**SUPREME COURT OF INDIA**

State of Maharashtra

Vs.

Rajendra Garbad Patil

(M.S.Fathima Beevi and S.R.Pandian JJ.)

23.01.1992

**JUDGMENT**

**S. RATNAVEL, J.**

1. The State of Maharashtra on being aggrieved by the judgment of the High Court of Maharashtra at Bombay dated 27th April, 1979 rendered in Crl. A. No. 703 of 1978 whereby the High Court has set aside the conviction of the respondent under Section 302, I.P.C. and the sentence of imprisonment for life imposed therefor by the trial Court, has preferred this appeal.

2. The respondent who is the sole accused in this case took his trial before the Addl. Sessions Judge, Jalgaon on the allegation that he at about 6 or 6.30 p.m. on 25th April, 1975 in Deshmukh Wadi at Pachora committed the murder of Varajlal Narayan Parmar (hereinafter referred to as the deceased) by stabbing him with a knife.

3. As the facts of this case are well set out in the judgment of the trial Court as well as the High Court, we feel that it is not necessary to reiterate the same except mentioning certain salient features. It appears there was a deep rooted enmity between the accused and the deceased since 1974 over an incident relating to the kidnapping of the sister of the deceased by name Veena by the respondent-accused. In respect of that incident, there was a case against the respondent for an offence under Section 366, I.P.C. registered on the strength of a complaint given by the father of the girl Veena. Following this incident, it appears that the respondent filed a complaint as against the deceased and his father for an offence under Section 307, I.P.C. on the ground that the deceased and his father attempted to cause the death of the respondent. At this juncture, it may be mentioned that the case as against the respondent for the offence of kidnapping stood posted for hearing on 4-8-75. It was in the above background this unfortunate incident had happened on the ill-fated day i.e. on 25-7-75.

4. It transpires from the evidence when the deceased Varajlal had gone to the shop of one Lalchand Dhobi (PW 5) and was conversing in front of that shop with one Abhimanyu (P.W. 3) and Mohan Lal (P.W. 4), the respondent came from the side of the shop and stabbed the deceased with a knife in his stomach. This occurrence was witnessed by P.Ws. 3, 4 and

5. After causing the fatal injury on the deceased the respondent made good his escape. On receipt of the injury the deceased cried out. P.W. 4 took the deceased to a place called Anand Guest House

from where he was taken to municipal dispensary which is at a distance of 300 feet from that place. At the Municipal dispensary P.W. 6 a medical officer examined the injured and found a cut injury measuring 1 1/2 " x 1" over epigastric region. The omentum and food substance were coming out. P.W. 6 immediately intimated at Panchora Police Station. On receipt of the information P.W. 16 Sub-Inspector of Police came to the dispensary and recorded the statement Ex. 48 (which serves as dying declaration) in presence of the Medical Officer P.W. 6. Thereafter on being summoned, P.W. 7 Dattatraya Executive Magistrate came to the dispensary and recorded the dying declaration Ex. 24 at about 7.15 p.m. in the presence of the medical officer and also attested by the same medical officer.

5. As the condition of the injured was serious, at the instance of P.W. 6 he was removed to the Civil Hospital, Jalgaon but the injured died on the way. Thereafter, the investigation proceeded during the course of which the accused was arrested and after completion of the investigation the charge-sheet was lodged against the accused. It may also be stated in this connection that the respondent-accused was arrested at 8.45 p.m. by P.W. 16 on the same night by the police. At the time of the arrest, the respondent was wearing a blood-stained full pant which was seized from his person as per the panchnama Ex. 26. The learned trial Judge placing much reliance on the evidence P.W. 3 Abhimanyu and on the dying declarations Ex. 48 and 24, recorded by P.W. 16 and P.W. 17 respectively, convicted and sentenced the accused as aforementioned. The trial Court has also accepted the testimony of P.Ws. 4 and 5 to the extent that their vidence is fully corroborating the testimony of P.W. 3.

6. The respondent preferred an appeal before the High Court, canvassing the correctness of the judgment of the trial Court. The High Court for the reasons given in its judgment has not only discarded the testimony of P.Ws. 3 to 5 but also rejected both the dying declarations as not worthy of acceptance and recorded an order of acquittal which is impugned before us.

7. As we have already pointed out the entire case of the prosecution rests (i) on the ocular testimony of P.Ws. 3 to 5; (ii) on the dying declarations Exs. 48 and 24 recorded by P.Ws. 16 and 17 respectively at the municipal dispensary within one hour from the time of the occurrence.

8. The motive for the occurrence cannot be disputed and in fact there is none. The witnesses P. Ws. 3 to 5 are totally independent witnesses and nothing has been brought on record to discredit their testimony and no animosity has been established on the part of these three witnesses for deposing as against the respondent.

9. We shall now examine whether these three witnesses were present at the scene of occurrence. It is pertinent to note that even the respondent himself has admitted the presence of these three witnesses at the scene. The following question and the answer given by the respondent in his statement recorded under Section 313, Cr.P.C. would clearly show that the respondent/accused has admitted the presence of these three witnesses at the scene. For proper understanding and appreciation of this aspect of the matter, we would like to reproduce the question and answer which read as follows:

Q. It is in prosecution evidence that thereafter at about 6 p.m. on 25-7-75 P.Ws. Abhimanyu (Ex. 15) Mohanlal (Ex. 16) and Vrajlal were talking with each other on the road outside the shop of Lalchand Dhobi and Lalchand Dhobi was also present in his shop at this time. Do you wish to say anything in this respect?

Ans. Abhimanyu, Mohanlal and Vrajlal were on the road outside the shop of Lalchand Dhobi. It is

false that they were talking with each other. Vrajlal was calling bad names to me. I do not know if Lalchand Dhobi was in his shop at this time or not.

10. The defence of the respondent in his statement is that on the date of the occurrence at about 6 p.m. while be was sitting in his tea shop the deceased came to the shop of Lalchand and started abusing him in vulgar and filthy language; that he on being frightened that his life would be in danger came from the shop; that the deceased caught hold of him, that there was a scuffle between the two and that he gave a jerk and got him free from the hold of the deceased. He further stated that at the time when the deceased loosened his grip the deceased suddenly shouted and that he did not know for a moment as to what had happened but taking advantage of that opportunity, he ran away from that scene. He further adds that he was not having any knife with him nor he assaulted the deceased. From the above statement of the respondent it is clear that the defence is that while all the three witnesses P.Ws. 3 to 5 were near the shop of P.W. 5 the deceased was assaulted and the respondent ran away from that place getting out of the clutches of the deceased.

11. There is absolutely no evidence nor do we find any averment in any of the dying declarations that there was a scuffle between the deceased and the respondent and therefore we hold that the defence of the respondent does not merit consideration. All the three witnesses (PWs. 3 to 5) consistently and convincingly have stated on oath that it was the respondent and respondent alone who was responsible for causing the injury on the stomach of the deceased which proved fatal within a few hours. Nothing has been brought in the cross-examination to discredit the testimony of any of these witnesses.

12. A vague suggestion has been made that P.W. 3 was not present in the scene of occurrence but surprisingly during the cross-examination, a suggestion is addressed to P.W. 7 that the deceased mentioned the name of P.W. 3 as having been present at the scene of occurrence and P.W. 7 failed to record it. It may be noted that the medical officer has mentioned in Ex. No. 21 (i.e. the injury certificate) that it was P.W. 4 who brought the injured to the hospital. For the discussion made above, we unreservedly and unhesitatingly accept the evidence of P.Ws. 3 to 5 as reliable and acceptable.

13. Now let us scrutinise the two dying declarations. The first dying declaration was recorded by P.W. 16 at the dispensary between 6.30 and 7.15 p.m. in the presence of the Medical Officer P.W. 6. The subsequent dying declaration was recorded by P.W. 7, the Executive Magistrate at about 7.15 p.m. in the same dispensary in the presence of the Medical Officer. The High Court by giving undue importance to some trivial and insignificant contradictions between the evidence of the witnesses and the version of the dying declaration (declarant?) regarding as to whether the knife, namely the weapon of offence was lying on the road or carried away by the respondent or whether the injured was made to walk up to the Anand Guest House or removed on a cycle up to that place, has rejected the dying declaration. These reasons given by the High Court for disbelieving the dying declarations in our considered opinion are very tenuous, filmsy and unacceptable.

14. After carefully examining both the dying declarations which were recorded within a hour successively in presence of the Medical Officer P.W. 6 and which declarations were given by the injured without being influenced by others, we absolutely find no reason to reject the same but on the other hand, in our considered opinion, both these dying declarations can implicitly relied upon and a conviction can be safely recorded by these two dying declarations alone.

15. The High Court has overlooked certain salient features and wrongly dislodged the finding of the trial Court which finding alone could be the reasonable one on the available formidable evidence. When we have examined the evidence in its entirety notwithstanding the reasons given by both the Courts below we arrive at only one conclusion that the prosecution has satisfactorily established the guilt of the respondent/accused beyond any shadow of doubt.

16. We do not find any mitigating circumstances in favour of the respondent who has cowardly come to the scene of occurrence and attacked the deceased, without any jurisdiction (justification?) on his part. There is nothing on record to spell out that he had no intention to cause the death of the deceased nor he did so on any provocation.

17. For all the above mentioned reasons, we set aside the judgment of the High Court acquitting the respondent and restore the judgment of the trial Court upholding the conviction under Section 302, I.P.C. and the sentence of imprisonment for life imposed therefor. The appeal is allowed. Bail bonds are cancelled.

</html