

Ramesh Maruti Patil

Vs

State of Maharashtra

Criminal Appeal No. 559 of 1981

(M. M. Punchhi, S. C. Agrawal JJ)

01.05.1992

### JUDGMENT

1. This appeal by special leave is against the judgment and order dated 20-2-1981 of the High Court of Bombay in Criminal Appeal No. 14 of 1974.

2. For the view we are taking, it would not be necessary to detail out the entire case. It would be enough to mention that the sole appellant herein, named Ramesh Maruti Patil, along with eight others stood trial under S.302/323 read with S. 149. IPC etc. for causing the death of one Moti Ram and causing injuries to three others on the complainant side. On the side of the appellant four accused were stated to have suffered injuries during the occurrence which took place on March 3, 1974 in front of the house of the deceased Moti Ram. In the First Information Report lodged by Savalaram, P.W. 9 the father of the deceased, it was Bhanudas Gajanan Patil co-accused who was ascribed the sole fatal injury on the deceased. The First Information Report was otherwise silent about the remaining five injuries on the deceased as well as those caused to the P.Ws. Similarly the FIR was also silent about the injuries found on the persons of four accused persons. The Court of Session on weighing the prosecution version and the cross versional defence recorded a finding that the parties had a free fight and therefore the prosecution case could not be relied upon to convict the accused persons. An additional factor which weighed with the Court was that the version given in the FIR about the sole fatal injury being caused by Bhanudas Gajanan Patil was deviated from at the trial since all the prosecution witnesses ascribed that fatal injury to Ramesh Maruti Patil, the present appellant herein. Otherwise also the prosecution case was held not reliable. Accordingly, the Court of Session recorded an order of acquittal which gave rise to an appeal by the State to the High Court. The High Court maintained the acquittal of eight co-accused, but convicted the appellant relying on the testimony of witnesses at the trial holding the appellant guilty for causing the sole fatal injury on the person of the deceased. The exercise in the instant appeal thus is whether it would be safe to maintain this conviction recorded under S. 304, Part II, IPC where under the appellant has been sentenced to five years' rigorous imprisonment.

3. We have heard learned counsel. We are mindful of the position that the FIR is not a substantive piece of evidence and has a limited use. It is also not an encyclopedia of the prosecution case. It is from the nature of the FIR and other surrounding circumstances to be seen whether there was any scope for any confusion at the time when the informant gave it or was it a version which merited explanation at the eventual trial. Here in the FIR we have a straight accusation of the fatal injury being caused by Bhanudas Gajanan Patil. At the trial the eye-witnesses inclusive of the first information have shifted this injury to the appellant Ramesh Maruti Patil. The High Court seems to have believed the explanation of the informant that he was somewhat confused at the time when he gave the FIR. This explanation given by the informant does not stand the test of probabilities. In the

first place it is difficult for him to have missed the identity of the killer of his son as otherwise he need not have been emphatic about it. In the second place, when mention is made of the appellant as prime accused of the crime, the informant was expected to have mentioned the weapon in his hand. There is no such accusation. We find only at the trial that the appellant was attributed having carried a Farshi, a sort of an axe. This means that the prime role of the appellant was alive to the informant when he made the FIR in contrast to the role of the other accused. In a case of free fight each one participating in it can be held responsible by the court for his act. In this state of evidence, we find it difficult to positively hold that the appellant was the author of the fatal injury as deposed to at the trial and not Bhanudas Gajanan Patil, the one who at the first instance was accused thereof. It is pertinent to notice that the High Court itself has accepted the view of the trial court that both sides had not come before the court with the whole truth. It is on that basis that the High Court did not interfere with the finding of fact recorded by the trial court in that behalf with regard to eight acquitted co-accused. So far as the narration of injuries on both sides were concerned, every eye-witness has been adversely commented upon in a uniform manner. There was no reason for the High Court to have singled out Prema Bai, P.W. to be a truthful witness with regard to the fatal injury when she too had been dis-believed with regard to the other part of the prosecution case. In these circumstances, we find it difficult to sustain the conviction of the appellant, unsafe as it would be to maintain it, on the shifting of stands.

4. For the afore reasons, this appeal succeeds and is accordingly allowed. The conviction and sentence of the appellant is set aside. Appeal allowed.

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