

Patel Rasiklal Becharbhai and Others

Vs

State of Gujarat

Criminal Appeal No. 15 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

19.02.1992

ORDER

1. There are three appellants before us. They along with five others were tried for offences punishable under Sections 147, 148, 302, 324, 426 and 447 read with Section 149 IPC. The trial court acquitted all of them. The State preferred an appeal and the High Court took the view that each of the respondents would be liable for his individual act. In that view of the matter, the High Court convicted accused 3 Patel Rasiklal Becharbhai under Section 302 IPC and sentenced him to undergo imprisonment for life. Accused 4 Patel Naranbahi Shivram and accused 8 Patel Shankerbahi Ramdas were convicted under Section 324 IPC and each of them was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs 500 or in default to undergo further two months' R.I. The other accused were acquitted. These three convicted accused have preferred this appeal.

2. It is alleged that all the eight accused formed an unlawful assembly on March 7, 1978 at about 4 o'clock near the village Dhanaj, Distt. Mehsana and in pursuance of the common object they attacked the deceased and inflicted injuries on PWs 2 and 5. During the course of the occurrence accused 1 and 5 also received injuries. There was a dispute regarding a right of way and also regarding construction of wall, between the deceased and his brother on one side and the accused on the other. On March 5, 1978 complainant Prabhudas and Vardhabhai had watered the field and this water was taken from the well situated in the field of witness 2. On the day of occurrence i.e. March 7, 1978 at about 2 p.m. the complainant and his elder brother and his younger brother had gone to see the plantations in the field. It is alleged that at about 4 p.m. they came near the field and in the meantime all the accused came armed. Among them A 3 Patel Rasiklal Becharbhai was armed with a crow-bar and others were armed with sticks. It is further alleged that A 3 voluntarily thrust a crow-bar into the neck of the deceased and other accused dealt some blows. The witnesses intervened. Thereafter all the accused left the scene of the occurrence. It was noticed that there was an injury on the neck of the deceased and he was profusely bleeding. He was taken in a camel cart to the Government Hospital, Kalol. On the way the deceased succumbed to the injury. Thereafter the complainant Prabhudas and younger brother Vardhabhai and others went to the hospital where they were treated for the injuries. The complainant Prabhudas also went to the Police Station, Kalol at about 7.45 p.m. and gave a report. The Police Inspector registered the case and laid the FIR. The inquest was held and the dead body was sent for post-mortem examination. PW 3 the doctor conducted the post-mortem examination and he also treated the injured as well as A 1 and A 5. The trial court discussed the evidence in detail and ultimately held that the incident must have happened in such a way that these persons must have started quarreling and that accused 1 and 5 also in turn must have caused injuries to the deceased and the complainant. The trial court ultimately held that the prosecution failed to prove its case against any of them and accordingly acquitted all of them. In

appeal against the acquittal the High Court repressed the evidence and held that the weapons which the accused respondents were carrying with them were agricultural implements which the farmers usually carry and possess. The High Court further held that there was exchange of words between Prabhudas and the deceased on one hand and the accused on the other and that was followed by the assault on the deceased and the two witnesses. It also observed that having regard to the manner in which the incident occurred, it is difficult to hold that the respondents-accused formed an unlawful assembly and armed with the object of assaulting or murdering the deceased and assaulting the injured witnesses. They do not seem to be any prior concert or meeting of minds before the assault was made. The High Court, however, took the view that the accused would be liable for the individual acts. In that view of the matter, the High Court held that accused 3 would be responsible for causing the fatal blow to the deceased, though a single blow, and convicted him under Section 302 IPC. Likewise, the High Court held that accused 4 and 8 would be liable for their individual acts which would be punishable under Section 324 IPC and convicted and sentenced them as stated above.

3. We have gone through the judgments of the courts below carefully and we see no reason to reject the evidence of the eyewitnesses. Taking the findings of the High Court as such we find it difficult to uphold the conviction of Patel Rasiklal Becharbhai under Section 302 IPC.

4. The doctor PWS 3, who conducted the post-mortem examination, noticed the single injury on the deceased and it was described as follows :

Incised wound 1" x 1/2" x 2' deep oblique in position on lateral aspect of right side of neck and just above the supra sternal notch and on an internal examination the doctor found torn off external carotid artery and external jugular vein with haematoma under the skin wound, haematoma on the strip of muscle and deep to the muscle on the right side of neck. The doctor opined that the death was due to the injury to the external jugular vein. The doctor further opined that the injury was sufficient in the ordinary course of nature to cause death. The circumstances noted by the High Court show that there was a sudden fight between the two groups. The accused were not armed with sharp-edged weapons, on the other hand they were having agricultural implements. There was a quarrel and it was also noted by the High Court that the deceased rebuked A 3 which infuriated him and he having lost his temper inflicted one blow but unfortunately it fell on the neck. No doubt it was a sharp edge of a crow-bar. Once the High Court has ruled out the applicability of Section 149 or 34 IPC and convicted A 3 under Section 302 IPC simpliciter then the ingredients of sub-clause (3) of Section 300 have to be established clearly. This clause as interpreted in a number of cases contemplates that particular injury which was proved in an objective manner i.e. the prosecution has to further prove that such an injury was sufficient in the ordinary course of nature to cause death by medical evidence. In the instant case, having regard to the circumstances mentioned above it is difficult to hold that accused 3 intended to cause that a particular injury. The agricultural implement only was used which he was having with him for the use for agricultural purposes. Suddenly a quarrel took place. The deceased rebuked A 3 which infuriated him and he gave a blow on the deceased but unfortunately it landed on the neck of the deceased. The medical evidence also shows that he did not cause any injury to any vital organ and there is no fracture of the internal bones. The external carotid artery and external jugular vein got injured and that resulted in profuse bleeding. We do not propose to say that such an injury, if caused, would not attract the provisions

of Section 302 IPC but circumstances which are peculiar to the facts of this case would show that there is a reasonable doubt whether the accused intended to cause that particular injury in which case the offence is one punishable under Section 304 Part II IPC since, the accused must be attributed knowledge that he was likely to cause the death. We accordingly set aside the conviction of the appellant (accused 3) under Section 302 IPC and the sentence of imprisonment for life. Instead we convict him under Section 304 Part II IPC and sentence him to undergo 7 years' rigorous imprisonment. So far as the other two appellants are concerned the sentence of imprisonment awarded is only six months' R.I. The occurrence is said to have taken place in the year 1978. At this juncture of time we do not propose to send them back to jail. They were in the jail for some time and we confirm their conviction under Section 324 IPC and reduce the sentence to the period already undergone. The sentence of fine shall, however, remain with default clause.

5. Appellant 1 is on bail. His bail bonds shall stand canceled and he will serve the remaining period of sentence.

6. The appeal is disposed of accordingly.

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