
(2009) 04 SC CK 0189

In the Supreme Court Of India

Case No : Criminal Appeal No"s. 1603 and 1609 of 2007

Ram Maruthi Pawar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2009) 2 ACR 1904 : AIR 2009 SC 2697 : (2009) AIRSCW 4139 :
(2009) 2 GLH 677 : (2009) 8 JT 403 : (2009) 5 KCCR 3380 : (2009) 5 SCALE
551 : (2009) 12 SCC 406 : (2009) 5 SCR 956

Hon'ble Judges : P. Sathasivam, J; Lokeshwar Singh Pantia, J; Arijit Pasayat, J

Bench : Full Bench

Advocate : Shriniwas R. Khalap, Wajih Shafiq and Anip Sachthey, for the
Appellant; Gaurav Agrawal and Ravindra Keshavrao, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—These two appeals are inter-linked and are directed against a common judgment of the Bombay High Court. Of the two appeals before the High Court, one was filed by Nathu Keru Bhatre (hereinafter described as 'A-12'). The other appeal was filed by the State of Maharashtra questioning the acquittal of one Mahadeo Dhandu Chavan (hereinafter referred to as 'A1') and the appellant Ram Maruti Pawar (hereinafter described as 'A14'). In all, 15 accused persons faced trial for alleged commission of offence punishable u/s 302 read with Section 149 of the Indian Penal Code (in short 'IPC'). The trial court convicted A12 while directing acquittal of other accused persons. The State's appeal before the High Court related to accused Nos. 1 and 14. The High Court allowed the appeal filed by the State qua Ram Maruthi Pawar A14 while upholding the acquittal so far as Mahadeo Dhandu Chavan (A1) is concerned.

2. Though learned Counsel for the appellant urged many points, we do not feel it necessary to go into them in detail. There are some disturbing features which have been noticed. It appears that during the course of trial, learned prosecutor

appearing for the State conceded before the trial court that it was not possible to say that any offence has been committed by accused Nos. 2 to 15 and they can be immediately set at liberty. The trial recorded the concession in the following words:

At the very outset of this arguments, Shri Pandey submitted that after critical examination of the prosecution evidence, it is not possible to say that any offence has been committed by accused Nos. 2,3,4,5,6,7,8,9,10,11,12,13,14 and 15 and they can be immediately set at liberty. All that time prosecution could alleged, against these accused is that they had produced sticks from their houses after execution of certain Panchanamas filed at Exhs. 60 to 64 but more production of a stick from the house is not enough to implicate them in the murders that had taken place unless any further corroboration was there to indicate that they had really taken part in the murderous assault. As there is no evidence whatsoever to show that these persons had belabored the deceased, it was but natural for Shri Pandey to submit that he has no comment to make against them.

3. Nevertheless the trial court convicted A12 which was challenged before the High Court. It is also interesting to note that before recording the concession of learned Counsel for the prosecution, the High Court noted that the evidence of Narayan Pandey Ghungre (PW9) as regards the particular part played by accused Nos. 2 and 14 are relevant. It has been noted as follows:

23. xxx xxx xxx

But PW9 Narayan says that he was able to identify 2/3 persons that were rushing at him with some instruments in their hands and accordingly he says that accused Nos. 12 and 14 were these persons who were chasing them.

24. It is on the basis of the statement of PW9 Narayan that the particular part played by accused Nos. 12 and 14 in the commission of the crime of murder has been sought to be established by the prosecution, while maintaining that so far as the other accused are concerned, there is no evidence whatsoever to connect them with the crime.

4. The High Court's judgment is equally baffling. The High Court noted that the identification parade took place after three months when PW9 identified accused Nos. 12 and 14. The High Court in this context noted as follows:

PW9 further states that the woman then directed her attention to the witness and told the villagers that Narayan and Sitaram were also thieves. Then 2/3 villagers rushed at Narayan, asked Sitaram to come down from the three immediately. Accordingly, Sitaram came down and 2/3 Arsons who had rushed on them were identified as accused Nos. 12 and 14. He stated that in the parade that took place after three months, he identified the accused Nos. 12 and 14.

5. But after indicating some reasons, the High Court noted that the evidence regarding the parade is to be rejected. The High Court also noted the fact that

before the police PW9 did not say anything about his being an eyewitness. But High Court went on to hold that just because he has given different versions at different point of time, his evidence cannot be discarded and it cannot be said that he is not an eye-witness. The conclusions of the High Court are certainly not defensible. It is to be noted that PW9 Narayan's evidence is full of contradictions.

6. That being so, the High Court was not justified, apart from other important aspects highlighted above, in convicting the appellants. The appeals are allowed to the aforesaid extent. The conviction as recorded by the trial court and the High Court, so far as Nathu Keru is concerned and the conviction as recorded by the High Court so far as Ram Maruthi Pawar is concerned, are set aside. The accused appellants are acquitted of the charges. They are to be set at liberty and released forthwith from custody unless required to be in custody in any other case.