State of Gujarat

Vs

Rasulmiyan Ahmedmiyan Malek and Others

Criminal Appeal No. 127 of 1979

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

12.04.1990

JUDGMENT

REDDY J.-

1. This appeal has been filed by the State against the judgment of the High Court of Gujarat confirming the order of acquittal passed by the Additional Sessions Judge, Ahmedabad (Rural). Before the Additional Sessions Judge, nine accused were tried for offences punishable under Sections 147, 302, 307, 148 read with Sections 149 and 109 IPC and Section 25 (1) (a) of the Indian Arms Act. They were also tried for offences punishable under Sections 323 and 324 IPC for causing hurt to PWs 1, 2, 4, 5 and 6. On June 1, 1975 at about 10 p. m. in Sipaawida Village (Ahmedabad District) it is alleged that all these accused-respondents were members of an unlawful assembly with the common object of taking possession of the house forcibly from the alongwith their another brother Babumiya were staying at Sipaawida. One of the brothers Abbasmiya was living separately. PW 9 and PW 4 were staying with their brother Babumiya in a family house which was also claimed by accused 1, 2 and others. Accused 1 and 2 were very much insisting to take possession of the family house which was occupied by PW 9, PW 4 and Babumiya but PWs 9 and 4 were not parting with the possession. On the day of occurrence, accused 1 and 2 who were the uncles of PW 9, PW 4 and Babumiya came near the house of PW 9 and they started abusing them. On exchange of abusive words the accused went near their house and started threatening them. Accused 3 who is the son of accused 2 also came there. The other accused also came on the spot having armed themselves with sticks. Accused 1 went inside the house and brought a spear and accused 3 brought a danti. Accused 2 took out a knife from his pocket and inflicted an injury on PW 4. Then accused 1 held PW 9 by his throat and started throttling him. By that time PWs 2, 5, 8 and the deceased Javidmiya also came there and they tried to intervene. It is alleged that at that point of time accused 1 inflicted a spear blow on the chest of deceased Javidmiya and accused 2 inflicted a knife blow on the abdomen of the deceased and the deceased fell down. It is also alleged PWs 1 and 3 also received injuries but the injuries are said to be superficial. The deceased was then removed in a private car to Ahmedabad. The doctor treated them. The deceased, however, expired. A case was registered, investigation was commenced and a charge-sheet was filed. The doctor who conducted post-mortem on the deceased, found a knife injury on the stomach. He found a punctured wound 1/4" x 1/6" in size and oval in shape over the anterior aspect of the left side of the chest and there were two abrasions. He also found an incised wound 2 1/2" x 1/2" going deep up to the abdomen. The doctor opined that the injuries were ante-mortem and resulted in death. The prosecution examined 18 witnesses. PWs 3, 4 and 9 are some of the important witnesses. The plea of the accused was of total denial. The learned Additional Sessions Judge after consideration of the evidence held that the evidence of the eye witnesses is in total conflict with that of medical evidence and they are all interested. The court also noted that the injures on accused 1 and 3 have not been

explained and accordingly acquitted the accused. Before the High Court the same contentions were put forward by the prosecution namely that the eye - witnesses are all injured and the discrepancies pointed out by the trial court are trivial and the view taken by the trial court is wholly unsound. The appellate court has elaborately dealt with all these submissions. It may be mentioned here that the complainant PW 2 also filed a criminal revision against acquittal and that was also dismissed.

2. The learned counsel for the appellant has contended before us that the view taken by the both courts is wholly unsound and perverse. According to him even of the witnesses have given a discrepant version as to how they received injuries but that by itself is not a ground to reject their evidence in toto. According to him, the dictum falsus in uno falsus in omnibus cannot be made applicable to these witnesses.

3. The learned counsel, however, could not substantiate that these accused were members of an unlawful assembly but contended that this was a free fight and each would be liable for this individual acts and in this view of the matter he submitted that the case against accused 2 is clearly made out, namely, that he inflicted a knife injury, on the deceased and therefore, he should be convicted. So far as other accused are concerned, even according to the prosecution, the accused have inflicted some minor injuries on some of the witnesses but the medical evidence in respect of each of the accused has been carefully considered by both the courts below and they have rightly held that they have not received these injuries in the manner they have alleged. Therefore, the prosecution has miserably failed to make out a case against the other accused. So far as accused 2 is concerned, both the courts have held that the evidence of these eye-witnesses is not reliable as it is in conflict with the medical evidence. Therefore, their evidence is rejected. They have also not explained injuries on accused 1 and 3. The learned counsel, however, submits that the injuries found on the accused are superficial and the prosecution need not necessarily explain. But since we are dealing with an appeal against acquittal we have to see whether the view taken by the courts below in this regard is erroneous. The courts below have also noted that all the injuries found on PWs 4, 9 and Banumiya are very superficial and as a matter of fact PW 9 did not even take any treatment. Both the courts below also doubted the evidence of PW 9 the principal witness because though he alleged that accused 3 throttled him but not an abrasion was found. Both the courts have considered evidence of these witnesses in great detail and held that their evidence does not inspire confidence. The appellate court in particular pointed out that the improvement in the evidence of these witnesses are deliberate and intentional and the appellate court also observed that the order of acquittal should not lightly be interfered with as the trial Judge had the additional advantage of watching the demeanour of the witnesses and that if two reasonable views ar possible, one which is more favourable to the accused, should be accepted.

4. We find absolutely no ground to interfere with these findings of the appellate court confirming the order of acquittal passed by the trial court. The reasons given by the appellate court are quite sound.

5. Learned counsel, however, relied on the two decisions of this Court in Dudh Nath Pandey v. State of U. P. 1 and State of Rajasthan v. Sukhpal Singh 2 and contended that even if there are concurrent findings of two courts, the Supreme Court can still interfere if the courts below have wholly mis-appreciated the evidence. In the first case, the Supreme Court no doubt pointed out that : (SCR Headnote : SCC p. 173, para 18)

> "The mere circumstance that two or more courts have taken the same view of facts does not shut out all further inquiry into the correctness of that view. Concurrence is

> not an insurance against the charge of perversity though a strong cases has to be made out in order to support the charge that findings of fact recorded by more than one court are perverse".

But in the instant case we have gone through the entire material and we find that both the courts have given sound reasons, and there is no ground whatsoever to hold that the said reasoning is in any manner perverse or unsound. In the second case, we do not find anything in support of the contention raised by the learned counsel. Therefore we see no grounds to interfere in this matter. The appeal is, therefore, dismissed.

</html