

B. N. Singh and Others

Vs

State of Gujarat and Others

Criminal Appeal No. 50 of 1980

(S.R. Pandian, K. Jayachandra Reddy JJ )

07.02.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. A rioting took place on October 11, 1988 at about 3 p.m. in Baroda Rayon Corporation Housing Colony during the course of which one Pandharinath Dagdu Patil, hereinafter referred to as the 'deceased', was killed. In respect of this occurrence six accused were tried for having committed offences punishable under Section 302 read with Section 149 IPC and under Section 135 of the Bombay Police Act. The trial court convicted accused 1 and 5 under Section 302 read with Section 34 IPC and sentenced them to imprisonment for life. The rest of the accused were acquitted. The two convicted accused preferred an appeal against their convictions and the State also preferred an appeal against the acquittal of the remaining accused. The High Court of Gujarat dismissed the appeal filed by accused 1 and 5 and allowed the appeal filed by the State and convicted accused 4 under Section 302/34 IPC and sentenced him to undergo imprisonment for life. Accused 2 and 6, however, are convicted under Section 326 read with Section 34 and each of them is sentenced to suffer RI for five years.

2. Pursuant to the leave granted by this Court, the appeal preferred by accused 4 is numbered as Criminal Appeal No. 50 of 1980. Similarly the appeal of accused 2 and 6 is numbered as Criminal Appeal No. 70 of 1980 and the one preferred by accused 1 and 5 is Criminal Appeal No. 74 of 1980. The State also after obtaining leave preferred Criminal Appeal No. 476 of 1980, against the partial acquittal of accused 2 and 6 and the total acquittal of accused 3. These appeals can be disposed of by a common judgment.

3. Since some of the acquitted accused namely accused 2, 4 and 6 are convicted by the High Court setting aside their acquittal, we have to necessarily state the facts and also consider the evidence in detail.

4. Firstly, the prosecution case may be stated. There is an industrial concern namely Baroda Rayon Corporation hereinafter referred to as the 'Corporation', in Udhana town. In the complex of the Corporation, there are factories as well as quarters for officers and workers. Except accused 5, the rest of the accused are the employees of the Corporation and they were allotted quarters. At the time of the incident, accused 5 used to reside with accused 1. The factory works in four shifts. Originally there was one trade union. About three years prior to this incident, another trade union came into existence and there were factions between the two rival unions. The deceased and the accused belong to the rival factions. At the time of the incident, accused 1 was their Joint Secretary. Accused 3 was the Vice-President and accused 6 was the Vice-President of staff union of the Employees'

Union. The deceased was the Vice-President of the rival Mazdoor Union. On the day of occurrence the deceased was returning after completing his duty in 'A' shift. PW 5 was following him. When the deceased reached near block No. 15 of 'C' colony, all the accused are alleged to have surrounded him. The deceased raised cries. PW 4 a dismissed worker and PW 6 were going along with one Ramy Bhandari towards the guest houses. They heard the cries for help and they ran towards him. PW 5 also ran towards him. They saw the accused assaulting the deceased. Accused 2, 3 and 6 caught hold of the deceased by his both hands and accused 1, 4 and 5 dealt blows with Rampuri knives on the front and on the back of the deceased. On seeing PW 5 approaching the place, the accused ran away. PW 5 escorted the deceased to a nearby 'mandi'. The deceased was bleeding profusely and he fell down. PW 4 having noticed the injuries went to the Udhana Police Station and lodged the report at about 3.30 p.m. PW 21 PSI Soni recorded the report, registered the crime and rushed to the place of incident on a motorcycle. He found the dead body of the deceased lying near the 'mandi'. He drew inquest and sent the dead body for post-mortem. In the meantime, PW 22 Circle Inspector Khan arrived at the spot and took over the investigation. He recorded the statements of the witnesses including PW 5. He found the bush-shirt of PW 5 stained with blood and seized the same. The doctor PW 13 who conducted post-mortem found 11 external stab wounds and corresponding 11 internal wounds all over the body. On internal examination, he found the injuries on the lung and other vital parts of the body and he opined that death was due to shock and hemorrhage and death would have been instantaneous. The Circle Inspector who continued the investigation arrested accused 1, 4 and 5 and at their instance he recovered some blood-stained clothes and knives. After completion of the investigation, the charge-sheet was laid. The prosecution examined 22 witnesses. The accused, when examined, denied the offence and stated that they were implicated because of enmity. Accused 3 pleaded alibi and stated that on October 11, 1977 he was not in Udhana but he was at Bombay. He examined DW 1 who deposed that accused 3 was in the Joshi Guest House from October 10 to 12, 1977 and he also produced original register containing the entries. He deposed that accused 3 was occupying room No. 8. The bill book and the bill also were produced.

5. The prosecution mainly relied on the evidence of the eye-witnesses PWs 4, 5 and 6. PW 4 is the person who has also given the complaint. The learned Sessions Judge accepted the alibi evidence used on behalf of accused 3 and acquitted him. After a necessary scrutiny of the evidence of all the eye-witnesses, particularly in the light of the manner of the evidence, he was not prepared to accept the prosecution version that accused 2, 3 and 6 caught hold of the deceased. He observed that there are injuries all over the body and it only goes to show that the deceased was attacked from all sides and in such a situation it would not have been possible for any of the accused to hold the deceased and accordingly acquitted them. He accepted the evidence of these eye-witnesses and convicted accused 1 and 5 only holding that the evidence of these eye-witnesses was corroborated by other evidence. He held that so far as accused 4 is concerned there is no such corroboration and accordingly acquitted him. The High Court relied upon the evidence of these eye-witnesses as against all the accused except accused 3 and convicted them as mentioned above. The High Court considered the evidence of alibi adduced on behalf of accused 3 and opined that the same creates a doubt about his complicity.

6. In these appeals filed by the convicted accused, learned counsel submit that they are all interested witnesses and they have falsely implicated accused 3 and there is no guarantee whether they are speaking the truth against other accused. It is also their statement that the prosecution has deliberately omitted to examine independent witnesses from the locality in which occurrence has taken place in broad daylight and in the midst of residential quarters.

7. The learned counsel appearing for the State submits that the alibi evidence adduced on behalf of accused 3 was not fully accepted by the High Court and even otherwise mere acquittal of accused 3 is not a ground to reject the prosecution case as against the other accused.

8. As already mentioned there is bitter rivalry between the accused union and the union of the deceased. The material witnesses are all interested witnesses. PW 5 deposed that accused 2, 3 and 6 caught hold of the deceased and accused 1, 4 and 5 dealt the blows with Rampuri knives. PW 4 also deposed to the same effect. PW 6 admittedly belongs to the rival union and he has also given the same version. The courts below have also held to the same effect. However, evidence of interested witnesses cannot be rejected outright on the sole ground that they are partisans but one important circumstance to be noted in this case is that all these three witnesses have consistently deposed that accused 3 also is one of the persons who caught hold of the deceased. The trial court has considered the evidence of DW 1 in greater detail and without any hesitation has held that accused 3 at the relevant time was at Bombay and not at the place of occurrence, and therefore accused 3 was falsely implicated. Even the appellate court has not preferred to reject this evidence. The learned Judges have examined the register maintained by the guest house and also scrutinised the evidence of DW 1 and it is observed : "Having regard to the defence evidence and the copy of the receipt of the amount received by the owner of the guest house and its original Exs. 88 and 89, we are inclined to believe that accused 3 might have gone to Bombay, though we cannot carry hundred per cent conviction in our minds that accused 3 had gone to Bombay, on October 10, 1977 and that he was there at Bombay till October 12, 1977". Having so observed the learned Judges again vacillated and further observed that the evidence of eye-witnesses also on that ground cannot be rejected and in this process thought fit to give benefit of doubt to accused 3. We have examined the reasoning given by the trial court as well as the appellate court in respect of alibi evidence. We are convinced that both courts have accepted the alibi evidence of accused 3. Therefore the only inference that could be drawn is that accused 3 has been falsely implicated.

9. We have also examined the evidence of these three witnesses and their cross-examination and we are satisfied that they are highly interested witnesses. Apart from false implication of accused 3 we are also of the view that the vague allegation that accused 2, 3 and 6 caught hold of the deceased appears to be equally false. All these witnesses have stated that they heard the shouts and when they went to the place of occurrence they saw that accused 2, 3 and 6 caught hold of the victim and that accused 1, 4 and 5 dealt knives blows all over the body, one of them on the back and others on the front. The doctor PW 13 found 11 injuries all over the body namely on both sides of the chest, clavicular region, hypochondrial region, abdomen, thighs, scapula and paravertebral region. If really three persons were holding the deceased in the manner spoken to by these interested witnesses, the other three persons armed with big knives could not have indiscriminately caused the injuries on all parts of the body in that manner. It would not have been possible for them to cause injuries without causing hurt to the persons so holding. Therefore, we are not prepared to accept the prosecution version that accused 2, 3 and 6 caught hold of the deceased and accused 1, 4 and 5 inflicted the injuries in that manner. As a matter of fact, in the report given by PW 4, it is stated that all the accused surrounded the deceased and were beating him. It is further stated that accused 1, 4 and 5 stabbed 4 or 5 times on the chest and thighs of the deceased and accused 2, 3 and 6 held his hands.

10. The High Court has held that the evidence of PW 4 is corroborated by the circumstance namely that the complaint was given within 24 minutes and the medical evidence, panchnama of the scene of occurrence and the evidence of PW 5 also corroborate. But these circumstances only at the most may establish the place and time of the occurrence and the nature of weapons used but the corroboration should be in respect of the complicity of the accused and incriminating. Regarding

PW 6 the High Court noticed several infirmities in his evidence but however held that even if his evidence is to be ignored the evidence of PWs 4 and 5 is sufficient to convict the accused except accused 3. It is well settled that the evidence of interested witnesses cannot be discarded on the sole ground of interestedness but their evidence should be subjected to a close scrutiny. But in the instant case, the circumstance namely that accused 3 was falsely implicated is glaring and renders the evidence of these interested witnesses highly suspicious. The Sessions Judge no doubt endeavoured to show that these witnesses PWs 4 and 5 are not interested but is not altogether correct. In the cross-examination PW 4 has admitted that he was dismissed 10 days prior to the incident and that there was a case against him that he assaulted Fernandes who was the President of the rival union. He also admitted that the accused Bhola Singh abused him because he was a member of the rival union. Likewise PW 5 admitted in the cross examination that he was a badli since 8 months prior to the incident and he was not allotted a quarter and he was staying with one Chauhan. Therefore this admission goes to show that he was a worker and naturally he must have aligned with the rival union. PW 6 was an operator in the Viscose Department of the Corporation. He admitted in the cross-examination that he belongs to the rival union and the other admissions made by him also go to show that he is partisan. As already observed the evidence of partisan witnesses cannot be rejected outright but in this case when they have gone to the extent of implicating one accused falsely and that their version that three of the accused caught hold of the deceased is not acceptable. We find it highly unsafe to rely on their evidence against any of the accused. In view of this glaring infirmity in their evidence we are of the view that their evidence is not trustworthy against any of the accused and any reliance placed on such evidence is likely to result in miscarriage of justice. Therefore for all these reasons we set aside the convictions and sentences of all the accused appellants. Accordingly, these appeals are allowed and the Criminal Appeal No. 476 of 1980 filed by the State is dismissed.

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