

**SUPREME COURT OF INDIA**

Prabhat @ Bhai Narayan Wagh

Vs.

State of Maharashtra

Crl.A.No.72 of 2008

(K.S. Radhakrishnan and Dipak Misra)

01.05.2013

**JUDGMENT**

**K. S. RADHAKRISHNAN, J.**

1. Appellants herein, the original accused A-1, A-3 and A-7, were charge- sheeted along with certain other accused persons for the offences punishable under Section 452, Sections 341, 302 IPC read with Section 34 IPC etc. The trial Court acquitted all the accused persons in Sessions Case No. 7 of 1989 vide its judgment dated 25.9.1989.

2. On appeal by the State, the High Court set aside the acquittal of the appellants of the offences under Section 452 read with Section 34 IPC and convicted and sentenced each one of them with a sentence of 1-2 years and fine with default sentence. The High Court also sentenced them for offences punishable under Section 302 read with Section 34 IPC to suffer imprisonment for life and pay a fine of Rs.5,000/-. The sentences were ordered to run concurrently. Aggrieved by the same, appellants herein have come up with this appeal.

3. The prosecution version is as follows:

Deceased Sanjay Gaonkar and his two friends, namely, Anil Raut - PW8 and Rajan Angane - PW15 were chit-chatting in front of Kishor Cycle Mart at Bharad Naka, Malwan. At that time, the complainant Suryakant Ramchandra Phansekar – PW4, a resident of Malwan having his house in an area known as Vaiery, had gone to a saloon situated just in front of Kishor Cycle Mart, which was owned by Vijay Chavan – PW3. PW4 used to go to that saloon

regularly for reading newspaper. While the complainant was at that shop, at about 7.30 pm on 19.10.1987, he heard a voice of 'run run'. He came out of the shop and found that the deceased Sanjan Gaonkar was running towards the house of Shobhana Parkar, which was very near to the said saloon and the appellants 1 to 3 were chasing him with weapons like sword and gupti in their hands. Deceased Sanjay Gaonkar was about to enter the house of Shobhana Parkar when original accused no. 1 gave a blow with a weapon like Gupti on the neck of the deceased and he fell on the ground. Other two accused persons assaulted the deceased with weapons. PW4, noticing the above incident, went to Malwan police station and informed them of the incident and, on request, he gave the complaint in writing. Police rushed to the place of incident and found Sanjau Gaonkar lying in a pool of blood just inside the door of the house of Shobhana Parkar. The police, later, registered the offence at GR No. 81/87.

4. The inquest panchnama (Ex. 20) noticed several incised injuries on the body of the deceased. The post-mortem report Ex. 48 and the report column no. 17 noticed the injuries inflicted on the deceased. Having noticed the post-mortem report and evidence on record, in our view, the trial Court as well as the High Court have correctly come to the conclusion that the death of Sanjay Gaonkar was homicidal.

5. The prosecution, in order to bring home the guilt, had examined as many as 20 witnesses, out of which PWs 4, 8, 15 and 16 are the eye witnesses. The trial court noticed various discrepancies, contradictions and improvements in the evidence rendered by the eye witnesses and held that the prosecution had failed to prove that, at the relevant time, there was an unlawful assembly of five or more persons and that the accused persons had committed offences punishable under Sections 147, 148 and 149 IPC. The trial Court had also commented upon the faulty investigation conducted by the police and ultimately, gave the benefit of doubt to all the nine accused persons and they were acquitted.

6. The High Court, as already indicated, sustained the acquittal of rest of the accused persons, but convicted and sentenced the appellants. The High Court also concurred with the view taken by the trial Court that the prosecution had failed to prove that there was an unlawful assembly of five or more persons and, hence, there was no question of accused persons constituting a unlawful assembly or their being members of the unlawful assembly. The High Court also, therefore, held that there is no evidence to show that the accused had committed the offences punishable under Sections 147, 148 and 149 IPC. The High Court, however, while assessing and evaluating the evidence of the eye witnesses (PWs 4, 8, 15 and 16)

took the view that the trial Court had given undue importance to the minor discrepancies, contradictions in the evidence of the eye witnesses and discarded them. The High Court took the view that there are no reasons to discard the evidence of the eye witnesses and found the appellant guilty of the offences punishable under Section 302 read with 34 IPC and each one of them was directed to suffer life imprisonment with fine with a default clause. The amount of fine, if paid, 50% of that was directed to be paid to the heirs of the deceased Sanjay Gaonkar.

7. Shri V. Giri, learned senior counsel appearing for the appellants, submitted that the High Court has committed a grave error in reversing the order of acquittal passed by the trial Court. Learned senior counsel submitted that there is sufficient material, in this case, to show that the views expressed by the trial Court were not unreasonable or perverse. Learned senior counsel submitted that the High Court ought to have noticed that, on the same set of evidence, other six accused persons were acquitted, which was affirmed by the High Court and there is no reason to take a different view so far as the present accused persons are concerned. Learned senior counsel submitted that the discrepancies and contradictions pointed out by the trial Court in the evidence rendered by the eye witnesses are crucial and cannot be brushed aside. Learned senior counsel also referred to the evidence of PW6 and submitted that he had not given a clear version of the deceased Sanjay Gaonkar going to the residence of Shobhana Parkar. Learned senior counsel also referred to Ex.27 and submitted that the same was in fact not the FIR, but Ex.28 appeared to have been given by the complainant for the first time. Learned senior counsel submitted that there is sufficient indication to show that the same was fabricated and even if the same is accepted, learned counsel pointed out, that the names of all the accused persons were not mentioned therein except that of the first accused and that no overt act had been attributed to him.

8. Shri Shankar Chillarge, learned counsel appearing for the State, submitted, on the other hand, that there is no reason to disturb the findings recorded by the High Court and that the discrepancies and contradictions pointed out by the trial Court are of very minor nature and not sufficient to discard the evidence rendered by the witnesses. Learned counsel submitted that the prosecution had succeeded in proving that the eye witnesses were present at the scene of occurrence and the versions given by them are trustworthy and reliable.

9. We have heard both the parties at length and also gone through the oral and documentary evidence, especially the evidence of the eye witnesses PWs 4, 8, 15 and 16. Complainant PW4, it may be noticed after the incident, had gone to the

Malwan police station and the Head Constable who was present at the police station asked the complainant to give his complaint in writing. PW4, therefore, gave Ex.28, wherein he had stated the presence of Divakar Joshi, who entered the house and assaulted the complainant's friend Sanjay Gaonkar and he also saw Bhai Wagh and other 5-6 persons and they were having sword, gupti in their hands and they had assaulted Sanjay Gaonkar, which is reflected in Ex.28 dated 19.10.1987. Ex. 54 and Ex.58 dated 19.10.1987 give a different version. Ex. 27 has been treated as the FIR, PW4, of course, named only A1, A3 and A7, not all. In Ex.28, PW4 had not named A3 and A7.

10. We find discrepancies in the version given at the very initial stage. The discrepancies and contradictions noticed by the trial Court were found to be of minor in nature by the High Court, but in our view, there is serious flaw in the conduct of the case by the prosecution and the discrepancies and contradictions pointed out by the trial court cannot be ignored as minor. No explanation is forthcoming as to why Shobhana Parkar was not examined in this case. Even, according to the prosecution, Shobhana Parkar had also received injuries on her arm when she tried to intervene. The prosecution story is that the deceased Sanjay Gaonkar ran to the house of Shobhana Parkar and that he was attacked just inside the door of the house of Shobhana Parkar. If that being so, in our view, Shobhana Parkar, who herself was injured and tried to intervene, was a crucial witness. Non-examination of Shobhana Parkar as well as the contradictory versions in Ex.28 and Ex.27 as well as the discrepancies and omissions pointed by the trial court, create a dent in the prosecution story.

11. Having considered the facts and circumstances of the case, in our view, the view expressed by the trial Court cannot be said to be unreasonable or perverse, warranting disapproval, especially when the trial Court had acquitted rest of the six accused persons, which was affirmed by the High Court on the same set of evidence. Taking into consideration all the facts and circumstances of the case, in our view, the appellants are entitled to the benefit of doubt.

12. Accordingly, the appeal is allowed and the appellants are acquitted of all charges and the conviction and sentence awarded to them by the High Court are set aside. They are ordered to be let free, unless wanted in any other case.