

State of Maharashtra

Vs

Balram Bama Patil and Others

Criminal Appeal No. 260 of 1975

(E.S. Venkataramiah R.B. Misra JJ)

01.02.1983

JUDGMENT

MISRA, J.-

1. The present appeal by special leave has been filed by the State of Maharashtra against the judgment of the Bombay High Court dated September 18, 1974.

2. The incident giving rise to the present appeal took place on July 30, 1972 in connection with an election to the Panchayat Samiti for the Nere constituency scheduled to be held on July 31, 1972. The Peasants and Workers Party as well as the Congress Party fielded their own candidates for that election. The candidate for the Congress Party was one Meghnath Mankame. It appears that in connection with their election campaign 30 or 40 workers of the Congress Party had proceeded to Dhamani village on the morning of July 30, 1972. After contacting some voters. According to the prosecution an understanding had been arrived at between the rival parties to the effect that their respective workers would not carry voters with them. Contrary to the understanding the workers of the Congress Party were carrying some of the voters with them on their way back from Dhamani. When the workers of the Congress Party along with those voters reached a place known as 'Vakyacha Mal' and were proceeding along a track, 50 or 60 persons belonging to the Peasants and Workers Party appeared from behind bushes armed with guns, axes and sticks. Bama Kana Patil, accused 18, exhorted the members of the Peasants and Workers Party to beat the members of the Congress Party headed by Nama Padu Kadav. Thereupon they attacked them. As a result of such attack Nama Padu Kadav, Mahadu, Dhondu, Balu, Rajaram, Dasharath, Rambhau, Sudam, Baliram and Jagan Ragho received bodily injuries. One Vithu Bama Mhaskar, who was assaulted with an axe died on the spot. Nama Padu Kadav, Mahadu and Dhondu reached Nere where they met Mankame, who was the candidate of the Congress Party for the election from Nere constituency. Meghnath Mankame tried to convey the information of the incident to the police of Panvel Station. He, however, could not do so as the telephone was not in order. Nama Padu Kadav and other, therefore, proceeded towards Panvel. On their way near the river they could get a police jeep car. They reached Panvel in that vehicle. Nama Padu Kadav then went to the hospital where he received necessary medical treatment. Meghnath Mankame had sent a chit informing the Police Sub-Inspector about the incident. On receipt of the chit of Mankame the Police Sub-Inspector Inamdar reached the hospital and after contacting Nama Padu Kadav took down his complaint about the incident. At about 8.30 p. m. the Police Sub-Inspector registered the case and took up the investigation. He went to the place of occurrence, held an inquest over the dead body of Vithu Bama Mhaskar on July 31, 1972. He effected arrest of some of the accused on the same day and recorded the statement of the witnesses. The learned Judicial Magistrate held necessary enquiry and committed all the 23 accused to the Court of Session for trial. The accused denied charge and

claimed to be tried. During the course of trial the prosecution examined in all 37 witnesses.

3. On the evidence adduced by the prosecution the learned Sessions Judge came to the conclusion that there was an unlawful assembly on the Vakyacha Mal near Vaje and the members of such unlawful assembly had assaulted Nama Padu Kadav and others. Accused 1 to 4 and 7 to 22 were present as members of such unlawful assembly. The presence of accused 5, 6 and 23 was not spoken of by anyone. Therefore, they were found to have no concern with the incident which took place on the Vakyacha Mal. The evidence showed that accused 1,2,7, 11 and 18 were armed with deadly weapons like guns and axes at the time of assaulting the prosecution witnesses. Accused 1,2,7,10,11,14,15 and 18 had inflicted bodily injuries on prosecution witnesses.

4. In the result the Sessions Judge found accused 1 to 4 and 7 to 22 guilty and convicted them under Section 147, IPC and sentenced each of them to suffer rigorous imprisonment for one month and to pay Rs. 50 as fine, in default to suffer rigorous imprisonment for one month. Accused 1,2,7, 11 and 18 were convicted under Section 148, IPC and sentenced each of them to suffer rigorous imprisonment for one month and to pay Rs. 50 as fine in default to suffer rigorous imprisonment for one month. Accused 1 to 4 and 7 to 22 were convicted under Section 324 read with section 149, IPC and each one of them was sentenced to suffer rigorous imprisonment for three months and to pay a fine of Rs. 50 in default to suffer rigorous imprisonment for one month. Accused 1, 2 and 11 were convicted under Section 307, IPC and each one was sentenced to suffer rigorous imprisonment for three years. Bama, accused 18 was convicted under Section 302, IPC and sentenced to suffer imprisonment for life. The substantive sentences were ordered to run concurrently. Accused 5, 6 and 25 were acquitted of all the charges.

5. The judgment of the learned Sessions Judge gave rise to two appeals and one revision. Criminal Appeal No. 873 of 1973 was filed by accused 1 to 4 and 7 to 22, against their conviction. Criminal Appeal No. 1439 of 1973 was filed by the State against the acquitted of original accused 1 to 17 and 19 to 23 of various offences. The State also filed a Criminal Revision No. 837 of 1973 for enhancement of the sentence against original accused 1 to 4 and 7 to 22. The High Court made a fresh appraisal of evidence, keeping in view the guidelines laid down by this Court in a case of this nature in *Masalti v. State of U. P.*((1964) 8 SCR 133 : AIR 1965 SC 202 : (1965) 1 Cri LJ 226), wherein this Court held :

. . . . where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be irrational or unreasonable.

In view of the aforesaid observation of this Court in the above case, the High Court did not think it safe to convict an accused on the basis of the evidence of a single witness.

6. The Court has given cogent reasons for believing or disbelieving a particular witness. No exception in our opinion can be taken to the appreciation of the evidence by the High Court.

7. The High Court in its turn convicted accused 1, 2, 10, 11, 14, 15 and 18 under Section 147, IPC and enhanced their sentence to one year's rigorous imprisonment. It further convicted accused 1, 2

and 11 under Section 148, IPC and sentenced them to two years' rigorous imprisonment. Accused 1, 2, 10, 11, 14, 15 and 18 were convicted under Section 324 read with Section 149, IPC and sentenced to two years' rigorous imprisonment. The High Court set under Section 302, IPC in respect of death of Vithu Bama Mhaskar. It also set aside the conviction and sentence passed on accused 18 under Section 302, IPC in respect of death of Vithu Bama Mhaskar. It also set aside the conviction and sentence passed on accused 18 under Section 506 (2) but convicted accused 1, 2, 10, 11, 14, 15 and 18 for a lesser offence under Section 506 (1) read with Section 149, IPC and sentenced each of them to six months' rigorous imprisonment. The conviction of accused 1, 2 and 11 under Section 307, IPC as well as the sentence passed on them in respect of the same were set aside. The sentence passed on the accused persons were directed to run concurrently.

8. The State of Maharashtra has come to this Court by special leave, as stated earlier, against the order of acquittal of accused 1, 2, 7, 8, 10, 11, 12, 13, 14, 16 and 19 under Section 302 read with Section 149, IPC, acquittal of accused 1, 2 and 11 under Section 307, IPC, acquittal of accused 3, 4, 7, 8, 9, 12, 13, 16, 19, 20, 21, and 22 under Section 147, Section 324 read with Section 149, IPC, and acquittal of accused 18 of the charge under Section 302, IPC.

9. Shri Rana appearing for the State strenuously contended that the High Court has committed a grave error in holding that the offence under Section 307, IPC was not made out merely because the injuries inflicted on the witnesses were in the nature of a simple hurt and in these circumstances it is not possible to hold any of the accused persons guilty in respect of that offence. We find considerable force in this contention. A bare perusal of Section 307, IPC would show that the reasons given by the High Court for acquitting the accused of the offence under Section 307 were not tenable. Section 307, IPC reads :

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

To justify a conviction under this Section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as these person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

10. The High Court, in our opinion, was not correct in acquitting the accused of the charges under

Section 307, IPC merely because the injuries inflicted on the victims were in the nature of a simple hurt therefore, that part of the judgment of the High Court acquitting accused 1, 2 and 11 of the offence under Section 307, IPC cannot be sustained and must be set aside. They have, however, already served out sentence of imprisonment for two years for the offence under Sections 147 and 148, IPC in pursuance of the order of the High Court. When the State filed an appeal against them they were arrested again and had to remain in jail for three months before they could be released on bail. Thus, they have already served a sentence of two years three months. In the circumstances the ends of justice should be met if the sentence is limited to the period already undergone..

11. As regards the appeal of the State against acquittal of accused 18 of the offences under Section 302, we have perused the judgment of the High Court and we are satisfied that the evidence has been properly dealt with and we do not feel inclined to interfere with the order of the High Court.

12. As regards the appeal of the State against the acquittal of other accused of other offences is concerned, the conclusion arrived at by the High Court has been after appraisal of the evidence meticulously and this Court will not be justified in making a reappraisal of the evidence and come to a different conclusion.

13. For the reasons given above the appeal is allowed only to the extent mentioned above. In other respects the appeal stands dismissed.

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