

Angad

Vs

State of Maharashtra

Criminal Appeal No. 233 of 1975

(R. S. Sarkaria, V. D. Tulzapurkar JJ)

17.12.1980

JUDGMENT

SARKARIA, J. –

1. This appeal is directed against a judgment dated October 31, 1974, of the High Court of Bombay, whereby reversing the acquittal of Angad, appellant, the High Court convicted him under Section 302, Penal Code, and sentenced him to imprisonment for life. The prosecution case was as follows :

2. One Shankar has three sons and daughter. The appellant, Angad, is the son and the original accused 2, Sumanbai, is Shankar's daughter; Laxmibai, the original accused 3 is Shankar's wife. Shankar had a brother, named Kundalik, who was joint in residence with him. The two brothers held about 30 acres of land. Kundalik died survived by this widow, Mathurbai, (who is the deceased person in this case).

3. About five or six years before the occurrence in question, the relations between Mathurbai deceased on one hand, and Shankar and his family on the other had become strained. Mathurbai claimed to get her share partitioned for separate enjoyment. Shankar was unwilling and refused to do so. Mathurbai complained to the respectables in the village. A Panchayat was convened which considered her complaint. The Panchayat suggested that Shankar should cultivate the entire land, including the share of Mathurbai, but should give her 1/4th of the gross produce of the entire land held by the family. Shankar did not abide by this settlement. Mathurbai again complained to the village leaders, repeatedly, to persuade Shankar to give her share of the agricultural produce according to the settlement brought about by the Panchayat.

4. Mathurbai had three first cousins. A year before the incident in question, Shridhar, one of her first cousins who used to take her side in the disputes with the accused, was murdered. Shankar, Angad and Moti Ram were prosecuted for that murder. The Sessions Judge acquitted Angad but Moti Ram was convicted and sentenced to two years' rigorous imprisonment. Moti Ram preferred an appeal against his conviction in the High Court, who released him on bail pending his appeal. The occurrence in question took place when Moti Ram was on bail. The relevant topography and the situation of the various physical facts in relation to the scene of occurrence, as summed up by the High Court in the impugned judgment, are as under : The bus stand of village Moha, where the accused and the deceased, resided is towards the east of the village. Near the bus stand there are hotels of Rama Shamrao and Mahetab Mahabbobshah. Between the habitation of the village and these hotels, there is located an open space of Garhi (dilapidated castle) towards the north of the hotels. The building of Government Primary Schools is at a distance of about 80 feet from the hotels. To the south of the hotels is another School run by a society. The building of the school was

at the time of this incident under construction. The Society's School building and the hotels are practically adjacent to each other and there is a narrow land between these two buildings through which people used to go to the bus stand or to the east of the hotels. Towards the east of the hotels is a river and beyond the river at a distance of 342 feet is a Kotha of the accused.

5. On March 10, 1971, in the morning, Moti Ram, the brother of the appellant, was found wounded in the said Kotha. He had an injury on his neck and was then unable to speak. The appellant and his sister (original accused 3) went to the Kotha and saw Moti Ram lying injured. Thereupon, they raised a hue and cry, on hearing which, a number of persons were attracted towards the Kotha. Among those person, was Rambhau (PW 4), who runs a hotel near the bus stand. Another witness Madhavrao (PW 5) had returned by bus from village Sirsala at about 6.30 a.m. He first went home and returned to the hotel of Rambhau on his way to attend the call of nature. When he returned to the hotel, he found many persons gathered in the Kotha of the appellant. He went there and found Moti Ram lying injured. The persons who had collected there, advised the appellant to remove Moti Ram immediately to a hospital. The appellant then proceeded towards their house in the village. Mathurbai deceased on hearing the outcry, also, proceeded towards the Kotha to find out what the matter was. Her married daughter, Mahananda (PW 3) also followed her. Mathurbai was under the impression that there was again some dispute between her cousins and the appellant. She, therefore, asked the appellant what the matter was. Enraged, the appellant replied that all this had happened because of her. The appellant picked up a stone and hurled it towards the deceased. The stone hit her on the left hand. The appellant and his sister, Sumanbai (co-accused), then threw and held down Mathurbai to the ground. Sumanbai exhorted the appellant to finish off the deceased. Mahananda entreated the assailants to spare he mother. Mahananda fell on her mother to shield her from the beating. Sumanbai, however, released the legs of Mathurbai and pushed and dragged away Mahananda; while the appellant picked up a heavy stone (M.O. 1), weighing about 12 kilograms, and dropped it right on the forehead of Mathurbai. The stone hit the deceased on the head smashing her skull and causing her instantaneous death. The appellant and his companions then went away. Apart from Mahananda (PW 3), the occurrence was witnessed by Rambhau (PW 4), Madhavrao (PW 5) and Shankarrao who were at that time, somewhere between the hotel and the school building of the society. Vinayak and Bhausahab also witnessed the incident while standing on the western side. Even after the witnesses had dispersed, Mahananda kept sitting by the side of her dead mother.

6. There was no Police Patel at that time because the former Patel, Shankar, the father of the appellant, had been removed from that office. The Sarpanch and Upsarpanch were also not in the village, as they had gone to village Bhir in connection with the Lok Sabha elections. Gampuappa (PW 2), the brother of the village Sarpanch, on his return to the village, learnt about the murder of Mathurbai. He went to the site of occurrence and saw the dead body there. Mahananda, who was sitting by the side of the dead body, told Gampuappa how the appellant had killed her mother by hitting her with stones. Gampuappa wrote a cryptic report, bereft of all the details. In this report (Ex. 9), he simply mentioned that there has been a murder of a woman. He did not mentioned the name of the murderer or the victim. He sent that unsigned report "as a citizen of Moha" to the Station House Officer. Sirsala Police Station six miles away, through Bhika Kotwal (PW 9). Bhika handed over that report to the Police Sub-Inspector Khandaliker (PW 16). Khandaliker recorded the statement of Bhika. In the meantime, the appellant and accused 2 and Moti Ram injured also reached the Police Station at about 10.30 a.m. The appellant made a complaint alleging that Moti Ram had been assaulted by Achut, Uttam and Jagannath. The Sub-Inspector registered that offence and sent Moti Ram for medical examination. He brought the appellant and the original accused 2 back to Moha.

7. On reaching the scene of crime, the Police Officer seized two blood-stained stones, pieces of bangles and prepared the inquest report and a Panchanama. He also prepared a sketch of the scene of offence and sent the dead body of Mathurbai to Sirsala Primary Health Centre for post-mortem examination. He recorded the statements of Mahananda and others.
8. The post-mortem examination of the deceased was conducted by Dr. Hajari (PW 7) on March 11, 1971. The Doctor found internal and external injuries on the dead body. There was an external wound on front of the head 4 1/2 inches X 1 1/2 inches and brain matter was visible through the wound. There was also a lacerated wound on the lateral aspect of upper left arm, surrounded with dark blood. There was a fracture of the skull-bone front part extending from nasal to left, oblique in direction. Brain was found lacerated. Injury No. 2 on the forehead could be caused with the stone (M.O. 1) and Injury No. 1 on the arm with the sharp edge of a stone. In the opinion of the Doctor, the head injury involving fracture of the skull, was sufficient to cause death in the ordinary course of nature. "The Doctor (PW 7) examined Mahananda (PW 3) on March 11, 1971 at 11.30 a.m. and found a lacerated wound on the inner aspect of her left hand at the base of the title finger covered with blood, 1 1/2 inches X 1/2 inch. There was also a diffuse swelling on the right hand of Mahananda.
9. In order to bring home the offence to the accused persons, the prosecution examined, among others, four eyewitnesses, namely, Mahananda (PW 3), Rambhau (PW 4), Madhavrao (PW 5) and Vinayak (PW 6).
10. Examined under Section 343, CrPc Angad appellant (original accused 1) admitted that Mahananda was insisting on residing separately and claiming maintenance. Angad did not deny that about five or six years before this occurrence, Mathurbai had complained to the Panchayat, that Shankar was not giving her share of the produce of the family lands; and that the Panchayat decided that Shankar should give her 1/4th of the produce of the entire land. He admitted that Gangadharappa, Sarpanch used to tell the appellant's father, Shankar, that they should give her half the lands; and in that quarrel, Shridhar, cousin of the deceased, used to take up her cause; that he along with his father, Shankar, and Moti Ram were tried for the murder of Shridhar; and that Moti Ram convicted and sentenced to two years' imprisonment. He further admitted that Moti Ram's appeal was pending in the High Court at the time of this incident. He, however, denied that he had murdered Mathurbai. He stated that he had been falsely implicated by Gangadharappa.
11. The Sessions Judge found it difficult to believe that Mahananda (PW 3) was an eyewitness of the murder of her mother. He further disbelieved that Mahananda had sustained the injury on her hands at the time and place of occurrence. The argument employed by the Trial Judge for discounting the presence of Mahananda at the scene of crime, was, that she had small children, aged four to five years, which she could not have left behind uncared, at her house. He rejected the evidence of Rambhau, Madhavrao and Vinayak on the ground that none of them had gone to the rescue of the victim. In the opinion of the Trial Judge, the appellant and his co-accused had been falsely implicated after deliberation, because in the First Information Report written by Gampuappa, the names of the victim and the assailants were not disclosed. In conclusion, he held that the accused had been implicated on suspicious only. In the result, he acquitted all the three accused. On appeal by the State, the High Court reversed the acquittal and convicted the appellant as aforesaid.
12. The High Court has death with and dislodged all the arguments given by the Trial Judge in support of the order of acquittal. The two-fold argument employed by the Trial Judge for rejecting the testimony of Mahananda was, that she should not have remained continuously for about four or

five hours at the scene of crime leaving her infant children uncared at the house; and that there was a discrepancy about the time as to when Gampuappa came to the spot and met her there. According to her, Gampuappa came to the spot at about 1 p.m., while Gampuappa testified that he had reached the spot at about 9 p.m. The High Court noted that this discrepancy about time was not entitled to any weight, firstly, because Mahananda was a rustic villager and had no sense of time, more so, when her mind at that time was unhinged by grief. In regard to this point of time, the High Court preferred to accept Gampuappa's version that he had written the report (Ex. 9) and despatched it to the Police Station, Sirsala at 10.30 p.m.

13. We have carefully gone through Mahananda's evidence. We agree with the High Court, that her version about the time at which Gampuappa reached the spot is not to be taken at its face value. There was one stark circumstance which assured her presence at the time and place of the incident. She was an injured witness. According to her, when she was trying to shield her mother from being hit, a stone thrown by the appellant at her mother, landed on the left hand of the witness causing the injuries. The Investigating Officer, on reaching the spot, noted these injuries on the hand of Mahananda and sent her for medical examination. Dr. Chandrapal (PW 7), testified that the two injuries found on Mahananda could be possible by a contact with the stone (M.O. 1) and these injuries were 24 to 36 hours old at the time of the examination (which was on March 11, 1971 at 11.30 a.m.). The Doctor further opined that the injuries on the hands of Mahananda (PW 3) and that found on the head of the deceased, could have been caused either by the same force or by different force. In answer to a question put by the defence, the Doctor stated that Injury No. 2 on Mahananda could also be caused if she had struck her hand against a stone. In cross-examination, the defence did not suggest to Mahananda that she had fabricated the injuries on her or had received them on some other day. The only suggestion put to her was that finding her mother dead, she, in grief, beat her hands against stones and sustained those injuries. She stoutly refuted this suggestion. Keeping in view the nature and age of the injuries, there was no ground to doubt her testimony that she had received this injury on being hit with a stone thrown by the appellant against the deceased. Mahananda (PW 3) had no motive to falsely implicate the appellant. On the other hand the malice harboured by the appellant against the deceased was rekindled by the alleged assault on Moti Ram by the cousin and supporters of the deceased. The evidence of Mahananda (PW 3) was substantially corroborated in material particulars by the three independent eyewitnesses, Rambhau (PW 4), Madhavrao (PW 5) and Vinayak (PW 6). These witnesses had no axe to grind against the appellant. The High Court has fully discussed their evidence and found it creditworthy. Their evidence could not be rejected - as the trial court has done - merely on the ground that they did not intervene to save the deceased.

14. Staling (PW 12), who reached the scene of occurrence soon after the crime, found Mahananda sitting by the side of the dead body of Mathurbai. To the same effect is the testimony of Gampuappa (PW 2). Gampuappa testified that Mahananda told him at the spot that the appellant Angad had hit her mother with stones. PW 2 did not give details, including the names of the victim and the assailants in the report (Ex. 9). Nor did he sign this report (Ex. 9). PW 2 explained that he omitted these particulars and did not sign the report (Ex. 9) because it was the function of the Upsarpanch and the Police Patel to do so, and these village dignitaries at that time were not present in the village. He thereafter, sent that vague information about the murder to the Police "as a citizen of Moha". The High Court had held - and we think rightly - "that the witness seemed to be under the impression that if he named a particular person (as the culprit), he might himself land in trouble".

15. The arguments given by the trial Judge for rejecting the evidence of the eyewitnesses were manifestly erroneous, if not perverse, and the High Court was, fully justified in accepting the

evidence of the eyewitnesses after reappraising the same.

16. For the foregoing reasons, we dismiss this appeal and maintain the conviction and sentence of the appellant. The appellant, if on bail, shall surrender to his bail bonds to serve out the sentence inflicted upon him.

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