

Rama Meru and another

Vs

State of Gujarat

Criminal Appeal No.425 of 1980

(S. Mohan, G. N. Ray JJ)

12.03.1992

JUDGEMENT

G. N. RAY, J.:-

1. The appellants, Rama Meru and Ghelaramsi, who were respectively accused Nos. 7 and 1 in Sessions Case No. 44 of 1976 in the Court of the Sessions Judge, Jamnagar, have preferred Criminal Appeal No. 425 of 1980 to this Court under S. 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the decision of the High Court of Gujarat in Crl. Appeal No. 301 of 1976 preferred by the State of Gujarat against the said appellants and other accused in the aforesaid Sessions case. In the High Court of Gujarat Crl. Appeal No. 161 of 1976 was preferred by Rama Meru, appellant No. 1 and Crl. Appeal No. 162 of 1976 preferred by Ghelaramsi, appellant No. 2, against their conviction and sentence passed by the learned Sessions Judge, Jamnagar, in Sessions Case No. 44 of 1976. Along with Criminal Appeal No. 425 of 1980, the said two appeals, namely, Criminal Appeals Nos. 161 and 162 of 1980 (1976?) were also disposed of by the High Court of Gujarat by a common judgment passed on November 18, 1976. The High Court dismissed the Criminal Appeals Nos. 161 and 162 of 1976 preferred by the accused appellants but partly allowed the Criminal Appeal No. 301 of 1976 preferred by the State of Gujarat and held inter alia that the learned Sessions Judge was not justified in acquitting the appellants for the offence punishable under S. 302 read with S. 34, I.P.C. but convicting the appellants only for the offence punishable under S. 326 read with S. 34, I.P.C. and also under S. 324, I.P.C. and awarding sentence on each of the said appellants to undergo a rigorous imprisonment for 17 years under S. 326 read with S. 34, I.P.C. and rigorous imprisonment for three years for the offence punishable under S. 324, I.P.C. with a direction that the sentences should run concurrently. The High Court by the impugned judgment has held that both the appellants should be convicted for offence under S. 302 read with S. 34, I.P.C. and the sentence of 7 years' rigorous imprisonment would be substituted by the sentence of imprisonment for life. The High Court of Gujarat, however, affirmed the acquittal of other accused persons and dismissed the Criminal Appeal No. 301 of 1976 preferred by the State of Gujarat against the acquittal of other accused persons.

2. As aforesaid, the appellants have preferred the Criminal Appeal No. 425 of 1980 against the enhancement of the conviction and sentence by the High Court of Gujarat and they have also preferred Special Leave Petition No. 1382 of 1977 against the conviction and sentence passed in the Sessions trial. Special leave petition and the Criminal Appeal have been heard together and are being disposed of by a common judgment. It may be stated in this connection that by an order dated October 21, 1980 passed in Criminal Appeal No. 425 of 1980 at the state of preliminary hearing, this Court has directed that the said Criminal Appeal will be confined to the question whether the alteration of conviction under S. 326, I.P.C. to S. 302, I.P.C. was justified or not. This Court also

granted bail to the appellants to the satisfaction of Chief Judicial Magistrate, Jamnagar and the appellants were enlarged on bail. The facts concerning the Sessions Case No. 44 of 1976 in the Court of -the learned Sessions Judge, Jamnagar, out of which the aforesaid Criminal Appeal and Special Leave Petition (Criminal) arise, may be stated as follows:

The deceased Rambhai Sidabhai, his brother and some other persons were charged for murdering Ramsi, Rambhai and another person in the year 1973. Some of the accused were convicted in that case but Rambhal Sidabhai was acquitted. The conviction and sentence were confirmed by the High Court of Gujarat and an appeal before this Court was pending. It is the case of the prosecution that 7 accused persons including the appellants formed an unlawful assembly on April 11, 1976 with the common object of committing the murder of Rambhal Sidabhai who was accused in the said murder case but was acquitted. Accused Nos. 1 and 7, namely, the appellants herein and one Nathu Ramsi were armed with knives, accused No. 3, Narayan Meraman, was armed with gun and other accused persons were armed with sticks. The deceased, Rambhal, was attacked by the accused persons and was dealt with knife blows and also with lathi blows. He was also injured by gun shots. As a result, the said person died on the spot. One Armed Police Constable, Jitubhai, who happened to be by a nearby shop went to the spot and tried to intervene and prevent the assault being inflicted on the deceased but he was given a knife blow by Nathu Ramsi and so he went to the Police Station and lodged a complaint about the incident. One Bhojubha had also gone to the spot and saw the incident. Thereafter, the widow of the deceased and other persons reached the place but by then the accused persons had left the place after injuring the deceased fatally. The accused, Nathu Ramsi and the appellant No. 1, Ghelaramsi and accused No. 5, Desurramsi, were the sons of Ramsi Rambhal who was murdered in 1973 and the appellant No. 1, Rama Meru, is the cousin brother of the accused No. 1, Ghelaramsi and accused No. 5, Desurramsi. The learned Sessions Judge inter alia came to the finding that the deceased had died on account of the multiple injuries suffered by him and such injuries had been caused by knife, by sticks and also by hitting on the head by the stone and also on account of the gun shot injuries. The learned Sessions Judge has referred to the evidence of the doctor who held postmortem on the deceased to the effect that individually none of the injuries was sufficient to cause death but the death had occurred on account of the multiple injuries inflicted on the deceased. It may be noted in this connection that the appellants and the other accused persons raised a plea that they were attacked and assaulted and the appellant No. 1, Rama Meru, also suffered injuries causing incised wounds on his person and in exercise of the right of private defence, the accused persons had attacked the deceased. The learned Sessions Judge has held that although the accused, Rama Meru had suffered incised injuries on his person, the plea of right of private defence could not be accepted in view of large number of injuries caused to the deceased person. The learned Sessions Judge was of the view that in the facts of the case, it must be held that the accused persons must have exceeded the right of private defence even if any and with a spirit of retaliation they caused multiple injuries on the person of deceased, as a result of which he had died on the spot. The learned Sessions Judge was, however, of the view that as none of the accused persons could be held responsible for inflicting injury of a nature which was likely to cause death, the accused persons could not be sentenced on the charge of murdering the said deceased but he was of the view that since there were

eye-witnesses who had seen the accused Nos. 1 and 7, namely, the appellants herein, with knife and as the deceased had suffered knife injuries which along with other injuries contributed to the death of the deceased, they should be sentenced under S. 326 read with S. 34, I.P.C. and also under S. 324, I.P.C. Accordingly, he convicted and sentenced the appellants for rigorous imprisonment for 7 years and 3 years by directing that the sentences would run concurrently. The learned Sessions Judge, however, acquitted the other accused persons. It may be noted in this connection that Nathu Ramsi who according to eye-witnesses had inflicted knife blows was not tried in the said Sessions trial because of his tender age but he was sent to Children's Court for trial according to law.

3. Mr. Parekh, learned counsel for the appellants, has very strongly contended that the appellant No. 1, Rama Meru, had suffered a number of injuries caused by sharp cutting instrument on his person and had to be treated medically for such injuries. Such fact of suffering cut injuries had been established in the case on examining the doctor and the prosecution has failed to explain how such injuries were caused on the person of appellant No. 1, Rama Meru. In the aforesaid circumstances, the plea of right of private defence should have been accepted by the learned Sessions Judge and also by the High Court of Gujarat. He has, therefore, contended that the special leave petition preferred by the said appellants against their convictions by the learned Sessions Judge should be allowed and the judgment passed by the learned Sessions Judge and also by the High Court of Gujarat should be set aside. He has contended that if this Court is not inclined to accept the plea of right of private defence but is inclined to accept the finding of the learned Sessions Judge that large number of injuries caused on the deceased would indicate that right of private defence, if any, must have been exceeded, the criminal appeal preferred by the appellants should be allowed by setting aside the conviction and sentence passed by the High Court of Gujarat under S. 302 read with S. 34, I.P.C. Mr. Parekh has contended that P.W. 5, Jitubhai, is the principal eyewitness in the case. He was a Police Constable and he lodged the complaint to the Police Station after seeing the assault made on the deceased. Although he had stated that the appellants and Nathu Ramsi had knives in their hands, he has clearly stated in the cross-examination he had seen only Nathu Ramsi giving knife blows to the deceased and the appellants were holding knives in their hands. The said Jitubhai has also stated that he was given a knife blow by the said Nathu Ramsi when he had tried to intervene and separate the parties. P.W. 6, Bhojubha, although stated that the appellants and Nathu Ramsi had inflicted knife injuries on the person of the deceased, he also deposed that he had found the appellant No. 1, Rama Meru, injured at the time of occurrence of the assault on the deceased. In the First Information Report, it was stated that Nathu Ramsi, Ghelaramsi, Rama Lakhan were assaulting the deceased with sticks and knives and Jitubhai seeing that all the said persons were assaulting the deceased went to separate them but then he was given knife blows by Nathu Ramsi and he left the place on being injured and when he was coming he had heard the sound of gun shot. Mr. Parekh has contended that from the postmortem report, it will appear that the injury Nos. 7, 22 and 23 were caused by gun shot. There is also a specific evidence of Bhojubha an eye-witness that Lakhanbhoda had given two blows on the head of the deceased with a stone. Mr. Parekh has drawn the attention of the Court to the specific questions put to the doctor who had held postmortem examination. The doctor was asked whether the injuries found on the dead body taken collectively were sufficient in the ordinary course of the nature to cause death or likely to cause death and the answer was in the affirmative but in answer to the question as to whether or not in the internal injuries taken individually coupled with corresponding external injuries were ordinarily sufficient to cause death, the doctor gave the answer in the negative. Mr. Parekh has contended that the principal eye-witness, namely, the Police Constable had only seen Nathu Ramsi inflicting knife blows on the deceased but

he did not see either of the appellants inflicting knife blows on the deceased or assaulting the deceased in any manner. As aforesaid, Nathu Ramsi was not tried in the Sessions trial in view of his tender age. Mr. Parekh has contended that from the evidence adduced by the prosecution, at the highest it can be contended that the deceased was an accused in the murder case in which father of one of the appellants had been murdered but the deceased was acquitted and it is likely that there was grudge and ill-feeling against the deceased. It may also be quite likely that the appellants and other persons in order to give him a good lesson had assaulted him seriously but in the facts and circumstances of the case, a common intention to murder the deceased could not be established and the learned Sessions Judge was therefore justified in holding that a case under S. 302 read with S. 34, I.P.C. had not been established in the facts and circumstances of the case. He had, therefore, acquitted all the accused persons from the charge of murder. Since there was evidence that the appellants had been seen with knives and one of the witnesses had also implicated the appellants in causing knife injuries and since on the person of the deceased a number of incised wounds caused by the sharp cutting instrument were found, the said accused Nos. 1 and 7, namely, the appellants herein, were convicted and sentenced under S. 326 read with S. 34, I.P.C and also under S. 324, I.P.C. by the learned Sessions Judge. Mr. Parekh has submitted that the learned Sessions Judge has scrutinised the evidence meticulously and has given cogent reasons for acquitting all the accused from the charge of murder. No interference with such acquittal of murder charge is warranted. He has submitted that in view of unfortunate death of Rambhail having suffered multiple knife injuries the High Court of Gujarat has made unreasonable inferences that the knife-injuries were intended to cause death of the deceased and the appellants caused such injuries with a common intention of murder. Mr. Parekh has contended that the High Court failed to appreciate that none of the appellants were found causing any injury to the deceased by the principal eye-witness, Jitubhai, the Police Constable. Although other witness at a later point of time has implicated the appellants in causing knife injuries, it has also been established that one of the appellants was also injured with the incised wounds. Mr. Parekh has contended that although the State of Gujarat had also preferred appeal against the acquittal of other accused persons, the High Court of Gujarat affirmed the order of acquittal passed by the learned Sessions Judge in respect of other accused persons and dismissed the appeal of the State to that extent. The High Court however allowed the appeal of the State so far it related to the appellants on surmise and conjecture. The High Court has held that since the accused Nos. 1 and 7 along with another person had inflicted knife blows and the deceased had suffered multiple knife injuries, a case for conviction under S.302 read with S.34, I.P.C. was warranted against accused Nos. 1 and 7. Mr. Parekh has contended that the High Court has failed to appreciate that apart from injuries caused by sharp cutting instrument there were various other injuries not caused by the knife, and there were also gun shot injuries and such injuries by gun had also been established by eye-witness. Admittedly, none of the appellants were found causing other injuries including injuries by gun shot. The doctor who had performed the postmortem has specifically stated that any single injury was not likely to cause death but the death was due to the cumulative effect of all the multiple injuries caused on the person of the deceased. In the aforesaid circumstances, simply because the appellants had inflicted some of the injuries caused by knife, there was no justification to single out the appellants for convicting on a charge of murder under S.302 read with S. 34, I.P.C. He has submitted that the criminal appeal against the enhancement of sentence and conviction by the High Court of Gujarat should be allowed and such conviction and sentence under S. 302 read with S.34, I.P.C. should be set aside.

4. The learned counsel appearing for the state has, however, contended that it has been established by the eye-witness that three persons had knives and they had inflicted injuries by knives. One of them, however, was not tried by the Sessions Judge but the other two accused persons, namely, the

appellants had Knives and they had also inflicted knife injuries. Since large number of injuries had been caused on the person of the deceased by Knives and some of the injuries were quite serious, the High Court was justified in allowing the appeal of the State so far as the appellants are concerned and considering the gravity and nature of injuries, a conviction rider S. 302 read with S. 34, I.P.C. passed against the appellants is fully justified. He has submitted that in a case of this nature, it is not necessary to pinpoint which of the accused had given the deadly blows with knife. Once the common intention to finish the deceased is established, and pursuant to such common intention the appellants had inflicted knife injuries, punishment under S. 302 read with S. 34, I.P.C. is quite legal and justified and no interference is called for in the Criminal Appeal. For the same reason, the special leave petition against the conviction and sentence should also be dismissed by this Court.

5. After giving our anxious consideration to the facts and circumstances of the case and the evidence adduced in the proceedings, it appears to us that P.W. 5, Jitubhal, a Police Constable, is a principal eye-witness in the case. The said Jitubhai did not see either of the appellants to inflict any knife injury. He had only said that Nathu Ramsi gave knife blows to the deceased and as a matter of fact when he tried to prevent, he himself was injured by the knife by Nathu Ramsi. It is also an admitted position that the appellant No. 1 had suffered some cut injuries on his person and such injuries do not appear to have been properly explained by the prosecution. The other eye-witnesses have also said that accused No. 1 was found injured at the time of assault. It is, therefore, not unlikely that initially the appellants did not intend to inflict any knife injury on the deceased although they had knives in their hands but after appellant No. 1 was injured the appellants had also inflicted injuries on the deceased. The doctor has categorically stated that although the injuries were collectively sufficient to cause death, individually any of the injuries was not likely to cause death. In the aforesaid circumstances, it cannot be definitely held that the appellants had been harbouring a common intention to murder the deceased and with such common intention they had inflicted knife injuries on the person of the deceased. In the absence of common intention to murder being established beyond all reasonable doubts, simply on account of death of Rambhai as a result of cumulative effect of all the injuries inflicted on the person of the deceased, a case for conviction for murder under S. 302 read with S. 34, I.P.C. cannot be sustained. In our view, in the facts and circumstances of the case, the learned Sessions Judge was justified in holding that a case under S. 326 read with S. 34, I.P.C. and S. 324, I.P.C. has been established by the prosecution against the appellants. We, therefore, allow the criminal appeal and set aside the conviction and sentence passed by the High Court against the appellants under S. 302 read with S. 34, I.P.C. We, however, affirm the conviction and sentence passed by the learned Sessions Judge against the appellants. Accordingly, the Special Leave Petition (Criminal) No. 1382 of 1977 is dismissed.

6. Mr. Parekh has submitted that the deceased was one of the principal accused in the case of murder of the father of one of the appellants and other persons. On the spur of the moment and in an agitated mind the appellants might have assaulted the deceased without any intention to murder him. Unfortunately, the cumulative effect of assault by a number of persons has caused death of the deceased. The appellants are on bail by the order of this Court from 1980 and they are living peaceful life with family members. Hence, even if conviction under Ss. 326 and 324 is affirmed by this Court, the sentence should be reduced so that the appellants may not go to jail. In the facts of the case, we are not inclined to reduce the sentence. The accused-appellants, Rama Meru and Ghelaramsi are directed to serve out the sentence in terms of the conviction and sentence passed by the learned Sessions Judge. The bail bonds in favour of the said accused persons stand cancelled.

Order accordingly.

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