

(1976) 05 SC CK 0003

In the Supreme Court Of India

Case No : Criminal Appeal No's. 197 and 249 of 1971

Abdul Majid Abdul Rahman

APPELLANT

Vs

State of Gujarat
Abdul Samad Amirmiya and Another
Vs State of Gujarat

RESPONDENT

Date of Decision : 03-05-1976

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 326
Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Section 2A

Citation : AIR 1976 SC 1782 : (1976) CriLJ 1382 : (1976) 4 SCC 351 : (1976) SCC(Cri) 625 : (1976) 8 UJ 652

Hon'ble Judges : R. S. Sarkaria, J;P. N. Shingal, J

Bench : Division Bench

Advocate : Urmila Kapoor, M. N. Shroff and Kamlesh Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Sarkaria, J.—These appeals u/s 2A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, are directed against a judgment of the Gujarat High Court whereby the acquittal of the appellants was set aside and converted into conviction. The facts are these:

2. The appellants, Abdul, Samad, Abdul Vahab and Abdul Walid, are original Accused 1, 2 and 3, respectively. Accused 1 and 2 are brothers and Accused 3 is the son of their sister. The deceased was one Maiyuddin who was dealing in mangoes in the partnership with the acquitted accused 7 and 8 in the town of Mahmedabad. Differences arose and the partnership was dissolved. After that dissolution, the deceased and his former partners started their independent businesses. This business rivalry led to quarrels between the deceased and Accused 1, 7 and 8.

3. On April 20, 1969 at 5.45 pm. the three appellants along with five others (who may be referred to A-4, A-5, A-6, A-7 and A-8), all residents of Mehmedabad;

went in a body to Maiyuddin in the bazar. A-1 was armed with a A-2 with gupits and a hockey-stick, A-3 was carrying a hockey stick; A-4 and A-6 had dharias; A-5 had a hammer stick; A-7 and A-8 were armed with sticks.

4. A-2 and A-6 caught hold of the deceased, while A-1 gave him gupti blows on the, chest. A-2 plunged his gupti into the abdomen on the deceased. Others also beat the deceased with their weapons.

5. Sikanderiya (PW 1), a brother of the deceased who was running a pan bidi shop in the vicinity, saw the assault when he came to the rescue of his brother, A-3 gave blows to him with the hockey stick on the head, knee and leg. A-7 and A-8 also dealt stick blows to Sikandar. The deceased somehow succeeded in extricating himself from the clothes of the assailants and moved to a nearby shop and sat there. Apart from Sikandar, the occurrence was witnessed by Amirmiya Saidmiya (PW. 2), Mohmad Hussain Abderehman Mansu (PW 3) and Kasammian Ahmadmiyan (P.W. 9). Mohamed Mansuri brought a hand-cart and removed Maiyuddin, injured, to the Hospital which is at a distance of about 200 yards from the scene of occurrence. Amirmiyar informed Abdul Rehman, and then, these two also reached the Hospital. In the Hospital the injured was removed to the operation table. The Medical Officer, Dr. Shah, found the condition of the patient critical. He therefore, thought it fit to record the dying declaration of the patient. The deceased stated to the Doctor that "Samad (A-1)" and others" had caused him the injuries. The deceased could not state further anything intelligible. He went into a coma and died 4 or 5 minutes thereafter at 6.45 a.m.

6. Abdulrehman and Sikander then went to the Police Station and contacted Head-Constable Chandubhai-Dayabhai. They requested him to record the First Information. Chandubhai expressed his inability to do saying that he was not in-charge of the Police Station. Chandubhai however, informed Senior Jamadar Raju Mia who came and recorded the First Information given by Sikandar, at 8. a.m.

7. In the meantime, the Medical Officer had sent an intimation about the death of Maiyuddin, injured in the Hospital. Jamadar Raju Mia then went to the Hospital and collected that dying declaration from Dr. Shah. Subsequently Police Sub-Inspector Gohil, arrived and took over the investigation. He prepared the inquest report, Exh. 18, and sent the dead body for post mortem examination. Accompanied by sikandar, he went to the scene of occurrence and prepared the panchnama Ex. 20. He found one chappal, a piece of hockey-stick and a blood stained plank of wood. He seized these articles. He recorded the statement of Amirmiya. He deputed a constable to bring the accused to take Police Station Accordingly, the constable brought A-1 A-4, A-5 and A-6 to the Police Station where the Sub Inspector arrested them. He found blood-Stains on the shirt of A-1. He seized the shirt. A-6 gave a complaint to the Sub-Inspector, and complained of assault by Sikandar and four others The Sub Inspector sent A-1 and A-6 to the Hospital for medical examination. He also sent Head Constable Chaturbhai to Anand town to search out A-1. He arrested A-1, A-4, A-5 and A-6

8. On the preceding facts, 8 persons were sent up for trial by the Judicial Magistrate, Mehmedabad, before the Court of Session at Nadiad. The Additional Sessions Judge acquitted all the 8 accused. Against his order of acquittal, the State preferred an appeal to the High Court. The High Court set aside the acquittal of the appellants and convicted A-1 (Abdul Samad) u/s 302, Penal Code and sentenced him to imprisonment for life. A-2 was Convicted u/s 326, Penal Code and sentenced to 10 years rigorous imprisonment. A-3 was Convicted u/s 323, Penal Code and sentenced to six months' rigorous imprisonment. Hence these appeals.

9. We have heard Counsel on both sides and examined the record carefully. The mainstay of the prosecution case was the ocular account of the four eye-witnesses viz., Sikandar, Amirmiya, Mohd Hussain Mansuri and Kasimmiya. In addition, there was the dying declaration, Ex. 37, recorded by the Medical Officer, Dr. Shah between 6.35 and 6.37 a.m. in the Hospital.

10. The trial Judge did not rely on the evidence of Dr. Shah and rejected the dying declaration on three grounds; Firstly, he doubted, if the deceased could have at all made any statement before he expired. Secondly, In this statement, the deceased had not, apart, from Accused 1, named any other assailant. The trial Judge read something sinister in the words "and others" which, according to Dr. Shah, had been stated by the deceased while referring to "accused 1 and others" as his assailants. Thirdly, Dr. Shah, did not, even after recording this dying declaration, disclose to the persons present there that the deceased had denounced A-1, as one of his assailants.

11. The High Court found, and we think rightly, that this reasoning was wholly puerile. There was absolutely no basis for doubting the integrity and veracity of Dr. Shah. We have examined the statement of Dr. Shah. We are in entire agreement with the High Court, that Dr. Shah's statement discloses "a picture of straight forwardness and forthrightness. There is absolutely nothing in that statement which could raise a suspicion that the deponent was biased in favour of the prosecution or ill disposed towards the accused. The Doctor was the best person to opine about the fitness of the deceased to make the statement, he did, the Doctor found that life was ebbing fast in the patient. There was no time to call the police or a Magistrate. In such a situation the Doctor was justified, indeed, he was duty bound to record the dying declaration of the deceased. He was a disinterested, respectable witness. The Trial Judge was therefore wholly unjustified in rejecting the evidence of the Medical Officer.

12. The reasons given by the trial Judge for not relying upon the testimony of the eye-witnesses were equally flimsy. He discarded the evidence of Sikandar on these grounds : that the presence of Sikandar at the scene of offence at 5-45 a.m. was improbable; that even though PW Mansuri removed the deceased to the Hospital in the hand-cart of Safi from the scene of the incident, Sikandar did not assist Mansuri in the process; that there was inordinate delay on the part of Sikandar in lodging the First Information with the police and getting himself

medically examined that there was reason to suspect that the FIR had, in fact, been recorded at 10 a.m. and not 8 a.m. as alleged by the prosecution; that the evidence of Sikandar was in conflict with the medical evidence : Sikandar had attributed 3 gupti blows received by the deceased to A-1 and 1 gupti blow to A-2 while Dr. Shah found seven incised penetrating wounds on the deceased, none of which could have been caused with dharia; that Sikandar had disowned all knowledge about the cross complaint filed by A-6 against him and others and had failed to give any explanation of the injuries found on the accused persons.

13. These so-called "reasons" were manifestly untenable. Indeed; they were no reasons. They were, as the High Court has rightly observed, "were frivolities" simulated as reasons. Each and every one of the grounds has been considered threadbare and squarely dispelled by the High Court. Sikandar was an injured witness. His presence at the time and place of occurrence could not be doubted. He was running a pan bidi shop in the vicinity. It is thus impossible to support the finding of the trial Judge that his presence at the scene of occurrence was "improbable" The delay in making the FIR was fully explained. As a matter of fact, Sikandar had reached the police Station without loss of time at about 7 a.m. Head-Constable Chandubhai owing to ignorance or otherwise did not record his report, and for full one hour while awaiting the return of Senior Jamadar, Chandubhai, kept Sikandar under interrogation in the Police Station. There was a real conflict between Sikandar's evidence and the medical testimony. As a matter of fact, Sikandar's version to the effect, that A-1 had stabbed the deceased in the chest, twice, and A-2 in the abdomen, was confirmed by the medical evidence. Doctor GB. Shah, PW 16. opined that there were three stab wounds in the chest and one stab wound in the abdomen of the deceased and these wounds were caused with a sharp cutting penetrating instrument, like guptis. These injuries were individually and collectively sufficient to cause death in the ordinary course of nature.

14. The reasons given by the trial Judge for throwing overboard the evidence of the other eye-witnesses were equally fanciful. The trial Judge said Amirmiya was related to the deceased; that his conduct in not using his own band-cart and instead borrowing the cart of Safi PW, for removing the deceased to the Hospital was unnatural; that Amirmiya did not talk about this occurrence to any one till his statement was recorded by the Police at about 2 or 3 p.m. the same day; that he was a chance witness whose presence at about 6 a.m. at the cross-roads was not probable : that this witness did not state before the Police that A.6 had also received any injury in the melee, that the witness had the temerity to deny the fact of the presence of his son in the court when he was giving evidence at the trial a fact which he subsequently admitted.

15. These "reasons" were again figments of imagination, phantoms conjured out of aery nothing.

16. Grounds on which the testimony of Mohd. Mansuri and Kasimmiya was rejected were equally grotesque. So far as Mohd. Mansuri is concerned, he was

neither related to the nor could his evidence be called as of a partisan character. True, he had some grievance against A-7, but the fact remains he had no amicus whatever against the appellants or even against the acquitted accused A-4 and A-6 who were nephews of A-1 and A-2. It was Mohd. Mansuri who had removed the injured in a hand cart to the Hospital.

17. appeals any by are is to and The of the in p a from for his with him that on In our opinion, approach could said be judicial approach. Prepossessed suspicion, smelled something sinister each every witness examined prosecution. Instead logical ratiocination, depended conclusions speculation conjectures. This apparent repeated observations impressed demeanour witnesses, although make note whatever such demeanour. Even judgment he did reveal particularity, nature ?demearour? led doubt veracity witnesses. We want no more. Suffice it say view evidence taken learned trial Judge not reasonably possible, High Court was fully justified reversing acquittal appellant. fail dismissed.

18. In our opinion, the aproach of the learned trial Judge could not be said to be a judicial approach. Prepossessed by suspicion, he smelled something sinister in the evidence of each and every witness examinded by the prosecution. Instead of logical ratiocination, he depended for his conclusions on speculation and conjectures. This is apparent from his repeated observations that he was not impressed by the demeanour of the witnesses, although he did not make any onte whatever of such demeanour. Even in his judgment he did not reveal with particularity, the nature of the "demearour" that led him to doubt the veracity of the witnesses. We want to say no more. Suffice it to say that the view of the evidence taken by the learned trial Judge was not reasonably possible, and the High Court was fully jstified in reversing the acquittal of the appellant. The appeals fail and are dismissed.