Deoka and Others

Vs

State of Maharashtra

Criminal Appeal No. 33 of 1980

(A. M. Ahmadi, M. M. Punchhi, V. Ramaswami – II JJ)

11.07.1991

ORDER

1. The appellants, five in number, have challenged their conviction recorded by the High Court under Section 148 and Section 302 read with Section 149 of the Indian Penal Code for the murder of Mahadu. For the offence under Section 148 they have been directed to suffer rigorous imprisonment for one year and for the offence under Sections 302/149 they have been directed to suffer rigorous imprisonment for life. They have also been convicted under Sections 323/34, IPC, for causing injuries to Runjaba and each of them has been directed to suffer rigorous imprisonment for one year. Original accused 1 having since died, no order of conviction was recorded against him.

2. The prosecution version regarding the incident is unfolded throughout the evidence of six eye-witnesses, viz., PW 3 Runjaba, the injured brother of the deceased, PW 6 Kasturabai, widow of the deceased, PW 5 Sahaji Saluba, a distant relative, PW 8 Bagaji Rama, cousin of the deceased, PW 7 Sonaba Thakaji and PW 2 Sampat Ananda. From their evidence it appears that on the morning of March 10, 1973 the deceased had gone out to ease himself while his wife, Kasturabai was preparing tea. At that time the family members of the assessed as well as his brother Runjaba who were at their respective houses, heard a commotion and rushed to the scene of occurrence. Many neighbours living in that lane, known as Dhanger lane, also had come out. The eye-witnesses deposed that the five persons were seen giving a beating to the deceased Mahadu Laxman with sticks. Mahadu had fallen down on the ground and in order to save him from further blows, his wife Kasturabai fell on him. In the meantime his brother Runjaba went to his rescue but he too was beaten up. Both the brothers were then removed to the hospital where the unfortunate Mahadu passed away at about 12.30 p.m.

3. The investigation was actually carried out in two stages, first by the Head Constable and later by the Deputy Superintendent of Police. Both the courts below have severely curtsied the investigating agency for several of its lapses and we think rightly. It is difficult to comprehend the reasons for the sluggish manner in which the investigating agency conducted itself but it would suffice to say the investigation was far from prompt and honest. We leave the matter at that.

4. The trial court acquitted all the five accused persons on the ground that the evidence tendered by the prosecution was unacceptable. The reasons given for discarding the evidence of all the six eye-witnesses have been dealt with by the High Court at length. Each contradiction on which the trial court relied for disbelieving the prosecution eye-witnesses have been critically examined and demolished. The High Court has taken pains to point out that the trial court had discarded the evidence of the prosecution witnesses on virtually filmsy grounds and on minor and inconsequential contradictions which did not touch the substratum of the prosecution case. We agree with this

assessment.

5. The prosecution tried to lead evidenced regarding motive. As stated earlier since the prosecution evidence was rejected wholly by the trial court, it did not examine the evidence regarding motive. The High Court, however, scrutinised the evidence on the question of motive and concluded thus :

> "It may perhaps be that the accused had that motive; but since the evidence in regard to motive has come for the first time and since there is no independent corroboration to the evidence of the six eye-witnesses in regard to motive, we could consider it unsafe to act on the motive suggested by the prosecution."

It is clear from this observation that the High Court did not hold that the prosecution evidence regarding motive was false and untrustworthy but it merely refused to act on it by way of abundant caution. That cannot reflect adversely on the credibility of the eye-witnesses.

6. Even if the evidence regarding motive is eliminated, we have to consider whether to offence alleged against the accused persons is established from the ocular evidence of the six eye-witnesses. If no motive is alleged or if the motive alleged is not strong enough, it is difficult to comprehend why the six prosecution eye-witnesses, should falsely involve the accused person and allow the real culprits to go scot free ? It is obvious from the number of injuries on the person of the deceased as well as his brother Runjaba that the assault was not by a single person but by more than one person. The suggestion that there was a scuffle between the deceased and his brother Runjaba in the early hours and it was in that fight between the two that the injuries were caused must be stated to be rejected. There is no evidence to show that there were disputes between the two brothers. On the contrary the evidence shows that they had partitioned the properties long back and were living in their respective houses. Besides, it is difficult to believe that if Runjaba has caused the death of his brother, the latter's wife Kasturabai would allow him to go scot free and involve totally innocent person with whom there was no deep-rooted enmity. If there was no enmity between the deceased and his family members on the one side and the accused persons on the other, we fail to understand why the prosecution witnesses should falsely point a finger at them. We have carefully examined the evidence of the six eye-witnesses, we have gone through the reasons which weighed with the High Court for disagreeing with the assessment of their evidence by the Sessions Court and we think that the High Court was justified in placing reliance on their testimony which stood corroborated by the medical evidence placed on record. We have, therefore, no hesitation in concluding that the High Court was right that the assault on the deceased and his brother Runjaba was by the five accused persons who were put up for trial before the Sessions Court.

7. The question then is what offence have they committed ? The genesis of the crime is not known, in the sense, that we do not know how the quarrel began. The evidence shows that the deceased had gone out of the house to answer the call of nature and it was at that point of time that the incident occurred. It is difficult to believe that there was a prior meeting of minds because the accused persons could not have expected the deceased to come out of his house to answer the call of nature at that hour. It, therefore, appears that after the deceased went out, something happened and as a result thereof Parashram and his family members came out with sticks and assaulted him. On his brother PW 3 Runjaba intervening, he too was given a thrashing. Therefore, it appears that there was no prior concert; it happened all of a sudden and the deceased and his brother received injuries in the incident. It would, therefore, appear that a common intention developed on the spur of the moment. We, therefore, think that the conviction under Section 148 IPC, cannot be sustained and so also the conviction with the aid of Section 149, IPC, cannot be maintained.

8. Further from the nature of injuries sustained by the deceased and his brother Runjaba, it appears that most of the injuries except three were on non-vital parts of the body. There were as may as five person belabouring the deceased. From the eye-witnesses account it appears that the deceased had ultimately fallen down when the witnesses arrived at the scene of occurrence. A few may have arrived before and a few thereafter. None of the six eye-witnesses claim to have seen the entire occurrence from start to end. As the decease was surrounded by five person who were thrashing him, it is natural that he must be shifting his position and hence two or three blows appear to have landed on his skull also. From the nature of the injuries to both the deceased and his brother Runjaba, it seems to us that the intention of the assailants was to give thrashing and it is not possible to cull out an intention to kill. This inference is consistent with the nature of motive alleged by the prosecution. In this view of the matter we think in the absence of evidence suggesting an intention to kill, the intention was merely to give the deceased a good thrashing with a view to teaching him a lesson. It would, therefore, be hazardous to sustain the conviction under Section 302 IPC. It is also not known when and by whom the fatal injury was caused to the deceased. None can, therefore, be convicted substantially for the said offence. In the circumstances, it is not possible to convict for murder with the aid of Section 34. We, therefore, think it appropriate to set aside the conviction and sentence recorded by the High Court under Sections 302/149 and substitute it by a conviction under Section 325 read with Section 34 IPC. We also confirm the conviction recorded by the High Court for the injuries caused to PW 3 Runjaba under Sections 323/34 and maintain the sentence. For the conviction under Sections 325/34, we direct each appellant to suffer rigorous imprisonment for five years.

9. Since the appellants are on bail, they will surrender to their bail forthwith and will undergo the remaining part of the sentences. The sentences will run concurrently. The appeal will stand allowed to the above extent only.

</html