

Ramji Surjya Padvi and Another

Vs

State of Maharashtra

Criminal Appeal No. 429 of 1980

(D. A. O. Chinnappa Reddy JJ)

13.05.1983

JUDGMENT

VENKATARAMIAH, J.-

1. This criminal appeal under Section 2 the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (Act 28 of 1970) is filed by two appellants - Ramji Surjya Padvi and Bhikji Surjya Padvi accused 2 and 4 in Sessions Case No. 102 of 1974 on the file of the Additional Sessions Judge, Dhulia against the judgment of the High Court of Bombay in Criminal Appeal No. 467 of 1975 by which it reversed the judgment of acquittal passed by the Sessions Court on a charge under Sections 302/34 of the Indian Penal Code and imposed the sentence of rigorous imprisonment for life on each of them after holding them guilty of the charge under Section 302/34 of the Indian Penal Code.

2. The facts of the case are these : Damji (accused 1), Ramji (accused 2) and Bhikji (accused 4) are the sons of Surjya Tulya Padvi (accused 3). Accused 1 to 4 are residents of a village called Veri in taluka Akkalkuwa. The said village was by the side of a river called Mothi Nadi. In the month of March 1974, one Prabhat Singh (the deceased) a resident of Mojabada which is a hamlet of Bhagdari village within the limits of Dhadgaon Police Station had grown water-melons on a portion of the bed of the Mothi Nadi river near the village, Veri. The distance between the place where water-melons had been grown by the deceased and his village was about two miles. It is the case of the prosecution that during the last week of March, 1974, the deceased Prabhat Singh and his wife, Surjabai (PW 2) were staying in a hut which they had constructed near the place where they had grown water-melons in order to keep watch over the water-melon crop. They used to cook their food in the hut. On March 26, 1974 at about 9 p.m. when Prabhat Singh was lying on a cot inside the hut, Surjabai was sitting outside near an agiti in which she had kept fire and was warming herself. It is the case of the prosecution that at that time, the four accused persons referred to above came there and when they were questioned by Surjabai, they told that they had come to smoke tobacco. At that time accused 2, Ramji was armed with an axe. The accused did not, however, stay there for the purpose of smoking but suddenly entered the hut where accused 1, 3 and 4, Damji, Surjya and Bhikji caught hold of Prabhat Singh and Ramji (accused 2) gave a number of blows with an axe on the head, face and neck of Prabhat Singh. Thereafter they ran away. Surjabai out of fear went near a big stone in a nearby hillock and concealed herself behind it. She continued to sit there for some time and on returning to the scene of occurrence she found that her husband had died. Thereafter she went to her village in the early hours of March 27, 1974 and narrated the incident to her daughter-in-law Bharatibai (PW 3) in the presence of two of her servants Bapu and Arshya who have not been examined in the case. It is stated that she sent another servant of her's Bamanya (PW 8) to go to a village called Nala-gavi where her son, Ratan Singh (PW 1) had gone on the previous

day to fetch him. She thereafter sent for Gumba (PW 5) who was formerly the Police Patel of her village and narrated before him the incident in which her husband had been killed. It is stated that she mentioned the names of the four accused as the assailants to PW 3 Bharatibai as well as to Gumba (PW 5). It is further stated that Surjabai, Gumba, Bharatibai and the two servants, Bapu and Arshya and some others went to the place where the dead body of Prabhat Singh was lying. They also sent for Detka (PW 9) who was the Police Patel at that time. Ratan Singh, according to the prosecution, reached the place at about 5 p.m. on being informed by Bamanya (PW 8) about the incident. Surjabai narrated the whole story again before Ratan Singh (PW 1). Thereafter PW 1 went to the village Molgi where there was a police outpost along with Detka (PW 9) and orally mentioned to the Head Constable by name Keval Bedse (PW 13) about the incident. PW 13 prepared the outpost 'Khabar' (Ex. 36) in the prescribed form and sent PW 1 Ratan Singh along with the outpost Khabar to the police station at Dhadgaon. PW 13 thereafter left for the scene of occurrence to keep watch over the dead body. Ratan Singh is stated to have hired a jeep and gone to Dhadgaon and reached that place at about 2.15 a.m. on March 28, 1974. There he met the Police Sub-Inspector at the police station and made a statement (Ex. 10) before him which was recorded by him. In that statement he narrated what he had heard from his mother at about 5 p.m. on March 27, 1974. In that statement, the names of the four accused are found as the assailants. Thereafter the Police Sub-Inspector came to the spot on the morning of March 28, 1974 and carried on further investigation. He arrested accused 1 to 3 on the evening of March 28, 1974, accused 4 on the next day and after completing the investigation, he filed the charge-sheet against them for an offence punishable under Sections 302/34 of the Indian Penal Code. The learned Sessions Judge who tried the case disbelieved the case of the prosecution that Surjabai was an eye-witness of the occurrence and acquitted the accused. Against the said judgment of acquittal, the State Government preferred an appeal before the High Court. It would appear that during the pendency of the appeal, accused 1, Damji and accused 3, Surjya had died. This fact perhaps was not brought to the notice of the High Court. Before the High Court, the accused were represented by an amicus curiae. The High Court set aside the judgment of acquittal and convicted all the accused including accused 1 and accused 3, who had died earlier, under Sections 302/34 of the Indian Penal Code and imposed on each of them the sentence of imprisonment for life. Against the judgment of the High Court, accused 2 and accused 4 preferred this appeal before this court. When the appeal came up for admission, by an order made by this court on August 18, 1980, the appeal of Bhikji (accused 4) was dismissed. The notice of appeal was issued only insofar as Ramji (accused 2) was concerned.

3. Shri M. N. Sharma who has appeared in this case as amicus curiae has raised among others two points before us - (1) that the case of the prosecution was a concocted one and (2) that in any event since it was not possible to say that two opinions were not possible about the guilt of the accused, it was not open to the High Court to reverse the judgment of acquittal of the Sessions Court.

4. We shall first deal with the manner in which first information was given to the police in this case. It is true that in the statement (Ex. 10) of Ratan Singh (PW 1) which is stated to have been recorded at 2.15 a.m. on March 28, 1974 at the Dhadgaon Police Station we find the names of all the four accused and a brief description of the incident which is alleged to have been narrated by Surjabai (PW 2) at about 5 p.m. on March 27, 1974 before Ratan Singh (PW 1). What value should be attached to the contents of this document depends on the evidence in the case. According to the prosecution, the incident took place at about 9 p.m. on March 26, 1974. Surjabai (PW 2) is stated to be the sole witness of the crime. She is stated to have disclosed all the particulars relating to the incident on the morning of March 27, 1974 to Bharatibai (PW 3) and some others as stated above. Surjabai has stated in the course of her deposition that she had told the Police Patel that she wanted a complaint to be lodged, thereafter the Police Patel wrote something and that writing was taken by

Ratan Singh (PW 1) to Molgi where the police outpost was situated. She has also stated that she had instructed the Police Patel and others that nobody should go to lodge a complaint till the arrival of her son, Ratan Singh (PW 1). The writing referred to above which according to the events disclosed in the prosecution case is the first document containing the gist of the version of Surjabai regarding the incident. That document is not forthcoming in the case. Bharatibai (PW 3) has a different version to give about the lodging of the complaint. She has stated in her cross-examination : "My mother-in-law Surjabai had told Gumba, Police Patel that he could lodge complaint of murder. This was stated to him at about breakfast time in the morning. Immediately thereafter Police Patel Gumba had gone to lodge a complaint. Van Singh Sarpanch and Tap Singh had gone along with Police Patel to lodge complaint. They returned at about 12 noon after filing complaint at Molgi." This complaint cannot be the same which is referred to earlier because the earlier complaint according to PW 2 Surjabai was the one which was taken by Ratan Singh (PW 1) to Molgi. The complaint referred to by PW 3 Bharatibai is a complaint which was prepared at about noon by Police Patel Gumba (PW 5) and lodged by him at Molgi at about 12 noon long before the arrival of Ratan Singh at the scene of occurrence. This complaint is also not forthcoming. Gumba (PW 5) who is a former Police Patel denies that Surjabai (PW 2) had told him to go and lodge a complaint. He has stated that he had received information about the murder in the morning, he did not go to lodge a complaint as Detka (PW 9) was the Police Patel and that when Surjabai narrated before Police Patel Detka the particulars of the incident, he asked Police Patel Detka (PW 9) that he should go to lodge a complaint. This happened according to him at about 2 p.m. on March 27, 1974. PW 9 Detka says that he went to the place of occurrence at about 1.30 p.m. on March 27, 1974 where the dead body was lying and he stayed there awaiting the arrival of Ratan Singh (PW 1) who reached that place by 5 p.m. and thereafter he and Ratan Singh went to Molgi Police outpost where the Head Constable prepared the occurrence report. He says that he reached Molgi at about sun-set time but the Khabar report (Ex. 36) prepared by the Head Constable at Molgi shows that the 'Khabar' was given to him at 21.00 hours i.e. 9 p.m. on March 27, 1974. Ratan Singh (PW 1) who is stated to have given that Khabar says that he reached Molgi at about 8 or 8.30 p.m. and gave the information contained in the Khabar report. The first information stated to have been recorded by the police under Section 154 of the Criminal Procedure Code is stated to be the one taken down at the police station at Dhadgaon (Ex. 10) at 2.15 a.m. on March 28, 1974. 0001

5. A close examination of the above evidence shows that according to Surjabai (PW 2) there was a document prepared by Gumba (PW 5) in the morning of March 27, 1974 containing the information given by her which was later on taken by Ratan Singh (PW 1). Then according to Bharatibai (PW 3) there was a document which was prepared by Gumba at about 12 noon which he took to Molgi and lodged with the Molgi police outpost. According to PW 9 Police Patel Detka, the information was given at the police outpost at about sun-set time i.e. at about 6.30 p.m. The khabar report itself shows that it was received at 9 p.m. on March 27, 1974 and the first information is stated to have been recorded at 2.15 a.m. on March 28, 1974. In this case the prosecution have attempted in the course of the evidence to explain away the delay in giving the information to the police outpost which was nearly 24 hours from the time at which the occurrence is stated to have taken place by stating that Surjabai (PW 2) did not want such information to be lodged with the police until the arrival of Ratan Singh which, according to the prosecution, took place 0001 0001 at 5 p.m. on March 27, 1974. The attempt of the prosecution to explain away the delay has failed in the instant case since we 0001 have several different versions about the lodging of the 0001 information with the police outpost and the earlier versions of the crime said to have been given by Surjabai which were in writing appear to have been suppressed in this case. This extraordinary delay in giving the first information to the police in the present case which has not been properly explained cannot but

be viewed with suspicion. 0001

6. The motive for the crime is stated to be that the plot on which the deceased had grown water-melons was being used by accused 2 Ramji some years before the incident to grow onions and that there was a quarrel about 8 or 10 days prior to the incident between accused 2 and Ratan Singh (PW 1). The land in question 0001 0001 0001 being a part of the river bed did not belong to accused 2 and he 0001 0001 was not cultivating there for about 2 or 3 years before the 0001 0001 incident. The land was probably getting submerged during rainy season. Accused 2 could not, therefore, be considered as being in possession of that plot when the deceased commenced cultivation. There is also no evidence showing that accused 2 had raised any objection when water-melon seeds were actually planted. In the circumstances, the motive suggested does not appear to be strong enough for the four accused joining together to commit her murder of the deceased. 0001

7. While there could be no doubt about the homicidal character of the death of the deceased, the learned Sessions Judge who heard the evidence of Surjabai (PW 2) held that the details of the 0001 0001 incident given by her were imaginary or improbable and, therefore, unbelievable. Some of the inherent contradictions in her evidence are these : In her evidence she has stated that she was sitting outside the hut near a place where she had kept fire (agiti) at about 9 p.m. and she saw from there all that took place inside the hut when her husband was assaulted by the 0001 accused. She has even given the role played by each of them. She has stated that while accused 1, 3 and 4 held the deceased, accused 2 assaulted him repeatedly with the axe he had brought. The sketch of the scene of occurrence (Ex. P-4) shows that the fire-place was to the south of the hut but the hut had an opening assault from the place where she is stated to be sitting. It is also noteworthy that the only source of light at the sitting. It is also noteworthy that the only source of light at the time of the incident was the fire said to have been ignited by Surjabai (PW 2). It is difficult to believe that she 0001 could in that light identify the accused, the arms they were carrying and the clothes they were warning about which she has tried to give detailed description in her evidence. Her answer that she had put more fuel in order to have more light so that she could identify the accused properly appears to be a bit artificial. She, however, has admitted that it had become dark even when they were taking food earlier. It is also strange that she did not try to resist the attack on her husband. It is further seen that in Ex. 10, the first information, it is stated that she had told Ratan Singh (PW 1) that at the time of the incident she was chit-chatting with her husband but in her deposition she has stated that the deceased had fallen asleep at the time of the incident. The doctor (PW 6) has stated that the cause of the death was due to severe bleeding due to the cutting of the right carotid artery. It is also in evidence that the blood of the deceased had been splashed all round, but it is stated by Surjabai (PW 2) that not even a single stain of blood was found on her clothes. Ordinarily on such an occasion a wife whose husband is being murdered would come into close contact 0001 with the body of her husband and her clothes would become blood-stained. In the instant case there was no means of 0001 avoiding such stains also as there was darkness all round where the incident is stated to have taken place. The absence of blood stains on the clothes of Surjabai (PW 2) suggests that she could not have been present at the scene at the time of occurrence. The statement found in Ex. P-10 and also in her deposition that she was hiding on a hillock during that night out of fear is contradicted by the evidence of Bharatibai (PW 3) that Surjabai (PW 2) had told her that she was in the hut throughout till she returned home. We may also note here that according to Ratan Singh (PW 1) the son of the deceased they had engaged about seven 'annual' servants to work on their fields and one of them was Bamanya (PW 8) who had gone to fetch him from Nalagavi village where he had gone to see his son who was studying in Ashram School. None of the servants had been asked to stay at the hut along with the deceased but only Surjabai (PW 2) is stated to be present at the scene of occurrence. The distance between the village of Surjabai (PW 2) and the scene of occurrence was

about 1 1/2 miles according to the evidence of Ratan Singh (PW 1). If that was so, it is not known why Surjabai did not run to the village immediately after the incident took place, instead of running towards the hillock and returning to the village next morning.

8. There is no doubt that even where there is only a sole eye-witness of a crime, a conviction may be recorded against the accused concerned provided the court which hears such witness regards him as honest and truthful. But prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness particularly where such witness also happens to be closely related to the deceased and the accused are those against whom some motive or ill will is suggested. Now in the instant case a careful analysis of the evidence relating to the inordinate delay involved in the giving of the first information to the police and the other inherent inconsistencies in the evidence of the sole eye-witness i.e. Surjabai (PW 2) shows that her evidence cannot be considered as sufficient to find the accused guilty. The first information (Ex. P-10) itself appears to be one prepared after some deliberation. The role attributed to Gumba (PW 5) the former Police Patel in the prosecution evidence compels the court to look for corroboration from the other prosecution evidence before accepting the evidence of Surjabai (PW 2).

9. Accused 1 to 3 were arrested on March 28, 1974. The axe and clothes recovered on March 28, 1974 itself on the basis of the statement of accused 2 and of accused 3 had no blood stains according to the report of the Assistant Chemical Analyser to Government (Ex. 39). The house of accused 1 was not searched on that day even though there was no impediment for doing so. His house was searched on the next day when a dhoti said to contain some blood stain was found with him. The delay in the recovery of this dhoti was considered by the learned Sessions Judge as affecting the evidentiary value of the said recovery. Similarly the blood stains said to be on a banian seized from the person of accused 4 when he was arrested on March 29, 1974 was considered by the Sessions Judge as not possessing any 0001 corroborative value again on account of the interval between the time of occurrence and the time of recovery. The learned Sessions Judge felt that the evidence of Surjabai could not be accepted without any further corroboration. The learned Sessions Judge also felt that the evidence of the other prosecution witnesses such Gumba (PW 5), Police Patel Detka (PW 9) and Ratan Singh (PW 1) could not be safely relied on as furnishing corroboration to the statement of Surjabai (PW 2) in view of the several circumstances narrated in his judgment. The evidence of motive also was found to be discrepant by the learned Sessions Judge. Accordingly he acquitted all the accused.

10. The High Court which was hearing an appeal against a judgment of acquittal has not bestowed due care on the principles governing its jurisdiction. While there is no doubt that the jurisdiction of an appellate court is coextensive with that of the trial court, in the case of an appeal against a judgment of acquittal it cannot totally brush aside the appreciation of the evidence by the trial court. The reasons for reversing a judgment of acquittal should be cogent and if two views are reasonably possible, the appellate court should be slow in interfering with the judgment of the trial court, even if it is possible for it to take a different view after a process of laborious reasoning. We do not find a proper discussion in the judgment of the High Court about the various versions in the prosecution evidence about the giving of the first information to the police, which we have pointed out above, in their true perspective. The High Court has oversimplified this issue and has observed : "In this case, bearing in mind the place where the incident occurred, we find no unreasonable delay in reporting the incident to the police outpost at Molgi and subsequently in giving the complaint at the Dhadgaon Police Station." It may be noted that the distance between Molgi and the village of the deceased was hardly three miles but the 'khabar' reached the Molgi, police outpost, according to the prosecution, nearly 24 hours after the incident. The reason given by the prosecution for this inordinate delay is

hardly convincing. This important aspect of the case has been overlooked by the High Court.

11. There is one other circumstance to which reference may be made here. The doctor (PW 6) who had conducted the post-mortem examination of the body of the deceased gave evidence stating that the death of the deceased could not have taken place soon after the dinner as he did not find any food particles in the stomach or the small intestines of the deceased. He opined that by the time of the death of the deceased at least four hours must have passed after his taking food. There being nothing highly incongruous about this statement, the learned Sessions Judge had observed in his judgment that the evidence of Surjabai (PW 2) that she had served food for the deceased at about 8.30 p.m. could not be accepted as probably as the fatal assault had taken place at about 9 p.m. But the High Court has severely criticised the evidence of this doctor observing that : "our impression is that he hardly knows what he is talking about and what is extraordinary is that the less he knows the more assertive he is. No reliance whatsoever can be placed on such evidence and no conclusion can be drawn either adverse or in favour of the prosecution from the opinion of such a poorly qualified medical witness". This comment by the High Court on the evidence of the doctor appears to be more severe than what it should have been particularly when his opinion that 'it was possible that the death in this particular case was instantaneous' is not seriously challenged. In the circumstances of this case, the scope for exaggeration on the part of the prosecution witnesses involving innocent persons cannot also be ruled out. As we have pointed out earlier, the High Court has missed some important discrepancies in the prosecution case. Bearing in mind the well-settled principles governing a case of this nature we feel that it would be unsafe to act upon the evidence of Surjabai (PW 2) and convict the accused. In the circumstances, the High Court was in error in upsetting the verdict of acquittal recorded by the trial court. We, therefore, hold that the appeal of Ramji Surjya Padvi accused 2 (appellant 1) should be allowed.

12. Having reached the above conclusion, we feel that ends of justice require that we should suo motu recall the order dismissing the appeal of Bhikji Surjya Padvi accused 4 (appellant 2) in this appeal and acquit him also. We accordingly review the order dated August 18, 1980 of this court dismissing his appeal and restore his appeal to the file. It may be mentioned here that the learned counsel for the State fairly conceded that if the appeal of accused 2 is to be allowed, accused 4 should also be released.

13. In the result we allow this appeal, set aside the conviction of accused 2 and 4 (appellants 1 and 2) Ramji Surjya Padvi and Bhikji Surjya Padvi under Sections 302/34 of the Indian Penal and the sentences of imprisonment for life imposed on them by the High Court and restore the judgment of acquittal passed by the trial court. Accused 2 and accused 4, the appellants herein shall be released forthwith.

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