

Amarsinh Bhimsinh Gharía and Others

Vs

State of Gujarat

Criminal Appeal No. 645 of 1986

(S. R. Pandian, Smt. M. S. Fathima Beevi JJ)

27.09.1991

ORDER

1. The four appellants have directed this criminal appeal questioning the correctness and validity of the impugned judgment rendered in Criminal Appeal No. 322 of 1983 on the file of the High Court of Gujarat at Ahmedabad. The brief facts of the case which have led to the filing of this appeal can be stated thus :

Appellants 1 and 2 are brothers. Appellant 3 is the son of appellant 2 and appellant 4 is the son of appellant 1. They were all residing adjacent to the house of the deceased and complainant in this case. It transpires from the records that the parties were not on cordial terms but on the other hand, they were on inimical terms. There was an incident of quarrel on May 25, 1982 which gave rise to the filing of cross complaints between the parties.

2. According to the prosecution on July 2, 1982 at about 3.15 p.m. the occurrence in question took place. On that day the deceased wanted to go to village Natrang and started proceeding to bus stop after informing his brother Bharat Singh, PW 2. Soon after, the deceased left his house, PW 2 found the four appellants following the deceased. Appellant 1 was armed with a gun, appellant 2 with a dharia, the third with a stick and appellant 4 with an axe/farsa. PW 2 suspecting foul play informed the Police Patel Khumansinh who was residing in the same street stating that the four appellants were following the deceased Dolatsinh and that he was going after the appellants. It is stated that PW 2 had informed his wife PW 6 also about this matter. The deceased who was going ahead of the appellant turned back and saw the appellants following him. Evidently fearing for his life he attempted to flee away from the spot but all the appellants chased him to some distance and surrounded and ruthlessly attacked the deceased. On receipt of the injuries, the deceased died on the spot. In respect of this incident, PW 2 made a complaint Ex. 21 at about 4.45 p.m. at Bhalod Police Station. The Investigating Officer after registering the case, and completing the investigation after observing all the formalities, laid the charge-sheet against the four appellants. The trial court for the reasons assigned in its judgment convicted all the appellants under Section 326 read with Section 34 IPC, but not under Section 302 read with 34 IPC as charged, and sentenced appellants 1 and 2 to undergo rigorous imprisonment for a period of 3 years and the appellants 3 and 4 to two years' rigorous imprisonment.

3. On being aggrieved by the judgment of the trial court, the four appellants have preferred Criminal Appeal No. 722 of 1983. The State on being dissatisfied with the judgment of the trial court filed Criminal Appeal No. 322 of 1983 on the ground that the evidence adduced by the prosecution has clearly made out a case under Section 302 read with 34 IPC. The High Court for the discussions made in its judgment, discarded the reasons given by the trial court for holding that the offence was

one punishable under Section 326 read with 34 IPC and convicted them under Section 302 read with 34 IPC and sentenced each of them to undergo imprisonment for life. While doing so, the High Court dismissed the criminal appeal filed by the appellants in Criminal Appeal No. 722 of 1983. Hence, the present appeal by all the appellants.

4. At the time when this appeal came up for admission, this Court granted leave limiting the question with regard to the nature of the offence and sentence. The facts of the case are well set out in detail both in the judgment of the trial court as well as of the High Court. However, we have also given a brief synopsis of the facts of the case in the preceding paragraph of this judgment and we feel that it is not necessary to reiterate the entire facts.

5. Suffice to state that the perusal of the records show that the prosecution has clearly made out the case as against these four appellants as being responsible for causing the injury on the deceased to which injury the deceased succumbed on the spot of the incident itself. PWs 2 and 6 are the ocular witnesses who consistently speak about the manner of attack and the participation of the appellants in the occurrence. As indicated above, now the question is limited only to the nature of the offence and the quantum of sentence. Hence, the question that falls for our consideration is : Whether all the appellants attacked the deceased with the common intention of causing the death or as contended by the learned counsel for the appellant, they caused the injury only with the intention of causing grievous hurt. The answer to the above question depends on the attending and impelling circumstances appearing in the case. Admittedly all the appellants joined together and followed the deceased in a body while the latter was proceeding to village Natrang (2) each of the appellants was armed with a weapon; (3) when the deceased on seeing the appellants following him, attempted to flee away, these appellants in a body chased him to some distance, surrounded him and attacked him indiscriminately with their respective weapons and caused several injuries, of course, not with a gunshot, and caused his death. The medical officer PW 3 who conducted the post-mortem examination on the dead body of the deceased found as many as 9 external injuries of which injuries 1 to 5 were oblique incised wounds. The medical officer has opined that the deceased died because of shock and haemorrhage resulting from the multiple injuries. The High Court while disagreeing with the view taken by the trial court has concluded as follows :

"All these acts from a chain which would show the circumstances that several persons, four of them were acting because of a common concert and they had a common intention and in furtherance of that common intention they had gathered. They had picked up arms. They had started moving. Thereafter they started running. Thereafter they had attacked and ultimately left the place only after the act was accomplished."

6. When the acts of all the four appellants are examined in the backdrop of the circumstances which we have indicated above, we have no hesitation in agreeing with the view taken by the High Court and holding that these four appellants have acted in furtherance of the common intention in putting an end to the life of the deceased.

7. For the above-mentioned reasons, we find no infirmity in the judgment impugned warranting our interference. In the result, the appeal is dismissed.

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