Ramesh Laxman Pardesi

Vs

State of Maharashtra

Criminal Appeal No. 8 of 1978

(G. L. Oza, V. Khalid JJ)

10.04.1987

JUDGMENT

OZA, J. -

1. This appeal has been filed after obtaining leave from this Court against the conviction of the appellant under Section 302 and sentence of imprisonment for life recorded by Additional Sessions Judge Greater Bombay in Sessions Case No. 204/73 and maintained on appeal by High Court of Bombay by its judgment dated October 17, 1977.

2. The prosecution case at the trial was that on the midnight intervening between July 25/26, 1972 the appellant alongwith others went to traffic island near Bandra, situated on Linking Road where Badshah Umarbax was doing the business of vending eatables from his handcart kept on that island. The eatables included heavy non-vegetarian items. Badshah, PW 4 was assisted in his trade by his brother-in-law Sadatali, PW 5 and some other servants. It is alleged that the appellant along with his friends had reached there to celebrate the victory of caroms game of the Caroms Club run by accused 1 and on reaching near the cart accused 1 and 4 placed order for meat and other preparations.

3. As the dishes were getting ready the deceased Sheroo Lala came there, driving his red Fiat Car MRT 566. By his side was his relation Ahmedkhan, who, though cited as a witness, was not examined at the trial, as it was reported that he was not available. In the back seat sat Chutkan, PW 2 and Alikhan, PW 3. It appears that Chutkan and Kala Topi met in a hotel in Khar and while they were conversing, Sheroo Lala came there together with Alikhan in the car from Santa Cruz side. After gossipping for some time Sheroo Lala proposed to go to Badshah's handcart on Linking Road, for taking food. That is how all of them arrived near the Badshah's handcart where the appellant and his friends had reached earlier. This car went and stopped very near the handcart. The other care which brought the appellant and his friends earlier were parked there. It was at 11.45 p.m. and there were two petromax lights burning on the handcart. There were also come street lights. It is alleged that Sheroo Lala got down from his car and proceeded for placing the order and just as he did so he was stopped by Maruti, one of the accused persons who addressed him in a loud tone. This was followed by heated exchange of words and suddenly the present appellant - accused 1 in the courts below - who was behind Maruti came forward with an open Rampuri knife and inflicted a stab wound in the stomach of Sheroo. The other accused also assaulted Sheroo Lala with a stick on the head. The other persons who were tried, it is alleged were also there. It is alleged that in the meantime Chutkan, Kala Topi and Ahmedkhan had come near the spot where Sheroo was stabbed and Sheroo keeping his hand on the injury walked towards the north and ultimately fell down in a pool of blood collected on the spot. Chutkan, Kala Topi and Ahmedkhan, it is alleged, got down

from the car probably to meet the assailants but just then Maruti who was accused 3 in the courts below, picked up a suri from Badshah's handcart and aimed a blow at Chutkan but Chutkan grappled with it and got hurt near the thumb on the palm of his right hand. Another blow was aimed by Maruti, but it was warded off by Chutkan and it is alleged that at that time accused 4 gave a blow with a bamboo on the right hand of Chutkan and accused 7 gave a blow on Ahmedkhan with an iron bar. Ahmedkhan fell down and sometime later he went away himself. It is alleged that when this was happening, Kala Topi removed a bamboo from Badshah's handcart and started flourishing it in defence. The others also were doing something to defend themselves. According to the prosecution in this exchange some injuries were inflicted but so far as the present appeal is concerned, we are not concerned with it as we are concerned with only the appellant Ramesh Laxman Pardesi.

4. Chutkan and Kala Topi, in the meantime, managed to board a taxi and went to K.E.M. Hospital for treatment. They reached the hospital at 1.50 a.m. At about 1.20 a.m. accused 3, who was having a bleeding injury on the head, visited the Bandra Police Station along with accused 4 to lodge a complaint against Sheroo and his companions. S. I. Patil, PW 17, who was on duty at the Bandra Police Station, sent Maruti to Podar Hospital along with form for medical examination in the car of Subhash, another accused person.

5. Dr. Parandekar, PW 15 who was attached to K.E.M. Hospital at the relevant time as Casualty Medical Officer examined Kala Topi and Chutkan whereas Dr. Muzavar, PW 13 examined Maruti at Podar Hospital. In the meanwhile Police Constable Sawant, PW 10, who was on patrol duty that night came across the injured Sheroo on the street north of the traffic island, mortally wounded. The constable therefore arranged for his removal to K.E.M. Hospital where he reached at about 2.20 a.m. and informed at 2.45 a.m. S. I. Patil of Bandra Police Station about this. Dr. Parandekar examined Sheroo Lala at 2.20 a.m. as an unknown person. His general condition was poor and found an incised injury on his person. There was another CLW on the left frontal region. He was admitted in the ward and on Dr. Aggarwal, PW 9 examined him at 2.25 a.m. and found him dead.

6. S. I. Patil received a telephone call at 2.45 a.m. sent by the Police Constable Sawant, PW 10. He went to the hospital immediately and made enquiries but could not ascertain the name of Sheroo. He learnt that two pathans meaning thereby Chutkan and Kala Topi were also in the hospital. He contacted them and questioned them. They were brought down they identified Sheroo. The statements which the Sub-Inspector Patil recorded of Chutkan is produced in the case FIR Ex. 6. After investigation, a charge-sheet was filed and on trial the present appellant was convicted for an offence under Section 302 and sentenced to imprisonment for life and on appeal his conviction and sentence has been maintained, and it is because of this that the present appeal has been filed.

7. Learned counsel appearing for the appellant made two submissions : (i) that Maruti one of the accused persons had a confused lacerated wound on the head on the right occipital parietal region. The defence version was that when exchange started between Sheroo and Maruti, it was first that Maruti was assaulted and then in the exchange, one another accused took out a knife and gave a blow to the deceased and thus plea of the accused was that this injury was inflicted on Sheroo in the exercise of right of private defence. Alternatively it was submitted by the learned counsel appearing for the appellant that both the courts, the Sessions Court and the High Court, came to the conclusion that as soon as Sheroo and his party arrived near the handcart of Badshah, there was a hot exchange between the two sides. The witnesses examined by the prosecution have not clearly stated what words were uttered and it was pointed out by learned counsel by reference to the Sessions Court's judgment that the learned Judge felt that the language was obscene and probably the witnesses did not like to mention whereas the High Court felt that the witnesses were not in a position to mention

the exact words but it was contended that both the courts did reach a conclusion that there was a hot exchange between the two groups. It was contended therefore in such a situation it could not be doubted that the party of the accused was provoked and on such grave and sudden provocation at the heat of the moment, this appellant who was carrying a knife took it out and inflicted only one blow. It was contended that he did not even attempt a second blow and the finding of both the courts is that this happened at the spur of the moment without premeditation and in the heat of passion. In these circumstances it was contended that at best the appellant could be convicted for an offence under Section 304 Part II. He has served more than 7 years of sentence already and being and incident of 1972, no useful purpose would be served by sending this appellant to serve a short period of sentence.

8. As regards the first question about right of private defence, the stand taken by the accused persons including the present appellant has not been accepted by the courts below. An attempt was made to suggest that it was not the present appellant but another accused who whipped out a knife and inflicted the injury on Sheroo and in that context it was also suggested that first injury was caused on Maruti but both the courts below rejected that story and the learned counsel could not refer to any particular part of the evidence to indicate that there was any material sufficient to come to the conclusion that it was Maruti who was assaulted first. On the contrary the consistent evidence indicated that on arrival of Sheroo it was Maruti who started the verbal exchange and in view of this evidence, in our opinion, the first submission made by the learned counsel could not be accepted.

9. As regards the second contention the High Court in its judgment stated "no doubt whatsoever that the words must have been kept back by these witnesses because they were too vulgar and too convincing to be uttered by the witnesses in court".

10. It was also contended that if it were the accused persons who uttered vulgar words which might have caused insult or annoyance or provocation to the witnesses they would not have hesitated in saying what was said to them by the accused persons but the witnesses chose not to say the exact words as it was their party itself which started this vulgar verbal talk which provoked the accused-appellant. The learned Judges of the High Court while examining this contention observed : "When they did not utter these words, there was every likelihood of Sheroo having uttered these words to provoke the accused. Even assuming that Sheroo had provoked by using such words accused 1 had no business to thrust a Rampuri knife inside the stomach of Sheroo in exchange of words." Similarly learned Sessions Judge ultimately held : "But suddenly in the heat of passion, accused 1 may have thought of taking out (sic) in his hand and inflicted the injury" and therefore learned Judge found that other accused persons could not be imputed with the intention of causing death. As regards the words uttered during the exchange the learned Judge observed after referring to the relevant portions of evidence of witnesses : "One cannot but feel that the witnesses are deliberately not speaking of it. Something provocative seems to have happened but they want to keep it away from the court, on that ground the evidence given by these witnesses will have to be examined with suspicion and caution."

11. It is therefore clear that both the courts, the trial court and the High Court, were of the view that the words spoken in the hot exchange between the two groups have been suppressed by the prosecution witnesses. The learned Sessions Judge felt that the words were such which might have caused provocation and it is only because of this that the prosecution witnesses, were trying to keep back these words. Learned counsel for the appellant contended that if the provocative words were used by the accused persons, the prosecution witnesses may not have kept it back but the only reason for the prosecution witnesses not to say what were the words spoken, appears to be what the

learned Sessions Judge felt when he observed what has been quoted above. It appears that this contention of the learned counsel appears to be correct. The learned Judge was right in reaching this conclusion as it is apparent that the prosecution witnesses did not say or give out what words were spoken, the only inference could be that if those words were given out, it would have damaged the prosecution case. The learned Sessions Judge felt that "something provocative seems to have happened".

12. We are therefore left with no option but to the look to the incident that on the arrival of the complainants' party some hot exchange began. Words were spoken, the witnesses have categorically stated that they were speaking loudly and still prosecution witnesses have chosen to give excuse for not speaking out the words by saying that they could not hear those words and this clearly goes to show that the words used by the deceased and his friends were such which caused provocation. Both the courts came to the conclusion that there was no premeditation. It was on the spur of the moment and in the heat of passion and it is also not disputed that only one blow was inflicted by the present appellant and the injury ultimately caused proved to be fatal. Learned counsel referred to series of decisions of this Court and contended that in such a situation when under provocation without premeditation and in the heat of passion, on the spur of moment one injury is inflicted, it could not be said that the accused had the intention of causing death and this is what has been propounded in number of decisions of this Court.

13. Learned counsel for the State, on the other hand, contended that there was some previous trouble between the parties and that furnished some motive and on that basis an attempt was made to contend that this opportunity was taken to seek vengeance. This story of some earlier trouble and the motive suggested by the prosecution has not been accepted by both the courts below and it is also clear that there was not a pre-arranged plan. Admittedly it was by chance that the party of Sheroo also chose to go to the same spot i.e. handcart of Badshah at that odd hour at night where the appellant and his friends and already reached. It is not as if seeing the deceased Sheroo and his friends that the appellant and his friends reached. On the contrary Sheroo and his friends arrived later. In this view of the matter both the courts were right in coming to the conclusion that hot exchange of filthy language resulted in some kind of provocation and in the heat of passion without premeditation this injury was inflicted and in the circumstances it could not be held that it was inflicted with an intention to cause death. The only intention which could be attributed to the appellant in the circumstances of this case could be to cause such bodily injury as is likely to cause death. Consequently the appellant could only be convicted for an offence under Section 304 Part I but as the appellant has already served out more than 7 years, in our opinion, the sentence already undergone will meet the ends of justice. The appeal is therefore allowed, the conviction of the appellant is altered from on under Section 302 to Section 304 Part I and sentenced to sentence already undergone. If the appellant is in custody, he shall be set at liberty forthwith.

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