

Patel Chela Viram

Vs

State of Gujarat

Criminal Appeal No. 715 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

24.07.1992

JUDGMENT

1. This is an appeal filed u/S. 379 of the Code of Criminal Procedure and S. 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970. The sole appellant was tried along with four others for offences punishable under Ss. 147, 148 and 302 of the Indian Penal Code. The case rested mainly on the sole testimony of P.W. 2 who figured as the star eye-witness. The prosecution no doubt examined some witnesses to show that the accused were seen while running away from the scene of the occurrence. The learned Sessions Judge having considered the evidence of P.W. 2 observed that he was an interested witness belonging to the opposite faction and there are certain material discrepancies in his evidence. It is also pointed out that the medical evidence does not corroborate his evidence. There are certain other reasons given by the Sessions Judge for acquitting all the accused. The State preferred an appeal. The High Court, however, took the view that P.W. 2 is an independent witness and the discrepancies pointed out are not material and P.W. 2 the sole eye-witness at least has stated clearly that the appellant dealt a blow with dharia and the medical evidence shows that there is incised injury and, therefore, to that extent his evidence is corroborated and in that view of the matter the High Court set aside the acquittal of the appellant and convicted him under S. 302, IPC. simpliciter and sentenced him to undergo imprisonment for life.

2. Learned counsel for the appellant submits that it is well settled that when the case rests on the testimony of the sole eyewitness his evidence should be wholly reliable on the other hand in the instant case even the High Court has rejected the material part of the evidence of P.W. 2. His further submission is that the view taken by the Sessions Court is a reasonable one and the High Court ought not to have interfered in the appeal against acquittal.

3. The prosecution case is as follows:

The deceased who was an agriculturist and a resident of Village Vajanagar where there were factions. The accused belong to one faction and the deceased belonged to the other. On 15-8-77 when the deceased was going to his house from his field at about 8-30 a.m. it is alleged that the appellant before us armed with a dharia and the other four accused with sticks surrounded the deceased and dealt blows on him. The deceased fell down in the field of late Sadhu Jivandas Kandas. P.W. 5 who had come to his field to answer the call of nature saw the accused and deceased. On hearing the cries P.Ws. 3,4, 5 and 6 came there and saw that the accused were running. A report was given to the Police and investigation was taken up and the victim was removed to the hospital where he succumbed to his injuries. The dead body was sent to the

hospital for post-mortem.

4. The doctor who conducted the postmortem found only seven external injuries. Out of them the first injury is an incised wound on the head of the deceased. Injuries 5 and 7 are also incised wounds on the arms and legs. Injuries 2, 3, 4 and 6 are contusions on the arms and legs. The doctor on internal examination found that brain matter was coming out as a result of Injury No. 1. The other injuries on the legs caused fracture of tibia and fibula. He opined that death was due to shock and haemorrhage and due to all injuries found on his person.

5. As mentioned above, the High Court mainly relied on the evidence of P.W. 2. We find from the judgment of the Sessions Court that P.W. 2 admitted that there are two rival factions and he filed an application against the accused in the year 1976 for binding over them and consequently proceedings were launched against the accused and that there were certain other instances which would show that P.W. 2 was inimical towards the accused. Therefore, it cannot be said that he is an independent witness. Further, there is some force in the submission of the learned counsel for the appellant that P.W. 2 appears to be a chance witness. He deposed that he went to this particular field which is away from his house to answer the call of nature. On his being a chance witness it is necessary to have a closer scrutiny of his evidence. Coming to the medical evidence we find only four contusions yet the evidence of P.W. 2 is to the effect that all the other four accused dealt blows with sticks. This part of the evidence is not corroborated by the medical evidence. It is pointed out in number of cases by this Court when the case rests on the sole testimony of the single witness, the same should be wholly reliable. We find in the instant case that P.W. 2 is not only an interested witness but the version given by him is highly doubtful apart from the fact he being a chance witness. The view taken by the Sessions Court is quite reasonable.

6. In appeal against acquittal the High Court cannot reverse the same on the ground that another view is possible. For all these reasons we set aside the conviction and sentence awarded to the appellant.

7. The appeal is allowed accordingly. The bail bonds stand cancelled.

Appeal allowed.

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