

Patil Hari Meghji and Another

Vs

State of Gujarat

Criminal Appeals Nos. 4 and 5 of 1977

(Syed M. Fazal Ali, D. Chinnappa Reddy JJ)

10.02.1983

JUDGMENT

1. This is an appeal under Section 2 of the Supreme Court (enlargement of Criminal Appellate Jurisdiction) Act and is directed against a judgment of the Gujarat High Court by which the acquittal of accused 1, 2, 3 and 4 was reversed by the High Court and after reversal the respondents were convicted under Section 302/34 and also 302/114 and sentenced to imprisonment for life. The Sessions Judge had acquitted accused 2 and 3 completely but had convicted accused 1 and 4 under Section 304 (1) and sentenced them to seven years' rigorous imprisonment on the finding that these two accused had exceeded the right of private defence. The facts of the case have been detailed in the judgments of the High Court and the Sessions Judge and it is not necessary for us to detail the same.

2. It appears that the present dispute arose out of a chronic land dispute between the accused and the deceased party. In fact there is evidence to show that about three weeks before the present occurrence, one of the accused had threatened to kill the deceased and his partymen. This matter was reported to the Police Patel and the report is Ex. 14. This report was given on April 28, 1975. The occurrence said to have taken place near the field of Hair Khoda. The prosecution case was that while deceased along with his companions and his relations were going to their field for cultivating the same, the accused party, variously armed, engaged them and started assaulting them indiscriminately. The companies of the deceased including PW 2 tried to protect themselves with whatever weapons they had in the cart and inflicted some injuries on the person of the accused. As a result of the attack by the accused three persons viz., Bhika Bhimji, Kadu Kala and Kanu Ganji received fatal injuries. Bhika Bhimji and Kadu Kala died on the spot and Kanu Ganji followed soon thereafter. PW 2 son of the 1st deceased Bhika Bhimji rushed to the Police Patel to give information. On the way he met PW 12 whom he told as to how the injuries were caused to the three deceased persons as a result of the attack made by the accused. Perhaps till that time Kanu had not breathed his last. A report was prepared by PW 10 which was sent to the police station and on the basis of that report the present FIR was lodged and the investigation proceeded. The accused persons were tried, with the result mentioned above.

3. We have gone through the judgment of the High Court as also that of the learned Sessions Judge. We have also carefully perused the entire evidence in the case which consist of the eye-witnesses account of the occurrence given by PWs 2 and 3 corroborated by the evidence of PW 7 and PW 12 who had seen the accused running away with the arms immediately after the occurrence while these witnesses were proceeding to the spot on hearing of the death of the three persons. Prosecution also led some evidence regarding the recovery of an axe and some other articles which have been disbelieved by the Sessions Judge and in the view that we take it is not necessary to refer to them. A

perusal of the evidence of PWs 2 and 3 clearly reveals that they have given a very truthful and complete version of the occurrence from the start to finish. The learned Sessions Judge seems to have described these witnesses as interested and gave the reason that the actual origin of the assault was not deposed by them and the result of it was that the plea of right of private defence taken by accused 1 and 4 became extremely probable. The evidence of PWs 9 and 12 also was rejected by the Sessions Judge on flimsy grounds. Regarding the evidence of PW 9, the Sessions Judge observed that as he was running towards the southern side and the accused were on western side, therefore, the witness could not see them. It is very difficult for a witness to remember after such a length of time as to the exact direction in which he was running. There is no doubt that PW 9 was informed by PW 2 about the deaths of Bhika Bhimji and others and was proceeding to the spot. There is no other circumstances to disbelieve his evidence. Similarly the evidence of PW 12 Bhim Mula was disbelieved mainly on the ground that he saw the accused running away. In fact PW 12 had deposed that he saw and he could not be disbelieved because he was deposing the facts seen. No other ground has been given by the learned Sessions Judge to disbelieve this witness whose evidence substantially corroborates the testimony of PWs 2 and 3. In our opinion the learned Sessions Judge appears to have made an artificial and unnatural approach to the evidence given by the prosecution and brushed aside the prosecution evidence mainly on the basis of trivial contradictions or small discrepancies.

4. We are, therefore, satisfied that the learned Sessions Judge has not considered the evidence properly and has based his conclusion on utterly unsustainable grounds. His judgment cannot be supported in law.

5. The cornerstone, however, of the argument of Mr Bhasme which appears to have found favour with the Sessions Judge are two : (i) That there is no evidence regarding the actual manner in which the occurrence took place and as a result it could not be said that the plea of private defence taken by the accused was not sustainable; and (ii) that although it appears from the evidence of PW 2 that he made a report to the Police Patel PW 10 and that report was written and signed by PW 2 yet the said report has not been produced which shows that there was some other FIR which the prosecution had deliberately concealed. So far as the first circumstance is concerned the learned Sessions Judge seems to have misread the evidence of PWs 2 and 3. In their evidence they have clearly stated the occasion, the motive and the genesis of the occurrence as also the manner in which it took place. They have given a careful description as to how the deceased and his party had proceeded to the field and before reaching there they were engaged by the respondents who started altering with them. This was really the origin of the occurrence and the Sessions Judge was not right in saying that the origin of the occurrence could be something else. This ground given by the Sessions Judge does not in our opinion appear to be tenable.

6. As regards the second ground there is clear evidence to show that at the very moment the name of the accused was disclosed to Keshav Kanji PW 9 and then to PW 10. The FIR was lodged within an hour or two of the occurrence itself. It is obvious that the board statement of PW 2 to PWs 9 and 10 removes the very basis of the charge that some FIR was written but concealed. It is however suggested that the FIR was concealed because the original FIR did not mention the name of accused numbers 2 and 3. This is also a reason based on speculation. There is no doubt that accused 2 and 3 were injured and their injuries clearly explained by PWs 2 and 3 who had stated that these persons also participated in the occurrence and in the course of which they were assaulted in exercise of the right of private defence. In these circumstances therefore the alleged non-production of a paper which had contained the signature of the complainant does not detract from the prosecution case.

7. Lastly, it was argued by Mr Bhasme that on the evidence adduced by the prosecution the accused had assaulted the deceased in exercise of the right of private defence but exceeded the same as found by the Sessions Judge and hence they could not be convicted under Section 302. We are however unable to agree with this argument. The nature of the injuries viz. 22 on one, 12 on the other and 13 on the third deceased clearly show that there could be no question of a plea of private defence. The accused party had come to teach the deceased a lesson for having raised dispute in respect of land about which they had hinted even a month back when the report Ex. 14 was lodged. The manner of the assault, the consequence of which was the death of three persons cannot for a moment give rise to a justification for pleading a right of private defence. Moreover Exception 2 of Section 300 clearly enjoins that there cannot be any question of exceeding the right of private defence where the accused causes more harm than it is necessary for the purpose of his defence. The clear evidence of PWs 2 and 3 in this case is that even after Bhika Bhimji and Kadu Kala had fallen down on the ground and were rendered harmless and were not in a position to offer any resistance, the accused continued to assault them until they had inflicted all the injuries mentioned above. In these circumstances, therefore, the plea of the right of private defence could not be accepted for a moment. On a perusal of the facts and circumstances mentioned above we are convinced that the judgment of the Sessions Judge was perverse. He had drawn wrong conclusions and based his decision purely on speculation and on a misreading of the evidence. The High Court has clearly indicated in its judgment that it was fully alive to the principles laid down by this Court in reversing an order of acquittal and even testing the present case on tests enunciated by this Court, the High Court was of the opinion that this was not a case in which any other view excepting the one taken by the High Court was reasonably possible. For these reasons, therefore, we uphold the judgment of the High Court and dismiss the appeals as also the special leave petition.

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