agreement on the point. Bayanabai, however, was not in a position to see the occurrence and, therefore, her testimony has been rightly disregarded by the High Court so far as this aspect is concerned.

5. An attempt was made by learned counsel for the appellants to prove that the lodging of the first information report was unduly delayed and that therefore reliance should not be placed on the oral testimony. This submission is without force. The assault took place about midday and it is clear that for some time Yeshwant, Balu and the others assembled at the spot were occupied with determining what had happened. Yeshwant on being informed of what had transpired detailed Balu to go to the police station and lodge a report. The incident took place at village Ingrul and from there the Taluka Police Station of Shirala lay at a distance of five to six miles. In the absence of any transport, Balu covered the distance on foot. According to his testimony it was raining that day. It may be pointed out that Balu was not cross-examined on the reasons for the first information report being lodged late. We are satisfied that all the appellant except Babu participated in the murder of Ananda and that, therefore, their appeal must fail.

6. In regard to Babu, it appears that his name was not mentioned in the first information report as a participant in the assault on Ananda. Radhabai did not include his name among the accused in her testimony before the submitting court although she specifically mentioned the names of other appellants. The High Court has observed that the omissions are of no moment and should be disregarded. We have examined the entire evidence afresh and on the totality of all that is contained there, we are not convinced that Babu was one of those who committed the assault on the deceased. In our opinion, he is entitled to the benefit of doubt, and must therefore be acquitted.

7. The appeal by Babu (appellant 1) is allowed, his conviction and sentence are set aside and he is required to be released forthwith. The appeal by the remaining appellants is dismissed.

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