Jayaram Shiva Tagore and Others

Vs

State of Maharashtra

Criminal Appeal No.53 of 1979

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

07.12.1990

JUDGMENT

1. There are four appellants. All of them were tried for an offence punishable under S. 302 read with S. 34, I. P.C. by the learned Additional Sessions Judge, Kolhapur and they were acquitted. The State preferred an appeal against the said order of acquittal. The Division Bench of the High Court of Bombay convicted all the four appellants under S. 302 read with S. 34, I.P.C. and sentenced each of them to suffer imprisonment for life. The prosecution case is as follows:

> The four accused are brothers. The deceased one Chander Appa Tagore was their cousin. All of them belong to the Maharwada of Nandani village. P.W. 5 Jayavanti is the wife of the deceased. They had a female child by name Raju P.W. 10 is the mother of the deceased. The deceased are two brothers examined as P.Ws. 8 and 7. They were living separately in the same house. The deceased was in occupation of one of the apartments. On the day of incident i.e. on 1st May, 1970 at about 7 a. m. the deceased left his house for the field after taking his breakfast where he was working i.e. in the field of P.W. 12, Police Patel. He continued till 2 p.m. P. W. 5, his wife left for the field with the food for the deceased leaving the child Raju in the house, in the care of one Vatsala, P.W. 6. At about 1 p. m. the child began to cry but by then P. W. 5 did not return. One of the brothers asked for to take the child to the field. Accordingly she was proceeding to the field with the child when she was passing by the side of place of occurrence, she saw P.W. 5 weeping by the side of the dead body of her husband. Vatsala was asked by P.W. 5 to give the report to her father and to P.Ws. 7 and 8. Vatsala returned to her house and informed her father and also P.W. 7. Immediately they went to the place where P.W. 5 was weeping and she told them that the four accused with sickles and scythes assaulted he deceased to death. P.W. 8 the brother of the deceased went to the village Chavadi but did not find the Police Patel there. He went to Dharabgutti to give him the information. The Police Patel on getting the information reached the place of occurrence. P.W. 5 gave the oral report which was reduced to the writing and it was sent to the police station and Anant Dalvi. Sub-Inspector P.W. 13 registered the crime and reached at the place of the occurrence. He held inquest. He also seized the bloodstained saree of P.W. 5 and prepared an observation report. He arrested the accused No. 1 and sent the dead body for postmortem. The doctor found five incised injuries on some region, thyroid coastral region, neck portion and also on other parts of the body. On internal examination he found that the thyroid cartilage was cut and the coils of intestines

were going upward to injury No.1. He opined that the nature of injuries was sufficient to cause death. After completion of investigation, charge-sheet was laid. The prosecution mainly relied upon the evidence of P.W. 5 and also on the evidence of P.Ws. 6,7,8 and 10,which corroborated the evidence of P.W. 5. The learned Sessions Judge found that the evidence of P.W. 5 the only eye-witness suffers from some infirmities and, therefore, not reliable. In that view of the matter all the accused were acquitted. In the appeal, the Division Bench having carefully examined the evidence of P.W. 5 reached the conclusion that her evidence is amply corroborated by the evidence of P.Ws. 6, 7, 8 and 10 and accordingly accepted her evidence and convicted all the appellants.

2. In this appeal, the learned counsel for the appellants submits that there are-certain infirmities in the evidence of sole eye-witness P.W. 5 and to place reliance' on such testimony of the sole eye-witness, the Court should find it to be wholly reliable. It is true that this Court has held that where the prosecution rests on the sole testimony of an eye-witness, the same should be wholly reliable. However, that does not mean that each, and every type of infirmity or minor discrepancies would render the evidence of such witness unreliable. One of the infirmities pointed out in the evidence of P.W. 5 in this case, that there is no need for P.W. 5 to take the food. She would have sent the same through her mother-in-law. This is nothing unnatural in rural areas. The house-wife generally takes food to her husband who is working in the fields. The timings during which the deceased said to have worked in the field is also questioned we do not find such substance in this submission.

3. After having carefully gone through the evidence of P.W. 5, we do not see any serious infirmity on the basis of which her evidence should be rejected outright. At any rate there is the evidence of P.Ws. 6, 7, 8 and 1 0. P. W. 6 is the daughter of one of the brothers. She deposed that P.W. 5 while leaving to the field at about 1 p.m. left her child in her care. The child was crying. She, took the child to the field but on the way she found P.W. 5 weeping near the dead body of the deceased on being questioned she informed him that the four accused attacked the deceased. More or less to the same effect is the evidence of P. Ws. 7, 8 and 10. All of them in one voice have deposed that P.W. 5 informed them immediately after the occurrence that four assailants attacked the deceased to death. Except the bare denial by the accused, there is entirely no valid explanations as to why the witnesses should implicate the accused. Having given our earnest consideration, we fail to see any ground on the basis of which the judgment of the High Court can be interfered with.

4. The Doctor who conducted the postmortem found on the deceased only five injuries and out of them injuries Nos. 1 and 2 are found to be sufficient in ordinary course of nature to cause death. The other injuries are simple. The other circumstance also would show that all the four accused did not use their weapons indiscriminately. No doubt by virtue of the application of S. 34 all of them are convicted, but in this case we find from the record that the four appellants were convicted by the High Court on 21-2-1973 since then they are in jail up till now. The cause title in the SLP itself shows that all the four of them have been in jail since then. Therefore, they must have served out a period more than 14 years. Though S. 433A was not in force by the time they were convicted, yet having regard to the fact that they served out a period of more than 14 years. We think this is a fit case that in view of the above circumstances, the Government should consider the question of releasing them forthwith.

5. In the above observation, the appeal is dismissed.

Appeal dismissed.

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