

Ranmal Samat and others

Vs

State of Gujarat

Criminal Appeal No. 533 of 1981

(K. Jayachandra Reddy, B. P. Jeevan Reddy JJ)

28.01.1992

JUDGMENT

1. The three appellants (A- 1 to A-3) along with one Naja Naran (A-4) who died subsequently, were tried for an offence punishable under Sections 302 read with 34 and 324 read with 34, I.P.C. The trial Court acquitted all of them. The State preferred an appeal in the High Court which convicted them under Sections 326 read with 34. I.P.C. and sentenced each of them to undergo 5 years' R.I. All the four convicted accused filed a special leave petition in this Court and the special leave was granted pursuant to which the present appeal comes up for hearing before us. During the pendency of the appeal in this Court, it is stated that A-4 died on 30-3-1983 and to that effect an affidavit is filed which is on record. We are, therefore, concerned with Ranmal Samat (A-1), Vijahi Ram (A-2) and Nahu Samat (A-3) in this appeal. The prosecution case briefly stated is as follows.

2. The deceased Dhanji and his father and mother, P.Ws. 4 and 5 respectively, the two injured witnesses in this case and the accused belong to village Ranparda in the Jamnagar District. The deceased and his father were working as barbers. In lieu of their services rendered to the accused persons, the latter used to give them grains. In this context there was some dispute because the accused persons did not give them grains for the last three years and that led to enmity. On 8-5-1978 at about 8.30p.m., the deceased and P.Ws. 4. and 5, his parents, along with three others were sitting at their house. At that time all the accused came to the house of P.W. 4. A-1 was armed with an axe and rest of the accused were armed with lathis and they entered in to the house of P.W. 4 and asked them to leave the village. A quarrel ensued and A-1 who was armed with an axe gave a blow on the head of the deceased and A-2 gave a stick blow to P.W. 4. A-3 gave a blow on the hands of P.W. 5. On receipt of these injuries, P.W. 4 and the deceased fell down. Thereupon A-3 sat on P.W. 4 and gave blows with sticks on his person. On their raising shouts some P.Ws. came there and rescued them, The injured were taken to the Primary Health Centre, Bhanwad, where P.W. 15 treated them. Later the deceased was referred to the Irwin Hospital, Jamnagar and a report was sent to the Sub-Inspector who was the incharge of the Bhanwad Police Station. On 9-5-1978, the deceased died and an altered F.I.R. was issued and the dead body was sent for post-mortem. The accused were arrested and at their instance, the weapons which are alleged to have been used, were recovered from A-1. P.W. 1, the doctor, conducted the post-mortem and he found three injuries on the parietal regions and on internal examination, he found injuries of clotted blood under the scalp and a linear fracture extending from occipital bone up to left side of frontal bone travelling left parietal and left temporal bones 18 cms. long. There was an extensive extra dural and subdural haemorrhage covering the left cerebral hemisphere. The doctor opined that all the aforesaid injuries along with the external injuries were sufficient in the ordinary course of nature to cause the death of the deceased. P.W. 2 another

doctor examined P.Ws.4 and 5 and he found a lacerated wound near the right eye of P.W. 5 and on P.W. 4, he found an injury on the interscupular region. After completion of the investigation, the charge-sheet was filed.

3. The prosecution examined P.Ws. 1 to 15 and among them P.Ws. 4 and 5 are very material witnesses. It appears that there was an injury on accused No. 3. The trial Court acquitted the accused holding that the medical evidence is in conflict with the oral evidence of P.Ws. 4 and 5 inasmuch as no incised injury was found on the deceased and that the earliest information given to the police orally or otherwise has not seen the light of the day and that the prosecution witnesses have not come out with the true story as to how the occurrence originated and accordingly gave the benefit of doubt. The High Court examined the evidence of two eye-witnesses, P.Ws. 4 and 5, in the light of the medical evidence and also considered the reasons given by the trial Court and reached the conclusion that the prosecution has established that the accused participated in the occurrence and inflicted the injuries on the deceased as well as on P. Ws. 4 and 5. The High Court also held that that is the only view that can be taken in the case.

4. In this appeal Shri Lalit, learned Senior Counsel, submits that the, reasons given by the trial Court are quite sound and the injured witnesses, as held by, the trial Court, did not come forward with true version and in those circumstances, the High Court ought not to have interfered.

5. We have gone through the evidence of P.Ws. 4 and 5 who are the parents of the deceased. They deposed that there was enmity between them and that on the day of occurrence all the four accused came armed with different weapons and they showered abuses on P.W. 4 and his family members and A-1, gave a blow with an axe on the head of the deceased and the other accused gave blows on both of them. In this appeal the evidence of injured witnesses, P.Ws. 4 and 5, is most important. P.W. 5 has not deposed that the sharp edge of the axe was used by A-1 in giving a blow on the deceased. It is only P.W. 4 who states at one stage that A-1 dealt one blow with sharp edge. The doctor, who conducted the post-mortem, however, has clearly stated that the injuries found on the deceased could be caused by blunt edge of the axe. The occurrence took place during the night time and we cannot expect the witness to have noticed whether sharp edge or the blunt edge of the axe was used. The medical evidence thus is not in conflict with the oral evidence. The evidences of P.Ws. 4 and 5 are no other than the parents of the deceased and they have come with cogent and convincing evidence. Having gone through the judgments of the Sessions Court and the High Court, we are of the view that the view taken by the Sessions Court is highly unreasonable and the High Court has rightly appreciated the evidence of eye-witnesses and reached the conclusion that the prosecution has established that the blows both on the deceased as well as on P.Ws. 4 and 5 were inflicted by these accused.

6. Coming to the nature of the offence, the submission of the learned Counsel is that even if the prosecution case is to be accepted, it is only A-1 who can be held liable under Section 326, I.P.C. and others cannot be convicted under Section 326/34, I.P.C. The circumstances show that the occurrence had taken place near the house of the deceased and all the four accused went there differently armed and they also dragged out the deceased together. Therefore, in our view the conviction under Section 326 read with S. 34, I.P.C. does not warrant interference, The sentence awarded is also not severe. The appeal is accordingly dismissed. Appeal dismissed.

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