
(1969) 07 SC CK 0033

In the Supreme Court Of India

Case No : Criminal Appeal No. 18 Of 1967

Mathai Methews

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-07-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 326

Citation : (1970) 3 SCC 772

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

Bench : Full Bench

Final Decision : Allowed

Judgement

K.S. HEGDE, J.-This is an appeal by special leave against the decision of the High court of Bombay setting aside the judgment of acquittal of the appellant by the Trial court and convicting him under S. 302, 326 and 324, Indian Penal Code.

2. The appellant and another person were tried before the Additional Sessions Judge, Greater Bombay, on as many as eight charges. The learned Sessions Judge disbelieving the prosecution evidence acquitted both the accused. The State of Maharashtra went up in appeal to the High court against the acquittal of the 1st accused Mathai Methews who is the appellant herein. No appeal was filed against the acquittal of the 2nd accused.

3. The incident from which this appeal arises had taken place at about 9 or 9-30 p. m. on 4/02/1964, at Sewri in the city of Bombay. As a result of that incident one Appa Krishna died. P. W. 4 Purshottam sustained grievous injuries. P. W. 5, Thomas, sustained one minor injury. At the same time the appellant also received several injuries including a head injury.

4. In support of its case, the prosecution examined as many as six eyewitnesses including the injured P. Ws. 4 and 5. But the learned Trial Judge was unable to accept their evidence. He came to the conclusion that the prosecution has not come forward with a true case ; the witnesses examined in support of its case

are partisan witnesses and they are unreliable. In appeal a division bench of the Maharashtra High court differed from the learned Trial Judge and substantially accepted the prosecution case. We have now to see whether the conclusion reached by the High court "is sustainable on the basis of the evidence on record.

5. It is now well settled that the power of an appellate court to review evidence in appeals against acquittals is as extensive as its power in appeals against convictions. It is also well settled that before an appellate court can set aside an order of acquittal, it must carefully consider the reasons given by the Trial Court in support of its order and must give its own reasons to reject those reasons, if a finding reached by the Trial Judge cannot be said to be a reasonable finding then the appellate court should not disturb that finding even if it is possible to reach a different conclusion on the basis of the material on record. It should bear in mind the presumption of innocence of the accused and the fact that the Trial Judge had the advantage of seeing and hearing the witnesses. In brief, the appellate court should not disturb an order of acquittal except on very cogent grounds. On an examination of the entire material on record we have come to the conclusion that the High court was not justified in setting aside the order of the Trial court.

6. We shall now proceed to give our reasons in support of our conclusion but before doing so we shall set out in brief the prosecution case as well as the defence version and the proved facts of the case.

7. P. W. 2 Jacob Anian and P. W. 3 Chacko and Papan live in room No. 5, Block No. 1, in labour camp at Sewri. On the evening of February 1, 1964, P. Ws. 2 and 3 alongwith P. W. 5 Thomas Abraham proceeded to a restaurant near the office premises of the Malayali Association at Sewri, for tea. When they were passing in front of a volleyball ground they saw accused No. 2 and some other persons playing volleyball. Then they got into the volleyball ground and demanded that they should also be allowed to play volleyball. To this accused No. 2 and his companions objected. Thereafter the game was stopped; accused No. 2 and his companions removed the net and started going out of the ground. At that time accused No. 2 was taking the ball in his hand. P. W. 3 tried to snatch the ball from his hand. Then there was an altercation between P. W. 3 and accused No. 2. They exchanged blows. There the matter ended. On that evening at about 8 p.m. accused No. 2 and his uncle Appi went to the room of P. W. 3 and there was some exchange of words between them and P. W. 3. At about 10-30 p.m. on 3/02/1964, i. e., two days after the first incident, accused No. 2 and Ponnachan another uncle of his went to the room of P. W. 1. There they picked up a quarrel with P. W. 1 and assaulted him. The further case of the prosecution is that on the evening of 4/02/1964, when P. Ws. 2,3,4, 5 and 9 were standing at the road side at Sewri, the appellant, accused No. 2 and several others came there. The appellant first hit P. W. 1 on his face. A8. Now coming to the version of the accused, they do not seriously dispute the incident that had taken place on the evening and night of February 1, 1964 as well as on the evening of February 3,

1964. Their case is that having been infuriated by what had happened earlier P. Ws. 2 and 3 got together their associates P. Ws. 4,5,9 and 10 and the deceased on the evening of 4/02/1964. Thereafter P. W. 2 sent someone to fetch accused No. 2. Accused No. 2 was afraid of meeting P. W. 2 and therefore he hesitated to go to P. W. 2's room. At that time the appellant who had returned from Kerala that day was there accused No. 2's room. He told him that he should go and settle matters. He further told him that he would accompany him. When both of them went there, the deceased Appa Krishna hit the appellant on his head with iron rod. Seeing that accused No. 2 ran away. thereafter the appellant was kicked and trampled upon. He became unconscious as a result of the injuries received by him and later on he was removed to the K. E. M. Hospital.

9. It is undisputable that at the time of the occurrence the deceased had received a knife blow on his chest as a result of which he died and that P. W. 4 Purshottam had received two knife injuries: one on his shoulder and another on his side. It is also proved that at that time P. W. 5. Thomas had received a minor cut injury. The version put forward by the accused offers no explanation for those injuries. It is equally true that during that incident the appellant had received a severe head injury which according to medical evidence was likely to have been caused either by a blow with an iron rod or with a stick. The X-ray examination of the lumbar spine of accused showed a chip fracture of 4th lumbar vertebra which according to Dr. Shashikant Mehta (P. W. 14) would have been caused by kicking with shoes. As seen earlier, the prosecution evidence has no explanation for these injuries. Therefore it is clear that neither the prosecution nor the defence has come out with the true version. In such a situation the task of the court is somewhat difficult.

10. Both the courts below, have come to the conclusion that the witnesses who speak to the occurrence are partisan witnesses. P. Ws. 2 and 3 live in the same room. P. W. 10 Balam was living with P. W. 2 after the occurrence. P. Ws. 4, 5, 9 and the deceased are proved to be the friends of P. W. 2. It is seen from the evidence of the prosecution witnesses that a large number of disinterested witnesses had witnessed the occurrence. Naturally it should be so because the occurrence had taken place in the middle of a street at Sewri, a crowded locality. But yet not a single disinterested witness has been examined in this case. This important circumstance was not borne in mind by the learned Judges of the High court. Naturally P. Ws. 2 and 3 must have been provoked by the incident that took place on the evening of 3/02/1964). Therefore it is not unnatural that they were getting ready to retaliate. Admittedly neither P. W. 3 nor P. W. 4 attended their office on the day of the occurrence. This circumstance lends probability to the contention of the defence that they were busy getting together their friends to have it out with accused No. 2 and his supporters. It may be noted that at about the time of the occurrence P. Ws. 4, 5 and 9 came together in a taxi to Sewri on that evening. It is difficult to believe that meeting of all these persons was by mere coincidence. We get it from the evidence of P. W. 4 that even before they came to Sewri they knew about the previous day's incident. Hence the

more reasonable inference is that P. Ws. 2 and 3 got these people together at Sewri with a view to attack accused No. 2 and his friends. This circumstance was also lost sight of by the High court.

11. As mentioned earlier the incident took place at about 9 or 9-30 p.m. on 4/02/1964, but neither P. W. 2 nor P. W. 3 was available for being questioned by the police till the evening of 6/02/1964. Their story that being frightened by the incident they ran away to Bandup and came back to Sewri only on the evening of 6th is highly unbelievable. Obviously they were keeping themselves away from the police so as to get ready with their version of the incidence ;.

12. Till; prosecution version that the incident commenced with the appellant attacking P. W. 2 is not supported by any medical or other circumstantial evidence. It may be noted that the appellant was away in Kerala till the day of occurrence. The version given by the prosecution witnesses that lie came there straight and began hitting P. W. 2 is an unnatural one. The prosecution witnesses have been giving different versions at different stages. Before the police, it appears their case was that more than live persons attacked P. W. 2 and his friends. This is clear from the charge-sheet and the charges framed. In court that version was watered down. There remained in the picture only accused Nos. 1 and 2 with some unknown persons innocently walking behind them in the street. The Trial court had listed the various contradictions found in the evidence of the eye-witnesses some of which are quite material. The Trial court's conclusion that those witnesses are not reliable is not an unreasonable one. The probabilities of the case indicate that P. Ws. 2 and 3 had gathered, together on that evening their friends P. Ws. 4, 5, 9, 10 and the deceased with a view to challenge accused No. 2 and his friends and the incident took place because of the aggressive posture put forward by them. It is likely that when the appellant accused No. 2 came to the scene, the appellant was beaten by an iron rod by the deceased and at that stage the appellant stabbed him on his chest. It is equally likely that the other persons were injured at the time when they were assaulting the appellant. If that was the real situation, which we think likely, then the appellant was well within his rights in inflicting the injuries found on the deceased, P. Ws. 4 and 5.

13. As it is not possible to place any reliance on the testimony of the eye-witnesses, circumstances most favourable to the accused must be accepted. Under the circumstances the conclusion of the Trial Judge that on the basis of the evidence on record it is unsafe to convict the appellant cannot be said to be an unreasonable conclusion. In a case of this nature it is difficult to sift false hood from truth and therefore quite naturally the courts have to give the benefit of doubt to the accused. Only one knife blow was given to the deceased. If as mentioned earlier, the deceased was the aggressor and that he had assaulted the appellant, with an iron rod then the appellant could have had a reasonable apprehension that there was danger to his life. Under those circumstances he had a right to defend himself against the persons who assaulted him. It is true that no plea of self-defence was taken but the facts disclosed clearly go to

support such a plea. We have to take note of them.

14. In the result we allow this appeal and acquit the appellant. He shall be set at liberty