SUPREME COURT OF INDIA

Mahadeo Laxman Sarane

Vs.

State of Maharashtra

(B Singh and H Bedi JJ.)

03.05.2007

JUDGMENT

1. In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 read with Section 379 of the Criminal Procedure Code the appellants Mahadeo and Raju have impugned the judgment and order of the High Court of Judicature at Bombay dated April 6 and 7 of 2005 in Criminal Appeal No. 279 of 1995 the appeal filed by the State against their acquittal. The Trial Court, on a consideration of the evidence on record, passed an order of acquittal in favour of all the four accused before it. The High Court by its impugned judgment and order, while upholding the acquittal of two other accused namely Basu and Sidhu, recorded an order of conviction against the appellants herein under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to suffer further imprisonment for a period of three months.

2. At the threshold we may notice that all the four accused including the two appellants herein are brothers. The deceased Bhimashankar Madolappa Kapse was the brother of Kashappa Kapse (PW-5) who is the informant in this ease. The accused are the sons of their sister. It would thus appear that the parties are related to each other.

3. The case of the prosecution is that on 26th June, 1994 at about 8.30 P.M. an occurrence took place in which the deceased was assaulted by the appellants resulting in his death. The first information report was lodged by the informant, PW-5 who, as noticed earlier, is the brother of the deceased. The case of the prosecution is that on the date of occurrence the informant, PW-5 along with PW-8 Mallikarjun Kapse and PW-12 Babling Patil was sitting on the katta in front of the Gram Panchayat. While they were sitting and chatting they noticed the deceased passing that way. Sometime later they noticed the appellants herein armed with sword and knife and two of their brothers (since acquitted) going in the same direction. The assault on the deceased took place at a distance of about 150 ft. from the katta where they were sitting. Appellant No. 1 Mahadeo is said to have given two or three blows on the neck of the deceased while appellant Raju gave him two or three injuries on his abdomen. They are also said to have raised the slogan "Kamaleshwar Maharaj Ki Jai" which attracted the attention of the eye-witnesses. It is further the case of the prosecution that Bhartabai (PW-13) who was related to the deceased as his niece resided in a house about 18 ft. from the place of occurrence. On hearing the commotion she had also come out and witnessed the incident.

4. The motive of the offence is said to be that the deceased was married to Kalawati, sister of the accused, about 20 years ago. They had two sons but both of them died. The deceased with the consent of Kalawati married Pushpa PW-7. From this marriage they had three issues - two sons and one daughter. Since Kalawati and Pushpa did not pull on well the deceased made arrangement for their separate residence. Kalawati lived in the village with her parents while Pushpa resided in the fields where arrangement was made for her. The appellants were aggrieved of the fact that the deceased had been neglecting Kalawati and not giving her due care as was expected of him. This appears to be the motive for the accused to commit the offence.

5. We stay observe that so far as the eye-witnesses are concerned, PW-5 is the brother of the deceased while PW-8 and PW-12 are his nephews and PW-13 his niece. Apparently, therefore, the eye-witnesses are related not only to the deceased, but also to the assailants. They however bore no animus against the appellants and therefore, they cannot be described as inimical witnesses particularly, because the accused who are sons of the sister of PW-5 the informant, are also related to them. There is nothing on record to prove that there was any enmity between the eye witnesses and the accused. It is therefore, not possible to contend in the absence of any convincing reason that the witnesses falsely implicated the appellants. In fact they would be anxious to get the real culprits punished rather than falsely implicating without any rhyme of reason persons related to them against whom they bore no grudge or enmity.

6. Soon after the occurrence one Ashok Palve informed the police Patil Suresh Patil at about 8.40 P.M. who, in turn, informed the Karajgi Police outpost at 11.45 P.M. The information was then sent to PW-16 Dattaraya Jadhav at about 8.45 A.M. PW-16 was the officer incharge of the police outpost. Three constables were sent to the village and at the same time PW-14 Head Constable Ingale at Akkalkot Police Station was informed. PW-16 thereafter proceeded to the place of occurrence reaching there at about 1.30 A.M. He found the dead body of the deceased as also the witnesses present on the spot. PW-5 Kashappa lodged his report when he and PW-16 came to Karajgi outpost. Thereafter PW-16 prepared the occurrence report and they both then proceeded to Akkalkot Police Station and handed over the relevant papers to Ingale PW-14. At 5.10 A.M. a case was registered under Section 302/34 IPC.

7. It is the case of the prosecution that on the following day that is, on 27" June, 1994 at about 11.00 A.M. the appellants herein appeared with their blood stained weapons and narrated the incident to the police in the presence of PW-15 Head Constable.

8. The prosecution examined PW-5, PW-8, PW-12 and PW-13 as eye-witnesses at the trial. The medical evidence on record conclusively established that death of Bheemashankar was not homicidal. The only question was whether the eye-witnesses produced by the prosecution proved the case of the prosecution beyond reasonable doubt.

9. We have gone through the judgment of the learned Trial Court and we find that without critically scrutinising the evidence of the eyewitnesses to test their credibility it chose not to rely upon them on unconvincing general considerations. It held that the three witnesses did not reside in the area where the incident had taken place, though there is evidence to show that they are residents of the same village but their houses are not located near the place of occurrence. From this the Trial Court jumped to the conclusion that these three witnesses cannot be said to be natural and probable witnesses. It then held that there was no evidence on record to establish that it was their practice to come to that spot after the day's work and sit there for chit chat. The Trial Court therefore,

concluded that in the absence of such evidence their presence became even more unnatural and improbable. The Trial Court then observed that if there was a katta of the Gram Panchayat where villagers used to collect there was no reason why at the time of occurrence apart from the four persons named in the FIR no one else was present on the katta. This really proved their absence on the spot. The Trial Court then observed that in the first information report there was reference to one Tarbhai as an eve-witness but in the course of deposition no one has mentioned the presence of Tarbhai. From this it jumped to the conclusion that the witnesses are not speaking the truth. On these considerations, the Court held that the theory that these eye-witnesses were present as claimed by them does not create confidence about their acceptability.

10. The Trial Court considered the evidence on record and held that since the four witnesses belong to different age groups it was not natural and probable that they would sit at the katta and involve themselves in chit chat. Even if they intended to do so they could have very well done so at their residence.

11. The Trial Court did not find the evidence of PW-5 to be reliable because many questions put to him in regard to matters not related to the incident were not satisfactorily answered by him, PW-5 in reply to a question as to whether Kalawati had resorted, to judicial proceeding against the deceased, his answer was that he had no knowledge about it. Similarly, when he was questioned as to whether he knew that appellant No. 1 Mahadeo had a brick kiln business in Degaon and was residing there along with his family members and that appellant No. 2 Raju was working at MIDC Solapur, he replied that he had no knowledge of these facts. The Trial Court, therefore, held that since the witness showed ignorance about facts which he must have known, he was not a witness speaking the truth and his veracity was doubtful. He need not refer to so many other questions unrelated to the incident which were put to this witness in response to which he pleaded ignorance.

12. The Trial Court further disbelieved the eye-witnesses on the ground that when they saw the occurrence they did not raise hue and cry. PW-5 had stated that he got so frightened that he could not do so. The Court inferred that the silence on the part of these witnesses was not natural and contrary to ordinary human nature. That they would have remained silent even after witnessing the occurrence was something unbelievable. This also affected the veracity of the version of these eye-witnesses.

13. The Trial Court also suspected the testimony of PW-5 the informant on the ground that the details of the wanner of occurrence was not stated by him in his first information report. Some of the details which he had mentioned in Court were not found in his first information report. The Trial Court further jumped to the conclusion that the details furnished by him in the course of his deposition was only designed to get corroboration from the medical evidence about the injuries found on the deceased. The Trial Court also disbelieved PW-5 for the reason that since his notice was attracted on account of raising of slogans, he could not have possibly witnessed the assault and therefore, he cannot claim to be an eye-witness. The Trial Court in some detail and rather meticulously examined the evidence of eye-witnesses to ascertain in which direction they were facing when they were sitting on the katta and the occurrence took place. It found some discrepancy as to whether they were looking to the South or West. It therefore, considered their evidence to be inconsistent and unreliable. It disbelieved PW-8 Mallikarjun Kapse since he had stated that the accused has raised slogans first and the incident took place thereafter, since this was not consistent with the version disclosed by PW-5. The Trial Court also held that since there was not sufficient light at the scene of occurrence it was not possible for the police officers to prepare the panchnama

and inquest report etc. in the night and those documents were prepared at about 8.15 A.M. or 9.15 A.M. The Trial Court also disbelieved the prosecution case observing that if the accused were on inimical terms with the deceased, the alleged eye-witnesses sitting on the katta would have become suspicious finding them going in the same direction. Even Bhimashankar would have raised an alarm and tried to escape the assault and seek protection from his brother and other persons sitting on the katta. This he did not do and therefore, the prosecution case was doubtful. It further held that since the accused did not know the usual time of the deceased to go to his house they could not have planned his murder in this manner.

14. Referring to the evidence of PW-13, the Trial Court held that though she is a resident of a house adjacent to the flour mill and the temple, she may not have heard the noise and commotion if the pump of the flour mill was functioning, because the flour mill created considerable noise which would have disabled the witnesses from hearing the noise outside. The Trial Court also went on to observe that the father of PW-13 was the real brother of the deceased and therefore, being a near relative of the deceased her evidence has to be appreciated with caution.

15. It noticed that PW-13 had mentioned only about the presence of the appellants and not their two brothers who were said to have accompanied them. It therefore, concluded that if she had not seen accused Nos. 3 and 4 (since acquitted) then she could have seen nothing. The Trial Court further observed that none of the other witnesses mentioned about her presence at the time of occurrence.

16. In this manner the Trial Court disbelieved all the witnesses and observed that all of them were related to the deceased and independent witnesses such as Tarbhai whose name was mentioned in the FIR (Exhibit 29) were not examined. Another point which the Trial Court held in favour of the accused was that though the eye-witnesses stated that a few blows with sword and knife were inflicted, there were many injuries numbering about 12 on the person of the deceased as found by the doctor. The Trial Court then considered the evidence with regard to motive and observed that even if the alleged motive was accepted it appeared to be unrealistic. It was also observed that Section 157 Cr.P.C. was not complied with since the report sent by the police reached the Judicial Magistrate two days later i.e. on 29th June. 1994. In view of these findings the Trial Court concluded that the prosecution had not been able to prove its case beyond reasonable doubt and consequently acquitted all the accused.

17. The State preferred an appeal before the High Court against the order of acquittal which has been allowed as against the appellants. The High Court in a detailed judgment dealing with all aspects of the matter came to the conclusion that the judgment of the Trial Court could not be upheld. It has dealt with each and every reason recorded in the judgment of the Trial Court and found that the reasoning of the Trial Court was highly unsatisfactory and on such general considerations an acquittal could not be recorded particularly, when there were as many as four eye-witnesses whose credibility could not be doubted.

18. We have heard counsel for the parties at length. We are conscious of the settled legal position that in an appeal against acquittal the High Court ought not to interfere with the order of acquittal if on the basis of the some evidence two views are reasonably possible - one in favour of the accused and the other against him. In such a case if the Trial Court takes a view in favour of the accused, the High Court ought not to interfere with the order of acquittal. However, if the judgment of acquittal is perverse or highly unreasonable or the Trial Court records a finding of acquittal on the basis of irrelevant or inadmissible evidence, the High Court, if it reaches a conclusion that on the evidence

on record it is not reasonably possible to take another view, it may be justified in setting aside the order of acquittal. We are of the view that in this case the High Court was justified in setting aside the order of acquittal.

19. So far as the eye-witnesses are concerned, the Trial Court never made an effort to critically scrutinize their evidence with a view to test their veracity. It doubted their presence merely because their houses were not near the place of occurrence, though they are the residents of the same village. It further commented adversely on their conduct in not raising a hue and cry when they saw the assault, though they rushed to the place of occurrence. It further observed that Tarbhai mentioned in the FIR was not examined and since large number of persons had assembled they could have been examined by the prosecution. For failure to examine such witnesses the Trial Court concluded that the case of the prosecution could not be believed.

20. The Trial Court made an erroneous approach in assuming that the witnesses were inimical to the accused. There is no evidence on record to suggest that the eye-witnesses were inimical to the accused. It is, no doubt, true that they were related to the deceased. As noticed earlier, the accused were also related to the eye-witnesses. The accused were the sons of the sister of the deceased and PW-5. In a case of this nature where there is no evidence to establish that the witnesses were inimical to the accused, it would be erroneous to proceed on the assumption that they are inimical witnesses and therefore, their evidence requires corroboration. In fact, in the instant case, the witnesses being related to the deceased, must be anxious to get the real culprit punished. For exonerating the real assailants and involving their other relatives, there should be very strong reasons which are completely absent in this case. We are satisfied that the witnesses were not inimical to the accused and there was no reason for them to falsely implicate them. The accused, as noticed earlier, are the sons of the sister of the deceased and PW-5. The other eye-witnesses are also related to the deceased being their nephew and niece. In any event they would not have falsely involved their innocent relatives, if they had not seen the occurrence.

21. The Trial Court also disbelieved the witnesses on the ground that they have made improvements in the course of their deposition with a view to make the prosecution evidence consistent with the medical evidence. We find no basis to support this conclusion. Even in the first information report lodged by PW-5 it was clearly stated that he had witnessed appellant Nos. 1 and 2 giving blows with their respective weapons to the deceased. When cross examined in Court, he stated that appellant No. 1 gave one or two blows with his weapon. It is not expected of an informant to disclose all minute details of the occurrence in his report. It was implicit in his statement that several blows were given, whether each one of them gave two or more blows is hardly significant. The Trial Court appears to have unnecessarily suspected the veracity of the eye-witnesses whose evidence we have read and find no reason to disbelieve them.

22. Learned Counsel appearing on behalf of the appellants laid great emphasis on the fact that independent witnesses were not examined and that furnishes a sufficient ground to disbelieve the case of the prosecution. In this context he relied on two decisions of this Court Mathura Yadav alias Mathura Mahato v. State of Bihar and Harijana Thirupala and Ors. v. Public Prosecutor, High Court of A.P., Hyderabad. We may observe that no straight jacket formula can be enunciated regarding the necessity to examine independent witnesses. It is common experience that witnesses are not willing to depose in Court. In the judgment in this Court did not consider it safe to act on the uncorroborated testimony of the eye-witnesses and therefore, sought corroboration. In that context, it was observed that if independent witnesses had been examined, they would have corroborated the

testimony of the eye-witnesses. This was for the reason that the court was not prepared to act on the testimony of the eye-witnesses without corroboration. In the Judgment in this Court has reiterated the settled legal position. On an appreciation of the evidence on record, this Court held in the facts of that case that non examination of independent witnesses was a fact which was in favour of the defence. Each case must be decided on its own facts. As early as in Pandurang and Ors. v. State of Hyderabad this Court observed that however similar the circumstances, the facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. Moreover., in the instant case the fact that PW-17 the Investigating Officer who reached the place of occurrence at 12.15 A.M. found a group of villagers having assembled near the dead body is not itself sufficient to establish that all of them or many of them were eye-witnesses. The occurrence had taken place at about 8.30 P.M. and it was but natural for the villagers to assemble near the dead body. The I.O. had reached the place of occurrence at about 12.15 A.M. It cannot, therefore, be assumed that all those persons were eye-witnesses. That apart where the evidence of all the eye-witnesses is found to be reliable and truthful, the question of corroboration does not arise particularly, when it is found that the witnesses are not inimically disposed towards the accused though related to the deceased and in this case also to the accused.

23. We may notice that the eye-witnesses did not ascribe any role to the two acquitted accused who are the brothers of the appellants. This is indeed indicative of the fact that the eye-witnesses did not intend to falsely implicate innocent persons.

24. We have, therefore., considered the entire evidence on record and the reasoning in the two judgments before us. We find that the reasons recorded by the Trial Court while recording an order of acquittal are unreasonable and perverse. On the basis of the evidence on record it was not possible to take a view in favour of the accused. The High Court was therefore, justified in setting aside the order of acquittal.

25. We, therefore, find no merit in this appeal and the same is accordingly, dismissed.