

Chandubhai Shanabhai Parmar

Vs

State of Gujarat

Criminal Appeal No. 468 of 1977

(A.D. Koshal, Baharul Islam JJ)

18.03.1981

JUDGMENT

KOSHAL, J. -

1. This appeal by special leave is directed against the judgment dated October 21, 1976 of the High Court of Gujarat affirming the conviction of the appellant in respect of an offence under Section 302 read with Section 34 of the Indian Penal Code, as also of one under Section 326 of that Code and upholding the sentence of imprisonment for life on the first count and of rigorous imprisonment for a year coupled with a fine of Rs. 300 on the second.

2. The appellant was tried along with 10 others on the murder charge. It was the case for the prosecution that all the 11 accused had intentionally caused the death of one Bawaji in prosecution of their common object, or, in the alternative in furtherance of their common intention. The charge under Section 326 of the Indian Penal Code arises out of an injury suffered by Shakrabhai Bavabhai (PW 7), according to whom it had been inflicted by the appellant.

3. The occurrence is said to have consisted of two incidents, which took place in village Khandhali on February 3, 1975 one at the Irrigation Store and the other at the house of the deceased. In the first incident the culprits were said to be accused 1 to 3 (accused 2 being the appellant before us). In the other incident all the 11 accused were said to have participated and that is the incident which, according to the case of the prosecution, resulted in the death of the victim.

4. The ocular evidence consisted of the testimony of Bai Mani (PW 1), Bai Laxmiben (PW 5) and Bai Shantaben (PW 6), who are the widow, the daughter and the brother's wife respectively of the deceased. Both the courts found that this testimony was unreliable in numerous particulars and it was on that account that the co-accused of the appellant were acquitted in two stages.

5. We do not find that we can really distinguish the case of the appellant from that of accused 1 and 3 insofar as the unreliability of the ocular evidence is concerned. We have gone through the judgment of both the courts below and are of the opinion that although Bai Mani (PW 1) may well be held to have witnessed the occurrence at the house of the deceased it is not safe to act on her word in respect of the participation of any particular accused or of the part attributed to him or her. In this connection it is noteworthy that in the statement (Ex. 7) which Bai Mani (PW 1) made to Police Sub-Inspector Ranchhodbhai Bhailalbhai (PW 13) the stand taken was that the appellant was armed with a stick during the incident which took place at the house of the deceased. At the trial, however, all the three eyewitnesses stated unanimously that he was armed with a dharia and this improvement was obviously resorted to so that the appellant could be held responsible for the fatal

injury. Be that as it may, we cannot persuade ourselves to hold that although the ocular evidence was not trustworthy enough for a conviction of accused 1 to 10, implicit reliance can be placed on it in the case of the appellant who, in our opinion, must be given the benefit of the same doubt which made it imperative for the two courts below to acquit his co-accused. The reasonable possibility of the appellant having been roped in falsely insofar as the second incident is concerned can itself not be ruled out. Accordingly, we acquit him of the charge under Section 302 read with Section 34 of the Indian Penal Code and accept the appeal to that extent. His conviction of an offence under Section 326 of the Code and the sentence imposed upon him in consequence are, however confirmed.

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