

Thakarde Malaji Ramsangji

Vs

State of Gujarat

Criminal Appeal No. 261 of 1982

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

22.10.1992

JUDGMENT

1. This is an appeal under Section 379 Cr. P.C. read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. The sole appellant was tried for the offence of causing the murder of one Ranaji. The trial Court acquitted him. The Appellate Court relying on the evidence of P.W. 4 interfered and set aside the order of the acquittal. Hence the present appeal.
2. The incident happened on May 2, 1978 at about 3.00 p.m. at village Jitpur, Taluka Danta, Distt. Banackantha. The deceased and the material witnesses belonged to the same village. It is alleged that there was some dispute between the deceased and the accused. The deceased was engaged in putting the hedge on the boundary of his field when he got into arguments with the accused as the accused objected to the hedge being put near his field. At that juncture according to the prosecution the accused snatched one 'KOS' from the hand of the deceased and hit the deceased and gave some blows which proved fatal. The accused ran away with the crowbar. On hearing cries P.Ws. 4, 5 and 7 who had taken shelter under a tree in the field of P.W. 4 ran to the place of occurrence. P.W. 5 after coming to know about the occurrence from P.Ws. 2 and 3 the eye-witness is went to the Police Station and lodged an FIR on the basis of which the investigation was taken up. After registering the offence the S. H. O. reached the place of occurrence where the dead body was lying. The inquest was held and the dead body was sent for post-mortem. The doctor, who conducted the post-mortem, noticed that there was a punctured wound on the right parietal region, a lacerated wound on the middle of the head and fracture of the left ulna and radius bones at the middle. After the completion of usual investigation, the P.S.I. who had taken over the investigation filed the charge-sheet. A detailed charge was framed against the accused and the same was read over and explained to him, to which he pleaded not guilty and claimed to be tried. The prosecution mainly relied on the evidence of P.Ws. 2, 3, 4, 5, 7. The two eye-witnesses P.Ws. 2 and 3 turned hostile. Their evidence has been discarded by the trial Court. The trial Court was not prepared to place reliance on the evidence of P.Ws. 4, 5 and 7. The trial court observed that in the earlier report given by P.W. 5, it is not mentioned that lie along with P.Ws. 4 and 7 saw the accused running away. Because of the inconsistency between the evidence of P.W. 5 and the other two witnesses, the trial court did not place any reliance on the circumstantial evidence rendered by them.
3. In the appeal filed by the State before the High Court the prosecution mainly relied upon the evidence of P.Ws. 4, 5 and 7. The High Court extracted the evidence of P.W. 4. P.W. 4 stated that he along with P.Ws. 5 and 7 were taking rest under a tree in the field of P.W. 4. They heard the cries and all of them ran together towards the place of occurrence. P.W. 4 added that he saw the accused

running away with an iron crow-bar from the scene of occurrence. But strangely P.W. 5, who is no other than the nephew of the deceased and who gave the earliest report, did not mention this fact. He did not state so in his deposition. Therefore, the trial Court, in our view, has rightly held that the evidence of P.W. 4, that they saw the accused running away from the scene of occurrence became doubtful. Admittedly even according to the prosecution P.Ws. 4, 5 and 7 along with two others who were not examined were taking rest under the tree. After hearing the cries all of them ran together to the scene of occurrence. There they had noticed that the accused was running away. P.W. 5 neither mentioned the said fact in the earliest report nor in his deposition. Therefore, the Sessions Court rightly held that the evidence of P.Ws. 4 and 7 in this regard became doubtful. The view taken by the Sessions Court cannot be said to be unreasonable. The High Court interfered with the judgment of the Sessions Court and convicted the appellant under S. 302 and sentenced him to life imprisonment. We think it is highly unsafe to convict the appellant on the basis of the evidence of P.Ws. 4 and 7 whose evidence differs from that of P.W. 5. For these reasons, we set aside the judgment of the High Court and confirm the judgment of the Sessions Court. In the result, the appeal is allowed and the appellant was enlarged on bail, his bail bonds shall be cancelled. Appeal allowed.

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