

Shaikh Nabab Shaikh Babu Musalman and others

Vs

State of Maharashtra

Criminal Appeal No. 238 of 1980

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

12.08.1992

JUDGMENT

1. This appeal pursuant to the Special Leave granted is directed against the Judgment of the High Court of Bombay. There are five appellants, who were the five accused in the Sessions Case and were tried for offences punishable under Sections 147, 148 and 302 read with 34 IPC. The case arose out of an incident that took place at Chalisgaon on 4th March, 1974 resulting in the death of Bhanudas Nathu Kumawat, the deceased in the case. All the five accused were convicted and sentenced to imprisonment for life. The appeal filed by them was dismissed by the High Court. During the pendency of the appeal before this Court Appellant No. 1, Shaikh Nabab Shaikh Babu Musalman died. The appeal in so far as he is concerned abated.

2. The prosecution case is as follows. The deceased and his relatives were on inimical terms with the accused persons and their group. The relations were strained for the last many years. In an earlier double murder case the deceased was sentenced to 10 years R. I. and his brother was sentenced to one year R. I. The village of the deceased is at a little distance from Chalisgaon. The relations became further strained because of the Panchayat elections. It is on record that Police also filed other cases against members of both the groups from time to time. The present incident took place on the Station Road at Chalisgaon on a Monday, on which day a Rath Yatra was held in another part of Chalisgaon. The incident took place in front of some temporary stalls on the road. Ashok Tulsiram Beldar, P.W. 5, who is the cousin of the deceased was returning from the place of his work. When he came near Nehru Chowk, he met Sakharam Kumawat, P.W. 10, who is also closely related to the deceased and P. W. 5. Both of them were walking together came to the place of occurrence. They saw five accused persons surrounding the deceased. One of them held the left hand of the deceased, two of them held his right hand and one of them held him from behind and Appellant No. 1, Shaikh Nabab delivered a knife blow. The deceased cried and fell down on the spot. The accused ran away. PWs. 5 and 10 did not intervene out of fear. After the accused ran away, they went near the deceased and found him to be dead. They then went to Ashok's house. They informed the inmates and Ashok went to Police Station and lodged the report, Ex. P.-20. The Sub-Inspector recorded the same and registered the case. He proceeded to the place of occurrence and prepared a Panchanama, held the inquest and sent the dead body for post-mortem. Dr. Kulkarni, P.W. 4 conducted the post-mortem and noted five incised wounds on the body of the deceased. On internal examination he found that the walls of the thorax were haemorrhaging, in the pericardium there was an incised wound on the covering of left ventricle and he also found another incised wound on the tip of the left ventricle in the heart. He opined that death was due to these injuries which are sufficient in the ordinary course of nature to cause death. The Investigating Officer also

found two discarded knives near the place of occurrence and they were found to be stained with human blood. After the investigation was completed, a charge sheet was laid.

3. The prosecution mainly relied on the evidence of the two eye witnesses P.Ws. 5 and 10. The accused pleaded not guilty. Both the Courts below accepted the evidence of P. Ws. 5 and 10 and convicted the appellants.

4. Learned counsel for the appellants contends that both the eye witnesses are highly interested and in view of their long standing enmity and several cases that were registered against both the parties it must be held that they are partisan and the version given by them is highly artificial and it cannot be relied upon. It is also his further submission that the witnesses deposed that it was only appellant No. 1, who stabbed once the deceased, but the Doctor found five injuries and that two knives were found at the place of occurrence and, therefore, the version given by these two eye witnesses is in conflict with medical evidence and the circumstantial evidence.

5. We have gone through the evidence, of these two witnesses carefully. We are satisfied that the two witnesses have not come out with the true version. No doubt a report was given within a reasonable time, but the version given there is also the same which was put forward during the trial. Each of these witnesses have deposed that Appellant No. 2 held the left hand of the deceased, Appellants 3 and 5 held his right hand and Appellant 4 held the deceased from behind and then Appellant 1 delivered a knife blow which according to them resulted in the death of the deceased. This version itself, in our view, appears to be artificial. From their evidence it appears that both of them witnessed the occurrence from the beginning and seeing 5 or 6 persons near the shop on the road they walked faster to see what was the matter and they saw 4 persons holding the deceased and then Appellant No. 1 assaulted the deceased with a knife. But at the scene of occurrence the Investigating Officer found two knives which were stained with human blood as per the report of the Chemical Examiner.

6. Both of them did not attribute any other overt act to Appellants 2 to 5. Since both the witnesses are highly interested and partisan, their evidence has to be subjected to a greater scrutiny. In a case of this nature there is a likelihood of false implication and having regard to the version, we find it difficult to accept the evidence of these two witnesses as against Appellants 2 to 5, who are not attributed any overt acts without any further corroboration. It is not necessary in every case there should be such corroboration, but having regard to the part attributed to the Appellants 2 to 5, the possibility of false implication of one or more cannot be ruled out. Therefore, we think it is not safe to convict the Appellants 2 to 5. So far as Appellant no. 1 is concerned, the version of these two witnesses is consistent, namely, that he was the person who inflicted the fatal injury. Therefore, his conviction need not be disturbed. But, however, in view of the fact that he died the appeal abates so far as he is concerned.

7. In the result, the convictions of Appellants 2 to 5 (originally accused 2 to 5) and the sentences for life imprisonment under Section 302 read with Section 34 of the I.P.C. are set aside. If they are on bail, their bail bonds stand cancelled. The appeal is allowed to the extent indicated above.

Appeal allowed.

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