

State of Gujarat

Vs

Patel Mohan Mulji and another

Criminal Appeal No. 777 of 1980

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

11.03.1992

JUDGMENT

1. This appeal is preferred by the State of Gujarat feeling aggrieved by the judgment of the High Court of Gujarat dated 26th November, 1979 made in Criminal Appeal No. 1168/78 whereby the High Court reversed the judgment of the trial Court convicting the two respondents herein under Section 302 read with S. 34, I.P.C. and S. 325 read with S. 34, I.P.C., and sentencing each of them to undergo imprisonment for life and for a period of two years rigorous imprisonment respectively. The respondents Nos. 1 and 2 are brothers. According to the prosecution these two respondents along with their sister by name Puribai who was arrayed as accused No. 3 before the trial court, in furtherance of their common intention caused the death of the deceased who was none other than the elder brother of the respondents and also injured P.W. 5, the wife of the deceased. The occurrence is stated to have occurred on 4-11-1977 at about 8.00 a.m. near a field.

2. It transpires from the evidence that there was enmity between the deceased and the respondent with regard to the diversion of water to their field and right of enjoyment over a passage. On the day of occurrence, the deceased accompanied by his wife PW 5 proceeded to his field riding on a cycle. PW 5 was following her husband walking. After they crossed one field from the Village these two respondents and the acquitted accused Puribai came and attacked P.W. 5. The second respondent herein, namely, Patel Govind was armed with a spear and the first respondent, Mohan Mulji, and the acquitted accused were each armed with the stick. It is said that P.W. 5, the second respondent, gave a blow with spear on the leg of P.W. 5 and thereafter all of them beat P.W. 5 with sticks. On seeing P.W. 5 being beaten the deceased went to the spot to rescue his wife and intervened. At that time the second respondent gave a blow with a spear on the left leg of the deceased. Thereafter, both the respondents and the acquitted accused beat indiscriminately the deceased and caused several injuries on his body. The occurrence was witnessed by P.Ws. 5 and 8. After the respondent had left the scene of occurrence along with the acquitted accused, P.Ws. 6 and .7 came on being informed by P.W. 8. The injured persons were removed to the local dispensary. P.W. 3 examined the deceased and found on his person six incised injuries, fracture of both bones of the right forearm and swelling on the left hand (vide wound certificate Ex. 19). P.W. 3 then examined the injured P.W. 5 and found on her person three contusions and a swelling as recorded in the wound certificate Ex. 20. P.W. 3 sent information for recording a dying declaration of the deceased as his condition was very serious. But even before his dying declaration was recorded by any Officer, P.W. 3 sent the injured persons to Junagadh City Hospital for further treatment. But unfortunately on the way to the Hospital the deceased expired. However, at the Hospital, the Police on information came to the Hospital and conducted the inquest over the dead body at about 2.15 p.m. After the inquest was over a statement

was recorded from P.W. 5 at about 5.00 p.m. which statement is the basis for recording the first information report in this case. Then a case was registered and the investigation proceeded. The Investigating Officer after completing the investigation laid the charge sheet against the three accused inclusive of these two respondents. The trial Court found these two respondents guilty as aforementioned but found the third accused Puribai not guilty and acquitted her by giving the benefit of doubt. These two convicted respondents preferred an appeal before the High Court which for reasons mentioned in the impugned judgment acquitted these two respondents. Hence this appeal by the State. At this stage it was brought to our notice that the second respondent, namely, Govind Mulji, had expired on 27-7-1983. Learned counsel has shown a copy of a death certificate which he has now undertaken to produce with a memo before the Court. Therefore, we are now left only with the case of the first respondent.

3. Learned counsel appearing on behalf of the State after taking us through the judgment of both the courts below and the material evidence has strenuously contended that the High Court was not at all justified in reversing the well reasoned judgment of the trial court.

4. The whole case rests only on the evidence of PWs. 5 and 8. P.W. 5 is none other than the wife of the deceased and she is an injured witness. No doubt the occurrence had taken place in the day light. The accused are none other than the brothers and sister of the deceased. In spite of the close relationship and in spite of the fact that the occurrence had taken place in the broad day light as rightly pointed out by the High Court, the entire case of the prosecution suffers from many infirmities which compel this Court to affirm the judgment of the High Court. P.W. 5 states that she was assaulted by the second respondent with a sharp edged pointed weapon on her leg but we do not find any corresponding injury on her person. P.W. 5 has not mentioned the names of the assailants either to P.W. 3 or to the Police or to any other person till 4-30 p.m. surprisingly the inquest took place at about 2-15 p.m. even before the registration of the case. In the inquest report also none of the names of the assailants find a place. The first information was recorded only at about 5 p.m. which is by a delay of nearly nine hours. It was under these circumstances the High Court was not inclined to place much reliance on the testimony of P.W. 5. Now we come to the evidence of P.W. 8. The name of P.W. 8 does not find a place in Ex. 25. P.W. 8 was not examined by the Police till the next day. On both the grounds the High Court rejected the testimony of P.W. 8. We are in full agreement with the reasons given by the High Court for discarding the testimony of P.W. 8. It may be also pointed out here that the medical evidence as rightly held by the High Court is irreconcilably in conflict with the oral evidence given by P.Ws. 5 and 8. Thus it is seen that there are many infirmities surrounding the prosecution case. Under these circumstances, we do not like to interfere with the order of acquittal passed by the High Court and in fact that judgment of the High Court does not suffer from any manifest illegality or perversity. In the result, the appeal is dismissed. Bail bonds are discharged.

Appeal dismissed.

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