(1969) 08 SC CK 0061

Supreme Court of India

Case No: Criminal Appeal No. 102 Of 1967

Satwara Chhagan Karsan and Others		APPELLANT
	Vs	
State of Gujarat		RESPONDENT

Date of Decision: Aug. 13, 1969

Citation: (1969) 3 SCC 203 : (1970) 1 SCC(Cri) 59

Hon'ble Judges: S. M. Sikri, J; K. S. Hegde, J; G. K. Mitter, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

S.M. SIKRI, J.-Eight persons, namely : (1) Satwara Chhagan Karsan, herein- after referred to as accused No. 1, (2) Satwara Makan Karamshi, hereinafter referred to as Accused No. 2, (3) Satwara Prema Khangar, hereinafter referred to as Accused No. 3, (4) Satwara Rava Karshan, hereinafter referred to as Accused No. 4, (5) Satwara Ramji Chhagan, hereinafter referred to as accused No. 5, (6) Satwara Popat Khangar, hereinafter referred to as accused No. 6, (7) Satwara Naran Karamshi, hereinafter referred to as accused No. 7, and (8) Satwara Rai Rambha Laxman, hereinafter referred to as accused No. 8, were committed to Sessions on various charges under Sections 447, 147, 148, 302, 307, 326, 324, 325 and 34 and 149, Indian penal code In brief the prosecution case was that these eight persons alongwith three others assaulted a number of persons on 10/01/1965 at about 7 a. m. at village Naya Amrapur, Taluka Halvad, District Surendranagar, as a result of which Harji Amba died having received six injuries including incised and penetrating wounds. Bhikha Manji received three injuries, two transverse incised wounds and one oblique penetrating wound ; Premji Shiva received three injuries, two transverse incised wounds and one transverse wheal mark ; Talshi Baval received three injuries, one incised wound on the head, an injury on left auricle of left ear, and diffused swelling and deformity of left forearm ; Thakershi Bhikha received as many as nine injuries including incised wounds and penetrating wounds; and Dharamshi Shiva received

three injuries. In other words, six persons on the complainant''s side received 27 injuries. On the side of the accused two injuries were alleged to have been received by Savji who was a minor and was tried separately alongwith two other minors.

2. The prosecution produced nine eye-witnesses to the occurrence including five injured persons and Naran Amba, P. W. 6, and Vella Ganda, P. W. 3. These seven witnesses supported the prosecution story. The two alleged eye-witnesses, Lala Vella, P. W. 12, and Ranchhod Hamir, P. W. 14, did not support the prosecution case fully.

3. It is admitted that there was enmity between tire party of the accused and the party of the complainants, but the immediate cause of the occurrence seems to have been a dispute over the right of way over an open land lying between the fields of Shiva Manji and Talshi Baval. Accused No. 1 claim- ed that he had a right of way through this land to his field which lay to the south of the field of Shiva Manji and Talshi Baval. Premji Manji, son of Shivaji Manji objected to accused No. 1 using the open land for going to his field. Premji had complained to the village Panchayat regarding this use by accused No. 1 of the open land for access to his field. On 8/01/1965, the Panchayat met in the evening and after hearing both the parties the Sarpanch, Lala Vella, asked both the parties to get the maps which were with the Talati of the village to find out the correct position about the right of way. Premji went to the Talati of Naya Amrapur on 9/01/1965, but he could not be contacted.

4. On the morning of 10/01/1965, it is admitted by the prosecution witnesses and has been found by both the courts below that Premji and his brother Dharamshi Shiva had gone to the field to construct a nala to prevent the cart of accused No. 1 from proceeding along the cart track. According to the prosecution what happened was as follows :

5. The eight accused and three other co-accused came near the field of Premji along the disputed land. Some of them were in the bullock cart which was driven by Savji, son of accused No. 1, while the others were walk- ing behind the cart. When these eleven persons came near the field of Premji, he asked them not to proceed further. Accused No. 1 replied that he had aright to proceed further towards the South, and thereupon accused No. 1 and the other accused started inflicting blows on Premji and Dharamshi. At this stage none of the injured persons except Premji and Dharamshi were present at the site of the occurrence. Talshi Baval, having seen the assault from his field ran to the rescue of Premji and Dharamshi, and he was assaul- ted by the accused and fell on the ground injured. Bhika Manji, a cousin of Premji, who was working in his own field with his son Thakarshi Bhikha, saw the assault and they went there and were assaulted. Naran Amba and his brother Harji Amba also saw the attack on Premji and Dharmshi and they ran to the rescue of Premji and Dharamshi, and they were assaulted and it is at this stage that Harji Amba received fatal injuries. Naran Amba went to fetch a bullock cart and also medical aid. Then the accused left in their cart.

6. The learned Sessions Judge disbelieved the eye-witnesses and acquitted all the eight accused. The State of Gujarat filed an appeal against acquittal and the High court admitted the appeal as against accused Nos. 1,2,3,5 and 7 and dismissed it as against accused Nos. 4, 6 and 8. Accused Nos. 1, 3 5 and 7 were convicted by the High court under Section 324, Indian penal code, and accused No. 2 was convicted under Section 325, Indian penal code, and they were sentenced to various terms of imprisonment. Accused No. 5 was also convic- ted under Section 323, Indian penal code

7. The learned counsel for the accused urges that the High court has not displaced all the findings of the learned Sessions Judge. He says that the Session Judges found that : (1) the F. I. R. was belated and the story was cooked up ; (2) that the complainants were the aggressors; and (3) that the accused No. 1 had a right of private defence, and these findings have not been expressly dealt with.

8. The learned counsel has taken us through the evidence and in our opinion it is not a case which calls for interference. The High court has carefully scrutinised the evidence of eye-witnesses and believed the witnesses to the following extent. Regarding Premji, the High court held :

"THUS Premji''s evidence is not inconsistent with the medical evidence on record regarding the injuries on Premji and to the extent that that evidence is corroborated by medical evidence we are prepared to accept Premji''s version that he had been assaulted by accused Nos. 1 and 3, by accused No. 1 with a spear and by accused No. 3 with a ''dharia'', causing him different injuries. We wish to make it clear that because Premji had received injuries at the place of the incident, his identification of the persons who inflicted the injuries on himself can be safely accepted and it is only to that extent that we accept Premji''s evidence. We hold on Premji''s evidence that Premji had received injuries in the course of the incident and that accused No. 1 had dealt a spear-blow to him and accused No. 3 had dealt him a ''dharia'' blow ; that other persons also received injuries in Premji''s field can be accepted in the light of other evidence which we will discuss later on."

9. No reliance was placed on the evidence of Dharamshi Shiva. Regarding Bhikha Manji, the High court field :

"BHIKHA Manji is the brother of Shiva Manji and appears to have been closely associated with the family of Shiva and Premji and except for the purpose of identification of his own assailants, we do not purpose to rely upon Bhikha''s evidence regarding the incident..... .....On Bhikha''s evidence, we hold that accused Nos. 1 and 7 had inflicted injuries by means of spears on him and in view of Bhikha''s injuries, it is clear that he was present at the scene of offence when the incident occurred and had received injuries in the course of the incident and apart from the identification of his own assailants and that too to the limited extent mentioned above, we prefer not to rely on his testi- mony."

10. The High court felt it to be safe not to rely upon Thakershi''s evidence even for the limited purpose of identification of his own assailants.

11. Nanu alias Talshi Baval, P. W. 15, was held by the High court to be a highly interested witness and except for the purpose of identification of his own assailants, the High court found it not possible to rely on his testi- mony. On his testimony the High court held that accused Nos. 2, 3 and 5 had inflicted injuries on him by their respective weapons.

12. The High court further relied on the evidence of Vela Ganda, P. W. 13. He was present in the field of Talshi Baval alongwith Talshi himself and Talshi''s son at the time of the incident. The High court held regarding this witness:

"NO contradiction from his statement before the police has been pointed out and though Vela is an interested witness in the sense that his uncle Talshi had also joined Premji in constructing the ''Nala'' across the cart-track and Vela had gone to Talshi''s field in order to help Talshi in his work. Vela himself is not a partisan witness to the same extent as the rest of the eye-witnesses in this case. Moreover, Vela has not tried to exaggerate. He had not made any attempt to identify the assailants of the different injured persons and has merely identified accused Nos. 1, 3 and 5 as the assailants of Harji Amba. From the evidence of Vela Ganda, no serious infirmities emerge and, in our opinion, we can rely on the testimony of Vela Ganda for the purpose of holding that there were 11 persons and we rely on the testimony of Vela to the extent to which that evidence is corroborated by independent circumstances. These independent circumstances are that injuries which could have been caused by spears, dharias and sticks were found on the bodies of different injured persons on the side of the prosecution. Fur- ther the injuries which he has mentioned as having been inflicted on Harji Amba were also found at the time of the post-mortem examination. We, therefore, hold on the testimony of Vela Ganda that a crowd of 11 persons, amongst whom were accused Nos. 1,2,3,5 and 7, had come near the field of Premji Shiva and members of that crowd were armed with weapons such as spears, dharias and sticks. On Vela Ganda''s evidence we hold that accused No. 1 had inflicted an injury on Harji with a spear. Accused No. 3 had inflicted an injury on Harji''s right hand with a ''dharia'' and accused No. 5 had inflicted two spear wounds on Harji, and on Vela''s evidence we hold that after the cart, which had come with the party of the accused came near Premji''s field, there was some exchange of words and then different persons on the side of the accused began-assaulting first Premji and thereafter injuries were inflicted on Dharamshi. Talshi Bhikha and Thakershi and lastly when Harji and Naran saw the incident, Harji came to the field of Premji and there he was assaulted by at least accused Nos. 1, 3 and 4."

13. On these findings the High court held that it was not possible to hold that the accused persons had come there with a pro-determination or with the common object of forcing their right of way along the cart-track. The High court observed that the presence of the women-folk indicated that accused No. 1 and the members

of his family and relations were most pro- bably proceeding to the field of accused No. 1 on a peaceful purpose, and further there was no evidence whatsoever either from the words spoken or from any other circumstances indicating that a common object was evolved at the site after accused No. 1 and his party came up to the spot where the ''nala'' was constructed. The High court, therefore, held that Section 149, Indian penal code, could not apply.

14. The High court held accused No. 1 guilty under Section 324, Indian penal code, for inflicting injuries on Premji, Bhikha and Harji by means of a spear. Accused No. 2 was held guilty under Section 325 because he caused the fracture of the left ulna bone of Talshi. Accused No. 3 was convicted under Section 324, Indian penal code because he was held to have inflicted injuries on Premji, Talshi and Harji with a ''dharia''. Accused No. 5 was held guilty under Section 324 because he inflicted injuries on Harji with his spear and under Section 323 for voluntarily causing hurt to Talshi with the handle of his spear. Accused No. 7 was convicted under Section 324, Indian penal code, because he was found to have inflicted an injury on Bhikha by means of a spear.

15. There is no doubt that the F. I. R was belated and it is for this very reason that the High court has scrutinized the evidence of the eye wit- nesses very carefully. We are unable to agree with the learned counsel for the appellants that the whole prosecution case can be thrown out because the F. I. R was belated. There is no doubt that five persons were injured and one killed during the fight and the nature and the number of injuries indicates that the party of the complainants was not waiting there fully armed to prevent the party of the accused from proceeding on the disputed track. It may be that the accused had not come there with the intention of deliberately forcing their way, but it cannot be said that this eventuality. was not in their mind for, as it turned out, they were fairly well armed and if their only intention was to go to the field they would not have been so heavily armed.

16. The learned counsel then urges that the accused No. 1 had a right of private defence of property. Section 99 of the Indian Penal Code, inter alia, provides that "there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities". Effect must be given to this provision. This court in Parbhati v. The State of Punjab observed:

"IT has been found that the fence was put up three or four days before the day of occurrence. There was no imiaediate emergency which called for the removal of the fence by the appellants. It is true that going to a civil court or a criminal court would take time, but even so the law enjoins that if there is time to have recourse to public authorities then those public authorities must be approached first."

17. On the facts of this case also we cannot possibly hold that the accused No. -I bad a right of private defence of property. Assuming that the right of way is ''property'' and assuming again that accused No. 1 had a right of way, he was not entitled to

enforce his way with arms because there was ample opportunity to have recourse to law to enforce his alleged right. It has not been shown that; there was any extreme urgency for him to have gone to his field on that day. The matter was being discussed by the Panchayat and if the Panchayat had decided against accused No. 1 he could have taken the matter to court. We are not convinced that the accused did not have time to have recourse to the protection of public authorities.

18. It is then contended that the accused had a right of private defence of person. But the learned counsel has not been able to point out any circumstance, which would establish that they had any right of private defence of person. If any member of the accused party had received serious injuries or if it had been shown that the complainants were carrying spears and dharias in their hands, it might have been possible to consider this defence. But there is nothing on the record to show that the accused bad any weapons like spears and dharias in their bands. As a matter of fact the defence story was rejected by the Trial court in these words :

"IT is not difficult to see that the defence has contrived to put forward the theory that Savij and Dhanji were the only persons who took part in the incident and further that they acted in self-defence, in order that such a theory may ultimately prove of benefit to the present eight accused and may also prove not against the interest of the two child accused. Savij received only two minor injuries, as appears from the evidence of Dr. Vaidya. Savji admitted that Dhanji Nanji did not receive any injury. He then says that all the blows directed at both of them were received by them on the spear and the dhariya which they had snatched from the members of the complainant''s party. It is difficult to believe such a tall statement. I, therefore, hold that Savji Chhagan has not given a true account of the incident."

It seem to us that the defence story was fantastic and deserved rejection.

19. The learned counsel also complains that the story given by the witnesses is conflicting in many respects. It is true that there are some contradictions but on the whole the story of the prosecution seems clear and substantiated, and, in our view, the High court was right in carefully scruti- nising the evidence and coming to the conclusions arrived at by it.

20. The learned counsel relies on the conclusion of the learned Sessions Judge that it was the party of the complainants who committed aggression. The Sessions Judge had observed :

"IN the result, so far as the account of the incident in question is concerned, the court is left with no material except the testimony of Lala Vela, which testimony also does not describe the progress of the incident itself. Consequently the court has to infer from the circum- stances whether it was the party of the complainant or the party of the accused which was the aggressor. In that connection, the relevant circumstances to be noted are that the party of the complainant con- sisting of 6 to 7 persons had collected in the field of Shiva on that morning ; that they had put up

the Pala or the Bandh so as to obstruct the way of the accused ; that they did so with the avowed object of preventing the accused and their bullock carts from proceeding along the disputed way ; that they had failed to get die accused to discontinue using the disputed way even by approaching the panchayat; and that Premji had also returned from Nana Ghanshyamgadh without being able to secure any material from the Talati. All these circumstance; (which) led to the inference that it was the party of the complainant which committed aggression." The High court, however, came to the definite finding that "after the cart which had come with the party of the accused came near Premji''s field, there was some exchange of words and then different persons on the side of the accused began assaulting first Premji and thereafter injuries were inflicted on Dharamshi, Talshi Bhikha and Thakershi and lastly when Harji and Naran saw the incident, Harji came to the field of Premji and there he was assaulted by at least accused Nos. 1 ,3 and 5". This shows that the High court was not impressed, and quite rightly, by the conclusion of the learned Sessions Judge and the finding must be deemed to have been displaced.

21. In the result the appeal fails and is dismissed.

22. Hegde, J.-I regret, I am unable to agree with the conclusions reached by the majority. In my opinion the High court was not justified ininter- fering with the order of acquittal made by the trial court.

23. The facts of the case are fully set out in the judgment just delivered by Sikri, J. Hence there is no need to restate them.

24. The trial court came to the following conclusions :

1. that the accused party had the right of way claimed by them ;

2. on the date of the occurrence they were going to their fields peacefully;

3. the complainants'' party had unlawfully put up a ''Pala'' that morning to obstruct the right of way enjoyed by the accused party and further obstructed them from going to their field ;

4. the complainants'' party were the aggressors ;

5. all the prosecution witnesses excepting P. W. 12 are highly interes- ted witnesses. They are also unreliable and hence on the basis of their evidence, it is not possible to come to a positive conclu- sion as to which of the accused were responsible for the injuries caused to the complainants'' party. So far as P. W. 12 is con- cerned, his evidence probabilises the defence version.

25. The High court did not differ from the trial court on the first four of its findings, namely : (1) that the accused party had the right of way claimed by them ; (2) on the morning in question the accused party were going to their fields in a peaceful manner ; (3) the complainants'' party obstructed them from exercising their right of way ; and (4) that the complainants'' party were the aggressors.

26. Now coming to the other findings, the High court agreed with the trial court that some of the occurrence witnesses are wholly unreliable and no reliance can be placed on their evidence. It also came to the conclusion that the remaining occurrence witnesses except P. W. 13, have given substantially false evidence but yet it saw some medium of truth in their evidence and though it safe to rely on the same. It differed from the trial court as to the value to be attached to the evidence of P. W. 13. It came to the conclusion that P. W. 13 is an independent witness and his evidence may be relied upon. It also differed from the finding of the trial court as to the value to be attached to the testimony of P. W. 12. It rejected the testimony of that witness solely on the ground that the evidence given by that witness is to an extent incompatible with the statements said to have been made by him before the police at the time of investigation.

27. Now first taking the evidence of P. W. 12, admittedly he had witnessed a portion of the occurrence. It was not suggested that he had any enmity with the complainants'' party or that he had any reason to give evidence in favour of the accused. Further it is the common case of the parties that on the day prior to the occurrence both the parties had gone to him and some others for a Panchayat in connection with the dispute as to the right of way in question. Hence prima facie he is an independent witness. When he was questioned about some of the statements alleged to have been made by him before the police at the time of investigation, he denied having made those statements. The trial court preferred to rely on the evidence given by him in court. Bearing in mind the manner in which the statements under Section 162, Criminal Procedure Code, are recorded and the bias an investigating officer is likely to have in favour of prosecution, I think it will be dangerous to place undue reliance on the police records. In the circum- stances of the case I am clearly of the opinion that the trial court was right '' in preferring the evidence given by P. W. 12 in court to the statements alleged to have been made by him at the time of the investigation. Even if his evidence is discarded the prosecution cannot get any support from the same.

28. Now coming to P. W. 13, the trial court has given several reasons for not relying on his testimony. He is closely related to the complainant. His version conflicts with the complaint given in the case. The evidence given by him is proved to be false in material particulars. The trial court has given several cogent reasons for not relying on his evidence. The learned appellate judge has not displaced any of those findings but yet asserted with- out giving reasons that he may be considered as an independent witness. As is well settled by the decisions of this court, an appellate court hearing an appeal against acquittal, before differing from the conclusions reached by the trial court particularly in the matter of appreciation of evidence must give reasons for rejecting these conclusions. The appellate court has not displaced any of the findings reached by the trial court.

29. Now coming to the appreciation of evidence of other occurrence witnesses, as mentioned earlier, the evidence of some of the witnesses has been totally rejected by the High court but yet in the case of others, it thought it could separate the grain from the chaff. It felt that their evidence to the extent it referred to the persons who had attacked them could be accepted as true. The reason given in support of this conclusion is that they must be expected to know the persons who attacked them. This reasoning overlooks the fact that partisan witness may include innocent persons along with the guilty. Each one of these witnesses has spoken to the fact that more than one person had attacked them. The injuries found on their bodies could have been caused by a single individual. Hence the possibility of their including innocent persons alongwith guilty cannot be ruled out. In my opinion, the learned judge of the High court has laid down for himself unsafe guidelines in the matter of appreciating the evidence of witnesses who even according to him are unreliable and interested.

30. It is true that it is open to courts to accept portions of evidence of witnesses and reject the rest but the danger inherent in such situations should not be overlooked. Such evidence should not be made the basis of conviction unless the same is corroborated either by an independent testimony or by reliable circumstances In my opinion the .learned judge of the High court in his anxiety to do justice according to his lights has overlooked the principles to be borne in mind while hearing appeals against acquittal.

31. For the reasons mentioned above I allow this appeal set aside the judgment of the High court and restore that of the trial court.

32. Order.-IN accordance with the opinion of the majority the appeal fails and is dismissed.