

SUPREME COURT OF INDIA

Narayan Manikrao Salgar

Vs.

State of Maharashtra

Crl.A.No.159 of 2008

(Surinder Singh Nijjar and H.L.Gokhale,JJ.)

28.08.2012

JUDGMENT

Surinder Singh Nijjar,J.

1. By this common judgment, we propose to decide criminal appeals being Criminal Appeal Nos.159 of 2008, 803-804 of 2008 and 297- 298 of 2008. For the sake of convenience, the facts have been taken from Criminal Appeal No.159 of 2008. All the appellants have been convicted for offences punishable under Sections 148, 302 read with Sections 149, 341 read with Section 149, 323 read with Section 149 and sentenced to S.I. for one year, imprisonment for life and fine of Rs.100/-. It has also been directed that, in default, they shall undergo further S.I. for six months, in the event of nonpayment of fine, S.I. for one month and S.I. for one month respectively with a direction that all the substantive sentences would run concurrently. The aforesaid conviction and sentences have been recorded in the judgment of First Adhoc Additional Sessions Judge, Parbhani dated 20th August, 2005, in Sessions Trial No.180 of 1998. Separate appeals filed by the appellants have been dismissed by the High Court. The conviction and sentence recorded by the Sessions Court have been confirmed. The High Court also noticed that the original accused No.2 Manikrao and original accused No.10 Maroti had died during the pendency of the proceedings. Therefore, the appeal filed by them had abated.

2. We may now briefly notice the facts recorded by the High Court.

3. PW 9, P.S.I Mallikarjun Ingale, who was attached to Tadkalas Police Station as a P.S.I. was informed by PW 1 Sharda about an incident in which her husband had been viciously attacked by about 10 to 11 persons at about 6.30 pm on 9th March, 1998. He was told that PW 1 alongwith her infant son was riding on a motor cycle with her husband Khushal from Tadkalas to Phulkalas. The motor cycle was intercepted by accused No.2 Manikrao on the road from Tadkalas to Phulkalas near the farm house of Salgar. PW 1 informed PW 9 that her

husband was lying in an injured condition near the farmhouse of the assailants. On receipt of this information, PW 9 P.S.I. Ingale went to the scene of the offence alongwith some other police staff. PW 1 Sharda also accompanied the police party in a police jeep. The Police party headed by PW 9 alongwith PW1 and Jiwanaji PW7 on reaching the scene of crime noticed that Khushal was lying in a pool of blood in a very seriously injured condition. Khushal was taken to the Government Hospital at Tadkalas in a police jeep. However, as the medical officer was not available at the Hospital, the injured was sent to the hospital at Parbhani accompanied by one Head Constable and Constable in a police jeep. PW 9 recorded two entries in the station diary in this respect and thereafter went to General Hospital at Parbhani. By the time he arrived, the injured Khushal had already been admitted in the hospital. On enquiry PW 8 Mukashe informed the police that Khushal was in a fit condition to give his statement. The statement was duly recorded in the presence of the medical officer Dr.Mukashe, PW 8.

4. In his statement, Khushal stated that while he was going on the motor cycle to Tadkalas for buying some household goods, about 10 to 11 persons assaulted him near the farmhouse of Salgar. He stated that the cause of the assault was an altercation of accused No.2 on the previous day when accused No.2 had diverted the water which was meant for the land of Khushal to his own land. Khushal had in his statement named all the assailants. On the same night, at about 12.00-12.15 a.m., Khushal succumbed to the injuries and died. The statement given by Khushal has, therefore, been treated as a dying declaration. It was produced as Exh.94 at the trial. The High Court notices that the clothes of the deceased were seized vide memo at Exh.72 in the presence of PW 4 Hanumant. On his return to the Police Station, PW 9 registered the offence on the basis of statement made by Khushal vide crime No.14 of 1998 under Sections 307, 147, 148, 149, 341, 323 and 504 of IPC at 11.30 p.m. On receiving information about 12.15 a.m. on 10th March, 1998 that injured Khushal had died, the offence under Section 302 IPC was also added. Panchnama at the scene of offence was duly drawn in the presence of panchas at Exh.76. Blood stained stones, blood mixed soil, a black bead neckless, pieces of bangles of green colour, one wrist watch, two sticks, one pair of Kolhapuri slipper, wooden leg of cot, four stones of different sizes, one motor cycle were seized from the scene of offence. On the very same day, the accused were arrested. Blood stained clothes of accused Laxman and Kundlik were seized in the presence of panchas by seizure memo at Exh.80 and Exh.81 respectively. Subsequently, accused Narayan willingly pointed out during the course of the investigation to the place where the sickle (Katti) had been hidden. The memorandum statement of accused Narayan was recorded in the presence of the panchas. Narayan took the police and the panchas to the place where sickle (Katti) had been hidden under a heap of dried stock of grains. It was seized by memo Exh.83. The seized

articles were duly sent to the chemical examiner. The reports of the chemical analyzer were produced in court at Exh.96 and 97.

5. At the trial, PW 1 Sharda narrated the entire incident. She named all the accused. She also described how all the accused were inter-related and belonging only to one family of Salgars. She has given the details which were noticed by the trial court as well the High Court. It is not necessary to recapitulate the same. We may notice that she has narrated the incident which is consistent with the version recorded by the injured Khushal before PW 9 at the hospital. She narrates that when her husband returned home evening before the assault, he had told her about the scuffle that he had with accused No.2 because he had diverted the water of the canal to his own field. She also narrated about the obstruction of the motor cycle when she was going along with her husband and the infant from Tadkalas to Phulkalas for buying some household goods. She described how accused No.2 had obstructed the motor cycle and had asked Khushal about the quarrel on the previous day. He had also told Khushal that he was “acing a bit smart”. After the motor cycle was stopped, accused No.1 called the other persons from the farm house. All the accused came there armed with weapons like sticks, stones, sickle (Katti). They pushed PW 1 Sharda and deceased Khushal from the motor cycle. They started assaulting Khushal and she tried to shield her husband by lying on top of his body. However, she was pulled away by accused No.1. She was badly hit by accused No.1. She was kicked and also given fist blows. All the time Khushal and PW 1 were shouting for help. However, all the accused dragged Khushal away from the road to a spot in front of the farm of the accused. They continued assaulting her husband with their respective weapons. She points out that on hearing her shouts, Shivmurti Shirale, Shivhari Shirale and Ram Kubde came running to the place where the assault was taking place. On seeing them, the accused dropped their weapons and ran away. She has narrated also how she stopped an auto-rickshaw and went to the village Tadkalas to inform her father-in-law about the assault. Subsequently, in the same auto-rickshaw she went to the police station and informed the police about the incident. She further narrates how she accompanied her husband to the hospital at Parbhani. PW 2 Kishan is also an eye witness whose land is near the land of accused No.2 Manikrao. He has stated that at about 6.30 he was watering the groundnut crop in his field when he heard shouts coming from the farm house of the accused No.2 at about 6.30 p.m. He along with Shivmurti who was also watering his crop in the adjoining land went to the farm house, they saw that Khushal was being viciously assaulted by all the accused. He also narrates the entire incident as described by Khushal in the statement given to PW 9. PW 7, Jiwanaji is the father of deceased Khushal. He is not an eye witness. He was informed about the incident by his daughter-in-law. He closed his shop and he was on the way to the place where Khushal had been assaulted when he noticed that the police jeep coming on the road. He travelled in the police jeep to the scene of the incident. He states that Khushal was

lying in a pool of blood in front of the farm house of the accused. He states that he had asked Khushal about the incident when Khushal had informed him that accused No.2 to 11 had assaulted him. He then narrates how Khushal had been taken to the hospital and about his death. PW 9, PSI Ingale, also narrated the entire incident, as noticed above. The prosecution also examined PW 3, Dr. Chaudhari, who had conducted the post-mortem examination. He had noticed the following external injuries :-

- “1. Contused lacerated wound over left wrist posteriorly 3 x 3 x 2 cms. Blood clots present.
2. Contused lacerated wound right knee anteriorly size 8 x 4 x 1 cms. Blood clots present.
3. Contused lacerated wound over right thigh medial aspect size 5 x 4 x 2 cms., blood clots present.
4. Contused lacerated wound right leg anteriorly size 2 x 2 x 1 cms. Blood clots present.
5. Contused lacerated wound left leg 3 x 2 x 1 cms. Blood clots present.
6. Contused lacerated wound left leg calf 6 x 2 x 1 cms. Blood clots present.
7. Contused lacerated wound left plam thenar aspect 6 x 3 x 2 cms. Blood clots present.”

6. According to this doctor, all these injuries were caused by hard and blunt object and the injuries were caused within the last 12 hours. He had noticed the fracture of middle third right humerus, fracture of lower third radius ulna, fracture of lower third of right tibia and fracture of right patella. On internal examination, he noticed that one contusion on scalp right parietal region size 3 x 3 cms. On internal examination of scalp he found meninges contested and subdural of haematoma of 3 x 2 cms. Brain was found congested. He, therefore, opined that all the injuries were ante-mortem including the internal injuries. He also opined that the cause of death was due to subdural haematoma with pulmonary embolism with haemorrhagic shock due to multiple fractures. The post mortem report was produced as Exh.70.

7. PW 8, Dr. Rajeshwar was the medical officer who had been assigned the duty of casualty on 9th March, 1998 from 8 pm to 8 am. He also states that on that night Khushal was admitted in the Civil Hospital Parbhani. He was having multiple injuries with cerebral concussion with multiple fractures with peripheral circulatory failure. He points out that he was brought by police constable and was referred by P.S.Tadkalas. He also states that PSI of Police Station Tadkalas had contacted him for recording the statement of the injured. He

examined the patient and permitted the PSI to record the statement of the injured. He categorically stated that the PSI recorded the statement. He was present while the statement of the injured was being recorded. After the statement was recorded, he examined the patient and gave the certificate that the patient was conscious to give the statement. He identified the endorsement on the statement which was Exh.89.

8. Relying on the aforesaid evidence, the Sessions Court convicted all the accused, as noticed above. The High Court re-examined the entire evidence and did not find any reason to differ with the findings recorded by the trial court.

9. We have heard the learned counsel for the parties.

10. Learned counsel for the appellant has submitted that the case of the prosecution is unbelievable and deserves to be discarded. It is submitted that the ocular evidence is completely inconsistent with the medical evidence. It is pointed out that the whole story has been concocted. The entry made in the station diary about the incident on the basis of the statement made by PW 1 was never produced before the court. PW 9 PSI did not register the FIR even when he had gone to the scene of the crime. It is further pointed out that the dying declaration cannot be relied upon. According to PW 9, it was recorded between 8.20 p.m. to 8.30 p.m. However, PW 8 says that Khushal was admitted at 8.55 p.m. The record says that the certificate of the doctor stating that the injured was fit to give statement between 10 p.m. to 10.10 p.m. The FIR came to be recorded at 11.30 p.m. and the injured died at 12.15 to 12.30 a.m. According to the learned counsel for the appellant, the whole story is concocted. It has been put forward only due to enmity between the family of the accused with the family of the deceased. Learned counsel has also pointed out that the deceased was in fact an undesirable character. Show cause notice has been issued to him as to why he should not be externed. According to the learned counsel, Khushal was actually riding the motorcycle when he was under the influence of liquor. He lost control of the motorcycle, as a result of which all the three riders fell off the motorcycle. The injuries suffered by them were due to the motorcycle accident. Learned counsel further pointed out that the conduct of the PW1 is wholly unnatural. According to her, after the assault she left her husband alone in a seriously injured condition and went away in a auto rickshaw. She also left her infant child on the road. According to the learned counsel, this is not expected from a wife whose husband is fighting for his life due to fatal injuries. It is further pointed out that all the witnesses have insisted that Khushal had been assaulted with the sickle (katti) but the injuries sustained by him were contused and lacerated wounds. They have pointed out the cross-examination of the PW 3 Dr.Kalidas, who had conducted the post mortem on the dead body of Khushal. The doctor had clearly stated that he cannot specify the external injuries corresponding to the injury mentioned in Column No.19. This injury was so serious that there was formation of blood on

the brain which led to formation of pressure on the brain. He had further stated that due to formation of blood on the brain and haematoma a person becomes unconscious. Contused lacerated wounds can be caused by hard and blunt object and also by a fall on the ground. Learned counsel for the appellant placed heavy reliance on the observations that in case of major accident such types of injuries are possible. This doctor has further stated that injuries in column 17 are possible if a person is driving the vehicle in drunken stage and the motor cycle skidded and it fell on one side and the rider falls on the other side. The appellants had also emphasized that none of the witness had seen any specific part on which the injuries were inflicted with Katti. Since according to the appellant, the medical evidence is inconsistent with the actual evidence, the entire prosecution case needs to be discarded.

11. Attacking the credibility of PW 1 and 2, the appellants submitted that PW 1 did not name any of the accused when she went to the police station though she was present there from 7 p.m. till 7.30 p.m. She also did not mention the names of the accused while she was travelling in the jeep with the police. She admitted in the cross examination that when her husband has been assaulted in front of the farm house of the accused, she could not see as to who had inflicted which injury. It is further pointed out that although she claims that she had been badly assaulted by accused No. 1 yet she did not get her medical examination.

12. The evidence of PW2 is sought to be discredited on the sole ground that he happens to be related to the deceased. Lastly, it is submitted that the appellants have been convicted with the aid of Section 149. This according to the appellants is unsustainable. As there was no occasion for all the accused to come together at that particular time. All the accused are living at different places and there is no evidence of any common intention. It is further submitted by the learned counsel that even if there was a common intention, it was not to kill Khushal. At best it could be said that accused had come with the common intention of giving him a good thrashing because of the incident that occurred on the previous day. Therefore, at best, the appellant could have convicted for the offence under Section 326 IPC and not 302 IPC.

13. On the other hand, learned counsel for the State of Maharashtra has submitted that the trial court as well as the High Court, upon reconsideration of the entire evidence, has concluded that the involvement of all the accused in the assault on Khushal has been proved beyond reasonable doubt. This Court, in exercising the powers under Article 136 of the Constitution of India, would not re-appreciate the evidence and substitute its own opinion for the findings recorded by the trial court and the High Court. It is only in very exceptional circumstances when a decision shocks the conscience of this Court that powers under Article 136 would be invoked. Learned counsel pointed out that in this case there is cogent evidence which is sufficient to support the conclusions recorded by the trial court as well as the High

Court. Learned Counsel pointed out to the evidence of the eye-witness PW 1 Sharda, wife of the deceased, and PW 2 whose land virtually adjoins the land of the accused. Both these witnesses had given consistent eye-witness account. They were present when the assault had actually taken place. The evidence of the wife cannot be discarded as she herself is an injured witness. The evidence of these two witnesses corroborates the evidence of each other on three crucial aspects: (i) Genesis of the dispute (ii) the manner in which the assault took place and (iii) events that took place after the assault. He points out that both these witnesses were subjected to lengthy cross-examination but the evidence remained unimpeached. The ocular evidence of the two eye witnesses is consistent with the statement made by Khushal firstly before his father PW 7 Jiwanaji. Secondly the statement which was recorded at Parbhani Hospital in the presence of PSI Ingale PW 9, and Dr. Mukashe, PW8. The statement made by Khushal, having been certified by the Doctor, PW 8 to be made when he was conscious to make a statement, cannot be either disbelieved or discarded. Both these dying declarations are consistent with the ocular evidence. The third most important piece of evidence is the recovery of various items at the instance of the accused. The sickle allegedly used by the appellant Narayan was stained with human blood. Similarly, clothes of all the accused which were taken into custody by the police and seized were also stained with blood. The weapons used by the appellant were also stained with blood. Learned counsel further pointed out that none of the accused was able to explain any of the evidence appearing against them in the statement recorded under Section 313 of the Cr.P.C, 1973. Learned counsel further pointed out that the medical evidence clearly shows that there are so many injuries caused to Khushal that his death resulted due to shock and hemorrhage. He submitted that none of the submissions made by the learned counsel for the appellants can be supported by the evidence on record. It is further pointed out by the learned counsel for the State of Maharashtra that all the appellants have been convicted under Section 302 read with Section 149 IPC. The offence under Section 149 is a specific and substantive offence. It is pointed out that for the purpose of application of Section 149 IPC, the prosecution had to prove the presence and participation of the accused in an unlawful assembly. This is duly proved by the fact that all the accused came together armed with various weapons which were used to assault Khushal. He further submits that Section 149 which fastened the criminal law on the accused does not require the prosecution to prove any overt act against any particular accused.

14. We have considered the submissions made by the learned counsel for the parties. At the outset, it must be noticed that the Trial Court as well as the High Court, on due appreciation of the evidence, have found all the appellants guilty of the offences punishable under Section 302/149 IPC. The acquittal of accused No.9 and accused No.11 of all the charges clearly demonstrates the care and caution with which the Trial Court as well as the High Court have examined the evidence. Even though the powers of this Court under Article 136 of the

Constitution are very wide, but it would not interfere with the concurrent findings of fact, save in exceptional circumstances. It would interfere in the findings recorded by the Trial Court as well as the High Court if it is found that the High Court has acted perversely and/or disregarded any vital piece of evidence which would shake the very foundation of the prosecution case. In other words, this Court would exercise the powers under Article 136 where the conclusion of the High Court is manifestly perverse and unsupportable on the evidence on record.

15. As noticed above, we have been taken through the evidence by the learned counsel of both sides. We are unable to agree with the submissions made by the learned counsel for the appellants that the appellants have been falsely implicated, or that the assault did not take place in the manner projected by the prosecution.

16. PW 1, Sharda has clearly stated that on the fateful day, she alongwith her infant child was riding on the motorcycle which was being driven by her husband. She has clearly stated that her husband was compelled to stop the motorcycle as accused No.2 had come and stood in the way. It is significant that the incident had taken place firstly on the road adjacent to the farm of the accused person, secondly Khushal was dragged by the accused person to a place in front of the farm of the accused persons. The assault was continued by all the accused with their respective weapons. This narration of the events was not shaken when she was subjected to a lengthy cross-examination by different learned counsel for all the accused. We do not find much substance in the submission that her evidence needs to be discarded as she did not name each and every accused person at the first opportunity, when she went to the Police Station. Her plight at such a situation is not difficult to imagine. She had done whatever was feasible to report the matter to her father-in-law. She then proceeded to inform the police, without wasting any time. She has narrated the entire sequence of events as a witness in Court. She has given the precise inter-se relationship of all the accused. However, we find substance in the submission of Mr. Sudhanshu S. Choudhari that even Sharda did not think that her husband was so seriously injured that he may die. Otherwise, her first impulse would have been to move him to the hospital or arrange for a doctor. She was aware that he had been injured only on arms and legs. But this does not detract from the fact that the assault had taken place as narrated by her. The fact that she could not indicate the precise injury caused by each of the accused is quite understandable as her husband was being attacked by a large group of people. In such a situation, it would perhaps be humanely impossible for anyone to indicate the precise injury caused by each one of the accused/appellant. We, therefore, find no infirmity in the ocular evidence given by Sharda PW1.

17. Furthermore, her evidence is duly supported by PW 2, who had come running to the scene of the crime on hearing the commotion at the farmhouse of the accused persons. It is

noteworthy that on seeing PW2, all the accused are stated to have discarded their weapons and ran away. The evidence of this witness also could not be shaken during cross-examination. It has further come in evidence that on receiving information about the assault on his son, PW7 promptly reached the scene of the crime. Luckily on his way he was picked up by the police jeep which had been brought by Sub-Inspector Ingale PW9 for investigation of the crime. On reaching the scene of the crime, both PW7 and PW9 have stated that they found the husband lying severely injured in a pool of blood. Both the witnesses have also fixed the spot in front of the farm of the accused persons. PW1 had clearly stated that she had tried to save her husband by lying on his body but she had been pulled away by accused No. 1 who had then proceeded to assault her. She had also further stated that the accused had dragged her husband by the collar of his shirt to a spot in front of the farmhouse of the appellant. They continued to assault her husband with the respective weapons. The assault on Khushal in front of the farmhouse is further supported by the evidence of PW2 who has given a corresponding narration of the assault. Therefore, the evidence of PWs.1 and 2 being consistent cannot be lightly brushed aside. PW 7 further goes on to state that on his arrival, he inquired from his son as to who had caused the injuries. The son had clearly stated that family member of Salgar had assaulted him. The statement made by the injured before PW7 is further strengthened by the statement that was recorded subsequently at Parbhani Hospital by PW9 in the presence of PW8. The statement clearly indicates that the incident took place exactly as narrated by PW1. The statement has been recorded at the time Khushal was certified to be conscious and in a fit medical condition to make a statement. The dying declaration being consistent and clear also cannot be discarded.

18. The medical evidence would also indicate that Khushal had been very severely beaten. But at the same time, it cannot be said to be an assault with intent to kill. Firstly, all the accused are armed with sticks and bricks etc. In our opinion, there is no evidence to indicate that Narayan was holding a “Katti” (sickle). It is noteworthy that Khushal had sustained external injuries on the left wrist, right knee, right thigh, right leg, left leg, left palm as well as head. There was hardly a bone in his body that was not broken. The number of injuries caused to Khushal clearly shows that the assault was premeditated. All the injuries were lacerated and caused by blunt weapons. None of the witnesses could say if any injury had been caused by Katti (sickle). According to Dr. Chaudhari, PW 3, the head injury could be the result of a rider falling from the motorcycle.

19. In our opinion, the appellants have failed to point out any infirmity in the conclusions recorded by the Sessions Court as well as the High Court with regard to the assault. On this issue, both the judgments do not suffer from any such perversity, which would shock the conscious of this Court. In fact, in our opinion, the entire prosecution evidence when

considered from all angles leads to a conclusion, beyond reasonable doubt, that Khushal was a victim of a premeditated assault by all the appellants with their respective weapons.

20. However, given the nature of weapons used, the location of the injuries and the nature of the injuries caused, it would not be possible to hold that the appellants shared a common object of causing the murder of Khushal. In our opinion, the accused had merely decided to teach him a lesson for having a quarrel with PW 2 on the previous day. They, therefore, appear to have made up their mind to give him a good thrashing for acting “a bit smart”. In such circumstances, it would not be possible to uphold the conviction of the appellants under Section 302 IPC. However, at the same time, the nature of injuries cannot be said to be superficial. It has come in evidence that numerous bones in the legs and arms of Khushal had been broken. The injuries being grievous in nature, the offences committed by the appellants would fall within the mischief of Section 326 IPC.

21. In view of the above, the appeals are partly allowed and the conviction of the appellants under Section 302 is set aside. Instead thereof, they are convicted under Section 326/149 IPC. For the offences under Section 326/149 IPC, the appellants are hereby sentenced to undergo Rigorous Imprisonment for seven years. The conviction and sentence recorded by the courts below under any other sections of IPC are maintained.

22. The appeals are partly allowed, as indicated above.