

Kathi Odhabhai Bhimabhai and others

Vs

State of Gujarat, Respondents.

Criminal Appeal No. 399 of 1981

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

05.08.1992

JUDGMENT

1. This is an appeal filed under S. 379 of the Code of Criminal Procedure read with S. 2(a) of the Supreme Court (Enlargement of the Criminal Appellate Jurisdiction) Act. There are four appellants. They were tried for offences punishable under S. 302 read with S. 34, IPC and S. 307 read with S. 34, IPC by the Additional Sessions Judge, Bhavnagar. They are alleged to have caused the death of Najbhai Nagbhai by inflicting injuries and also caused injuries to Shardul Merambhai. The prosecution mainly relied on the evidence of the two eye-witnesses P.W. 1 and another P.W. 2 Mavji Magan. P.W. 2 was treated hostile. Therefore, the prosecution was left with the evidence of P.W. 1. The trial Court acquitted all the four accused holding that P.W. 1 is a highly interested witness and his version is in conflict with the medical evidence and there was inordinate delay in giving the report. The trial Court has also pointed out certain other discrepancies in his evidence. The trial Court further observed that it is unsafe to rely on the testimony of P.W. 1 to convict the accused. The State preferred an appeal against acquittal and the High Court accepted the evidence by explaining the various inconsistencies with reference to the medical evidence and also partly relied on the evidence of P.W. 2, the hostile witness, to the extent that he has seen four accused running away from the fields. Thus the High Court reversed the order of acquittal and convicted the four appellants under S. 302 read with S. 34, IPC and sentenced each of them to undergo Rigorous Imprisonment for life and also under S. 326 read with S. 34, IPC. for causing the injuries to P.W. 1 and each of them was sentenced to five years' Rigorous Imprisonment. The sentences were directed to run concurrently.

2. In this appeal Shri T. U. Mehta learned counsel for the appellants submits that the sole testimony of P.W. 1 suffers from many infirmities and the very fact that he has given a version which is in conflict with the medical evidence and when he has gone to the extent of implicating four accused as having dealt blows and when that version is found to be incorrect it is highly unsafe to rely on the P.W. 1's sole testimony particularly when, admittedly, he is an interested witness and when there was inordinate delay in giving the report. Mr. R. P. Bhatt, learned counsel appearing for the State on the other hand, submits that the presence of P.W. 1 at the scene of the occurrence is not disputed inasmuch as he is an injured witness and the inconsistencies in his evidence with reference to the medical evidence can be explained and the fact that the delay in giving the report has also been sufficiently explained.

3. According to the prosecution the deceased was involved in an earlier murder case. P.W. 1 is no other than his nephew. The further case of the prosecution is that there was an enmity between the

accused persons and the deceased and his relatives with regard to some disputes. On 5-6-77 P.W. 1 and the deceased had gone to take a round in their fields and were looking after the supply of water. Thereafter they returned at about 1.30 p.m. and when they reached the fields of Haribhai and Shivabhai Soni they saw the four accused armed with weapons like dharies, axes and sticks. The accused are alleged to have intercepted the deceased party and there was exchange of hot words as regards taking of the water from the canal. During the said quarrel, it is alleged that A-1 gave a dharia blow on the head of the deceased and A-2 gave an axe blow also on the head. As P.W. 1 intervened A-1 gave him an axe blow and A-4 gave a dharia blow. It is further alleged that all the accused dealt blows on the deceased and P.W. 1 jointly. When P.W. 1 raised cries the accused ran away along with their arms from the fields. The injured was taken in a cart to the hospital. Likewise also P.W. 1 was also taken. They were taken to the doctor. Doctor on examination of the deceased found one contused lacerated wound over right parietal region 2 1/2" x 1/2" skin deep and Oedema over the right lower eyelid. He did not find any other injuries. He issued medical certificate Ex. 39. As the condition of the injured was serious, he referred him to the Government Hospital. Dr. J. C. Chauhan at the Government Hospital examined the deceased and he also found one contused lacerated wound over the right front parietal region and Oedema on the right lower eyelid. The injured was admitted in the Hospital at Ahmedabad for further treatment. The deceased died on 13-6-1977. The post-mortem was conducted and the doctor found two external injuries and on internal examination he found fracture of skull and also fracture of ribs on the right and left sides and some lacerated wounds. He opined that death was due to intra-cranial haemorrhage. He further opined that the injuries can be caused by hard and blunt weapons and the injuries were sufficient in the ordinary course of the nature to cause death. The injuries on P.W. 1 were also examined by the Doctor and it was found that he had one incised injury on the left knee joint and contusions and abrasions on other parts of the body. After completion of the investigation the charge-sheet was laid.

4. As mentioned above out of the two eye-witnesses examined by the prosecution P.W. 2 turned hostile. Now coming to the evidence of P.W. 1 Shardulbhai we have examined the same and we find that the version given by him is in conflict with the medical evidence. P.W. 1 deposed that on the day of the incident he was returning along with his uncle, the deceased, after visiting the fields. When they reached the field of Shivabhai Soni, the four accused came running towards them. They abused them and when the deceased objected, the accused got annoyed. A-1 was armed with a dharia, a cutting instrument and he gave a blow on the head of the deceased. A-3 gave a blow with an axe with the blunt part thereof on the temporal region of deceased. The deceased fell down. P. W. 1 raised cries. On hearing that P.W. 2 Mavji Magan came there. A-3 hit P.W. 1 with an axe on the head. A- 1 raised the dharia to give a blow to him and pointed end of that dharia touched on his right hand. A-2 gave a blow with an axe on the left leg. A-4 gave a dharia blow on his head. Then all the four accused started giving blows simultaneously with the blunt part of the axes and with the handles of the dharias. P.W. 2 further stated that all the accused further gave a number of blows to the deceased and that 3 or 4 blows fell on the body of the deceased when he was fallen. When P.W. 2 Mavji Magan came there the accused ran away. After some time the injured were taken to the hospital. If this version is taken to be true then there should be number of injuries on the deceased as well as on himself. As already noted both the Doctors, who examined the deceased, found only one contused lacerated wound over right fronto-parietal region and only Oedema over the right lower eyelid and the deceased died one week later. The Doctor, who conducted the post-mortem also found only two external injuries but internally he found the fracture of the temporal and parietal bones. These injuries are due to injury No. 1. Echymosis near the right eye did not cause any internal injury. The Doctor however, during the internal examination, also found the fracture of three ribs on the right side and fracture of two ribs on the left side. But there were no corresponding

external injuries. If the version given by P.W. 1 is taken to be true then there should have been numerous injuries on the body of the deceased as well as on P.W. 1. It must be borne in mind that he has implicated four accused and deposed that all the four attacked him as well as the deceased. No doubt the medical evidence corroborates his version to the extent that A-1 having dealt a blow on the head. But here again we find some variation. Dharia is a cutting instrument whereas injury found on the deceased is a contused lacerated wound which caused internal damage. Likewise there are no corresponding injuries on himself. When the case rests mainly on the sole testimony of P.W. 1, it should be wholly reliable. P.W.2 the other eye-witness was treated hostile. Therefore the High Court did not place any reliance on his evidence. Under these circumstances, the trial Court held that implicit reliance cannot be placed on the evidence of P.W. 1 and in that view acquitted the accused. It cannot be said that this view is not reasonable.

5. The High Court relying on the fractures of the ribs of the deceased, as found by the Doctor on internal examination held that these injuries must have been inflicted by blunt weapons by other accused. We must at once note that as already mentioned there was no corresponding external injuries. These fractures could be due to violent fall also. The High Court further observed that the evidence of P.W. 2 though hostile can be relied upon. But P.W. 2 did not speak anything about the occurrence. He deposed that he saw the four accused going away. When the evidence of P.W. 1 is of doubtful nature regarding the participation of all the four accused and when there is no other direct evidence, the evidence of P.W. 2 cannot be of any use. No doubt P.W. 1 is an injured witness and his presence cannot be doubted but unfortunately his evidence is in conflict with medical evidence and the trial Court felt that it is not safe to convict the accused on his sole testimony. In such a situation and when the view taken by the trial Court is not unreasonable, no interference in an appeal against acquittal was called for.

6. For the aforesaid reasons the convictions and sentences awarded by the High Court are set aside. The bail bonds shall be cancelled. The appeal is allowed accordingly. Appeal allowed.

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