

PETITIONER:  
RAJU @ RAJENDRARAJYA A ALIAS RAJU

Vs.

RESPONDENT:  
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 22/10/1997

BENCH:  
M. K. MUKHERJEE, K. T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

WITH  
CRIMINAL APPEAL NO. 695 OF 1997  
J U D G M E N T

MUKHERJEE, J.

These two appeals, filed under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, are directed against the judgment and order dated August 16, 1991 of the Bombay High Court in Criminal Appeal No. 294 of 1996 whereby it set aside the acquittal of Rajya @ Raju (hereinafter referred to as 'A-1') and Raju @ Rajendra (hereinafter referred to as 'A-2') of the charge under Section 302/34 I.P.C. recorded in their favour by the sessions Judge. Wardha and convicted and sentenced them thereunder.

Briefly stated the prosecution case is as under:

(a) On March 14, 1995 at or about 6 P.M. A-1 and A-2 went to the house of Ramkrishna (the deceased), who lived in their neighbourhood, and took him to the house of Ganesh (P.W.3) where all of them consumed liquor. Thereafter they proceeded towards Ramnagar along the Rashtrabhasha Road. When they reached the Ganesh temple situated on that road A-1 and A-2 started beating Ramkrishna: the former with a hockey stick and the latter with a stone, when, owing to such beating he fell down they took him behind the house of one Timande in a rickshaw and dumped him there. In the meantime two boys had gone to the house of Ramkrishna and told his father Yadaorao (P.W.1) about the incident. P.W.1 immediately rushed to the spot and found his son lying in a rickshaw, but its puller was not there. While he was making arrangement to remove his son to the hospital a police van arrived there. In that van he took his son, first to the police station and from there to the General Hospital, Wardha. After admitting him there P.W.1 came back to the police station and lodged a report about the incident at 8.30 P.M. On that information a case was registered under Section 302/34 I.P.C. and investigation taken up.

(b) In that night at or about 11 P.M. Ramkrishna succumbed to his injuries. After inquest his dead body was sent for post-mortem examination. Dr. Moon (P.W.7) held the autopsy and found twelve injuries on his person including fractures

of his left arm and left side of the mandible.

(c) On the following morning (15.3.1985) Inspector Patil (P.W.6) went to the scene of offence and seized a hockey stick, a stone and some earth under a panchnama.

(d) On March 15, 1985 both the appellants were arrested and their wearing apparels which were blood stained, were seized. Those clothes along with the articles seized from the scene of offence and the wearing apparels of the deceased were sent for chemical examination. After receipt of the report of such examination and completion of investigation police submitted charge-sheet against the appellants.

3. The appellants pleaded not guilty to the charges framed against them and contended that they had been falsely implicated.

4. To sustain the charge levelled against the appellants the prosecution relied upon the ocular evidence of Raju (P.W.4) and Gulab (P.W.12), and its corroboration by the medical evidence and the recoveries of blood stained hockey stick and stone from the scene of offence and of blood stained clothes from the persons of the appellants at the time of their arrest. Besides, the prosecution led evidence through P.W.1 to prove that sometime before the incident the appellants came to his house and took the deceased out with them

5. On consideration of the evidence adduced by the prosecution (no witness was examined by the defence) the trial court held that P.W.4 and P.W.12 could not be relied upon: firstly, because they were chance witnesses and, secondly, because they did not disclose the fact of their having seen the incident to anybody till they were examined by the Investigating Officer in the afternoon of May 15, 1985. It further observed that in view of the admission of P.W.12 that the two appellants were not known to him from before it was the incumbent duty of the Investigating Agency to have a test identification parade held and in absence thereof their identification by him (P.W.12) for the first time in Court was of no moment. As, according to the trial court, the other circumstances alleged against the appellants, by themselves, did not unerringly point towards the guilt of the appellants, it gave them the benefit of reasonable doubt. In reversing the order of acquittal, the High Court observed that in absence of any material brought on record that the two eye witnesses were inimically disposed towards the appellants or that they were interested in the cause of the prosecution, the trial court was not at all justified in discarding their evidence, more, so, when on being interrogated by the Investigating Officer on the following day they narrated the incident. The High Court found their evidence not only trustworthy but fully corroborated by the medical evidence and other circumstantial evidence.

6. This being a statutory appeal we have gone through the entire evidence on record and the judgments of the learned Courts below. Having done so we are constrained to say that the disinclination of the trial court to accept the evidence of the two eye witnesses and, for that matter, the entire prosecution case was not proper. Raju Balwe (P.W.4) testified that on the day in question he went to the shop of Gulab Ahuja (P.W.12) on Station Road at or about 6 P.M. as he wanted to buy some earthen pots. Accompanied by him they proceeded on a scooter along Rashtrabhasha Road to go to Hind Nagar for the purpose. On the way they saw a number of people present near the Ganesh temple. They alighted from the scooter and found A-2 beating Ramakrishna with a hockey

stick; and after he fell down A-1 picking up a big stone from a nearby heap and dropping it on the leg of the victim. When Ramkrishna raised cries they brought a rickshaw and after putting him in it dragged the rickshaw upto some distance towards the Railway Station. The other eye witness, namely P.W.12, fully corroborated the above testimony of P.W.4. Both these witnesses were cross examined a length but nothing could be elicited in cross examination to discredit their claim that they had seen the assault. As earlier noticed one of the principal reasons that weighed with the trial Court for disbelieving the above two witnesses was their conduct in not disclosing the incident to anyone till they were examined by the Investigating Officer on the following day. In repelling the above criticism the High Court observed:

"All that they had seen was Ramkrishna being beaten in the market place and being removed in a rickshaw by the Station Road. There was no reason for them to apprehend that Ramkrishna must have been killed by the accused Nos. 1 and 2. In fact, Ramkrishna died at about 10 P.M., after he was removed to the hospital. The apathy of even the law-abiding citizens in reporting the outrages, to which they were witnesses, is too notorious to merit a mention, and merely because these witnesses had not reported the matter to the police, it would not follow that they were not telling the truth."

In absence of anything elicited in cross examination to indicate that these two witnesses were interested in the prosecution of the appellants we are in full agreement with the above quoted observations of the High Court. The other criticism levelled by the trial Court that they were chance witnesses is also wholly unmerited for in respect of an incident that takes place on a public road, the passers-by would be the best witnesses. We have, therefore, no hesitation in concluding that the claim of the above two witnesses that they had seen the incident cannot be disputed at all.

7. That brings us to the question whether their identification of the two appellants as the miscreants can be safely relied upon. So far as the identification of A-1 is concerned we find that he (A-1) was known to both of them from before. In such circumstances their identification of A-1 as one of the two miscreants who assaulted the deceased with a stone can not be questioned. Resultantly, we need not deal with or delve into the circumstantial evidence pressed into service by the prosecution to buttress the evidence of the eye witnesses in proof of the accusation levelled against A-1.

8. The same cannot, however, be said about their identification of A-2 as the other miscreant for they admitted that they saw him for the first time on that day. In view of their above admission and in absence of any T.I. parade held for identification of A-2 immediately after his arrest, we find it difficult to solely rely upon the identification of A-2 by the witnesses for the first time in Court and that too after a lapse of almost one and half years after the incident.

9. It is of course true that the prosecution led evidence through P.W.1, father of the deceased, to prove that about an hour earlier before the incident both A-1 and A-2 came, and accompanied by the deceased left his house. The evidence of P.W.1, so far as it relates to identification of A-1, cannot also be relied upon for even though he claimed to have known A-2 from before, in the F.I.R. he did not mention the name of A-2. When he was confronted with his such material omission he asserted that he mentioned the name of A-2 but he could not assign any reason why it did not find place in his report. The evidence of P.W.1, therefore, does not come in aid of the prosecution to prove that A-2 was the other miscreant. As from the other circumstantial evidence such an irresistible conclusion cannot be drawn, he is therefore entitled to the benefit of doubt.

10. On the conclusions as above we allow Criminal Appeal No. 683 of 1991 filed by Raju @ Rajendra (A-2) and set aside the conviction and sentence recorded against him under Section 302/34 I.P.C.. The appellant, who is in jail, be released forthwith. The other appeal (Criminal) Appeal No. 695 of 1997) preferred by Rajya alias Raju (A-1) is, however, dismissed.