

Badruddin Rukonddim Karpude and Others

Vs

State of Maharashtra

Criminal Appeal No. 372 of 1975

(A.D. Koshal, V.B. Eradi, R.B. Misra JJ)

23.02.1981

JUDGMENT

KOSHAL, J. –

1. This appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is directed against a judgment dated July 11, 1975 of a Division Bench of the High Court of Bombay setting aside the acquittal recorded by the Additional Sessions Judge, Latur of the eight appellants and convicting them of offences under Sections 147 and 148 and Section 302 read with Section 149 of the Indian Penal Code, and sentencing each of them to rigorous imprisonment for a year on the first count, to a similar term of imprisonment on the second, and to imprisonment for life on the third, the three sentences having been directed to run concurrently.
2. The occurrence took place on December 30, 1971 and Amirali, a stepbrother of Shahabuddin (PW 1) lost his life in consequence. Seventeen persons were tried by the learned Additional Sessions Judge for the offences mentioned above as also one under Section 302 read with Section 34 of the Indian Penal Code. The trial ended in acquittal of all the accused with the judgment dated October 11, 1972 rendered by the learned Additional Sessions Judge which was, however, set aside in the case of the eight appellants by the High Court as stated above. The appellants were arraigned before the trial Court as accused 1, 3, 4, 7, 10, 14, 15 and 16 and that is how they would be referred to hereinafter in this judgment.
3. Some of the accused are interrelated and it may be helpful at this stage to set out how they are connected to each other. Accused 1 is a brother of accused 2 while accused 10, 11 and 12 are their nephews. Accused 8 and 9 are the cousins and accused 4 the maternal uncle of accused 1 and 2. All the seventeen accused are residents of village Janval in Osmanabad District of the State of Maharashtra.
4. The prosecution case may briefly be stated thus. At about 8.00 a.m. on December 30, 1971 the wife of one Suleman, a resident of village Janval, quarrelled with his sister and he brought home the deceased to pacify the two ladies. Sometimes later the said Suleman and the deceased went to the latter's house which is situated near the flag post in the village chowk. At that time the deceased was hurling abuses at the ladies. Accused 3 (Sambha, who was then present at a nearby hotel) enquired from accused 1 (Badruddin) about the person who was the target of the abuses and then instigated the latter to beat the deceased who had by then gone home.
5. Accused 1, 3, 15 and 16 went in the company of each other to the house of the deceased and

challenged him to come out. There was an exchange of hot words between then and the deceased who emerged from his house in response to the challenge. Shahabuddin (PW 1) then intervened and asked one Ranga to take away the deceased. Ranga accompanied the deceased to the house of one Jayawanta.

6. The other thirteen accused armed with sticks joined accused 1, 3, 15 and 16 and then all the seventeen of them reached the house of Jayawanta and demanded that the door thereof be opened failing which they threatened to smash it. Not having been obliged by the inmates they broke open the door, dragged the deceased out of the house and took him to the chowk where he was beaten by them with sticks. He fell to the ground but the beating was continued.

7. Zainabbi (PW 10) who is the wife of Shahabuddin (PW 1) ran to the police patil of the village, namely, Laxman (PW 13) while the beating was in progress and told him that the deceased was being belaboured by accused 1, 3, 4 and 14. The patil went to the scene of the occurrence, found the deceased lying injured and in a serious condition and asked him as to who had beaten him. The deceased responded with the word "Karpude".

8. A cot was arranged and the deceased was taken therein by the patil and others to the hospital at Chakur which lies at a distance of 10 miles from village Janval and on the way to which Amirali breathed his last. The party carrying the dead body arrived at Police Station, Chakur at 4.30 p.m. Shahabuddin (PW 1) had already reached there.

9. The first information report (Ex. P-6) was lodged at Police Station, Chakur by Shahabuddin (PW 1) at 5.45 p.m. on the same day. In that document sixteen persons including the eight appellants were named as the assailants of Amirali and seven others as eyewitnesses of the occurrence which was stated to have taken place at 10.30 a.m.

10. Head constable Baburao (PW 14), who copied out the first information in the relevant register, prepared the inquest report, despatched the dead body to the mortuary, recorded the statements of those of the prosecution witnesses who were present at the police station and then left for village Janval, where he continued the investigation.

11. The autopsy was carried out by Dr. Madhukar Kulkarni (PW 11) on the next day. He found that the deceased had suffered three extensive contused lacerated wounds in the head, two incised wounds in the forehead and multiple contusions on the back. The left parieto-occipital bone extending from a place half an inch above the ear lobule right up to the middle of the occipital prominence was found fractured. The brain revealed multiple haemorrhages.

12. Sixteen witnesses were produced at the trial in support of the prosecution case. They included six eyewitnesses, namely, Shahabuddin (PW 1), Muktabai (PW 4) who is the wife of Jayawanta above-mentioned, Ismail (PW 5) who is the wife's brother of Shahabuddin (PW 1), Bhanudas (PW 8), Nama (PW 9) and Zainabbi (PW 10). The learned trial Judge held that the prosecution evidence was unconvincing, unreliable and unworthy of being accepted for the conviction of any of the accused who were, therefore, all acquitted.

13. The learned Judges of the Division Bench, however, saw no reason to doubt the testimony of Shahabuddin (PW 1) and Ismail (PW 5) in relation to that part of the occurrence according to which seventeen persons "including several of the accused" formed an unlawful assembly near the house of the deceased. They proceeded to analyse the evidence of Muktabai (PW 4) and Nama (PW 9) and

did not attach much importance to the omission therefrom of the names of some of the accused. They noted that out of the six eyewitnesses three were named in the first information report. They were alive to the duty of the court to guard against the possibility of eyewitnesses roping in more persons than actually took part in the assault but did not approve of the approach of the learned trial Judge to the appreciation of evidence which, according to them, was that each eyewitness "must fully corroborate the other eyewitnesses and must also depose to everything that he should have observed". They then formulated three principles which they thought should govern the acceptance of the eyewitness account regarding the participation of a particular accused in the crime :

- (i) The name of the accused must be specifically mentioned by at least two eyewitnesses.
- (ii) Such accused must have been assigned an overt act during the occurrence.
- (iii) The testimony should not find any material contradiction from the statements made to the police by the concerned witnesses.

The application of these principles to the available evidence, in their opinion, established the participation of the eight appellants in the occurrence and that is why they convicted and sentenced them as stated earlier.

14. After hearing learned counsel for the parties we find ourselves at one with learned counsel for the appellants that implicit reliance cannot be placed on the testimony of Shahabuddin (PW 1) and Ismail (PW 5) both of whom are not only deeply interested in the deceased but have also been shown to have made, during the course of their testimony, improvements in the prosecution story propounded by them at the investigation stage, and that in material particulars. We need not give the details of those improvements as they have been adverted to by the learned trial Judge and it is conceded by learned counsel for the State that the depositions of these two witnesses do suffer from that defect. In this view of the matter we propose to look for assuring circumstances for their testimony in the case of each of the appellants and to confirm the conviction of only those of the latter whose guilt as testified to by Shahabuddin (PW 1) and Ismail (PW 5) finds support from reliable evidence.

15. Accused 1, 3, 4 and 14 fall in one category. They were named as the assailants of Amirali by Shahabuddin (PW 1) and Ismail (PW 5). According to Nama (PW 9) accused 1 was present outside the house of Jayawanta when his co-accused broke open the door thereof and dragged out the deceased. Muktabai (PW 4), Bhanudas (PW 8) and Nama (PW 9) assert that the accused who took away the deceased from Jayawanta's house included accused 3. Bhanudas (PW 8) further avers that one of the stick blows in the head suffered by the deceased was given by accused 3. Participation in the dragging of the deceased is ascribed by Nama (PW 9) to accused 4 while Muktabai (PW 4) states that accused 4 was standing outside her house while the deceased was being taken out therefrom by his co-accused. According to Bhanudas (PW 8) accused 4 gave a stick blow to the deceased. Accused 14 is also implicated in the dragging incident by Muktabai (PW 4) and Nama (PW 9) while the participation of that accused in the actual assault on the deceased is testified to by Bhanudas (PW 8) who attributes to him a stick blow in the head of the victim.

16. In the case of accused 1, 3, 4 and 14, therefore, we have the word of not only Shahabuddin (PW 1) and Ismail (PW 5) but also of other prosecution witnesses whose testimony does stand on a higher pedestal. Apart from that, however, we have a wholly independent witness in the person of

police patil Laxman (PW 13). He states that when he was contacted by Zainabbi (PW 10) and the window of the deceased, he was told by them that Amirali was being beaten in the chowk by accused 1, 3, 4 and 14. The witness proceeds to say that on going to the chowk he found Amirali lying seriously injured. In answer to a query from the witness about the identity of the assailants the deceased is said to have uttered a single word "Karpude". The witness claims to have arranged for the deceased to be taken to a hospital on the way to which the latter expired. This witness is not interested in either side and his word, therefore, deserves to be acted upon. His testimony shows unmistakably that accused 1, 3, 4 and 14 were named as the assailants of Amirali while the beating was still in progress. The information conveyed to the witness is admissible as part of the res gestae and, in our opinion, it lends very important corroboration to the other evidence in support of the culpability of the four accused last-mentioned. We, therefore, find that their conviction is well deserved, even though our reasons for so holding are slightly different from those given by the High Court.

17. Next we take up the case of accused 10. He was holding the deceased on the way to the flag post from the house of Muktabai (PW 4), according to Shahabuddin (PW 1). Nama (PW 9) has testified that accused 10 was present outside Jayawanta's house when the deceased was being taken away therefrom. Bhanudas (PW 8) has deposed that accused 10 was one of those who actually gave stick blows to the deceased. This evidence the High Court has accepted as good for the purpose of holding accused 10 as fully guilty. In view of the support that the testimony of Shahabuddin (PW 1) finds from that of Bhanudas (PW 8) and Nama (PW 9) we are of the opinion that conviction of accused 10 is well-founded. We may add, however, that like accused 1 he is one of the Karpudes which is another pointer, though only of a marginal value, to his participation in the occurrence in view of the dying declaration of Amirali testified to by Laxman, PW 13.

18. The case against accused 7 is rather shaky. He is no doubt named as one of the culprits by Shahabuddin (PW 1) and Ismail (PW 5) but Muktabai (PW 4), Nama (PW 9) and Zainabbi (PW 10), do not state that he was one of the persons associated with the dragging of and the beating given to the deceased. Bhanudas (PW 8) no doubt inculcates him during the course of his testimony but then the name of the accused is conspicuous by its absence from the statement made by the witness to the police and on that account we cannot rely on his word in this behalf. No other material has been pointed out such as may support the conviction of accused 7, who, therefore, deserves acquittal.

19. The case of accused 15 is more or less similar to that of accused 7. It is only Shahabuddin (PW 1), Ismail (PW 5) and Zainabbi (PW 10) who incriminate him, but without support from the other material witnesses, namely, Muktabai (PW 4), Bhanudas (PW 8) and Nama (PW 9). The depositions of Shahabuddin (PW 1) and Ismail (PW 5) have already been held by us to be insufficient for conviction in the absence of corroboration from reliable sources. The testimony of Zainabbi (PW 10) to the effect that accused 15 was one of those who gave beating to the deceased appears to be based on hearsay as she admitted in cross-examination that by the time she returned from the patil's house, the occurrence had finished. Her word must, therefore, be excluded from consideration. Accordingly, the conviction of accused 15 is also held to be ill-founded.

20. The gist of the evidence against accused 16 may be set out here. According to Shahabuddin (PW 1) this accused was one of the four persons who first assembled outside the house of the deceased and challenged him to come out and later on took part in the actual assault when this accused gave a stick blow to Amirali. Muktabai (PW 4) deposed that accused 16 was one of those who broke open the door of Jayawanta's house and dragged out the deceased. The testimony of Zainabbi (PW 10)

and Ismail (PW 5) was not considered reliable in this connection by the High Court itself. The participation of accused 16 in the occurrence, therefore, is not shown to extend to his being a member of the unlawful assembly which took away the deceased to the flag post and gave him a beating. In this connection his case is at par with that of accused 2 who acquitted by the High Court in similar circumstances with the remark :

On this evidence it is possible to hold that accused 2 along with other accused also proceeded to the house of Mukta and was a member of the unlawful assembly till the deceased was dragged out from her house, but there is no further evidence that he continued to remain a member of the unlawful assembly thereafter.

21. Accused 16 deserves to be given the same benefit as was conceded by the High Court to accused 2. The conviction of accused 16, therefore, cannot be sustained.

22. In the result the appeal succeeds insofar as accused 7, 15 and 16 are concerned. The conviction recorded against and the sentences imposed upon them by the High Court are set aside and they are acquitted of the charge in its entirety. The appeal, however, fails and is dismissed in regard to the other five appellants.

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