

PETITIONER:
NARESH MOHANLAL JAISWAL

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT: 09/10/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

The appellant-original accused No.2 alongwith six other accused persons was tried in Sessions Case Trial No. 45 of 1984 for having committed the murder of one Ramesh Haribhau Himane popularly known as "Ramesh Patil" resident of village Bhari Distt. Yavatmal in the evening of January 6, 1984. The appellant and original accused Nos. 1,3 and 4 were charged under Section 302/34 of the Indian Penal Code whereas remaining three accused persons were charged for offences punishable under Sections 201,202 and 212 of the Indian Penal Code. Uday Shankar Dixit-original accused No.1, however, was murdered during the pendency of the trial hence it abated against him. The trial court by its judgment and order dated 8th July, 1986, acquitted all the accused persons except the appellant who was convicted under Section 302/34 of the Indian Penal Code, and sentenced him to suffer imprisonment for life and to pay a fine of Rs.1,000/-. The appellant's appeal to the High Court of Bombay, Bench at Nagpur, came to be dismissed on 13-2-1988. It is against this judgment and order of High Court, the appellant on obtaining special leave had filed this appeal.

2. The facts of the prosecution case lie in a very narrow compass:-

Ramesh Patil (since deceased) was allotted 15 acres of land in village Bhari situated at a distance of about 6 kms. from Yavatmal on Yavatmal-Pandhar Kowada road and was doing cultivation. Haribhau (PW 2) is the father of Ramesh Patil who was then residing in his own house at Yavatmal. Ramesh Patil used to go to Village Bhari everyday at about 11.00 a.m. and would return at about 5.30 p.m.

3. It is alleged by the prosecution that in the year 1978, Ramesh Patil alongwith six other persons of whom some are prosecution witnesses in the present case, was prosecuted under Section 307 of the Indian Penal Code for having attempted to commit the murder of Uday Shankar Dixit (A-1). However, on the conclusion of the said trial, Ramesh Patil and other accused persons were acquitted. Since then, the two rival groups were on inimical terms and, therefore, Ramesh Patil apprehended danger to his life from Uday

Shankar Dixit and the appellant.

4. It was then alleged by the prosecution that on January 6, 1984, Ramesh Patil as usual was returning on his bicycle to Yavatmal at about 6.00 p.m. by Yavatmal-pandhar-Kawada road. Arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7) resident of village Bhari had then come to Yavatmmal at about 3.00 p.m. to watch a matinee show in Sham Talkies. After the matinee show, they were going back to their village Bhari double seat on a bicycle of Arvind Mangrulkar (PW 6). When they came near the octroi post, two lunas coming from behind over took them. Udey Shankar Dixit was driving the Luna of blue colour and A-3 was the Pillion rider. The appellant was riding on another Luna of brown colour and A-4 was the pillion rider. Both these lunas went in the direction of village Bhari. Arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7) stopped near the bridge for answering nature's call and when they crossed the bridge, heard the shrieks "bachao-bachao" coming from the opposite direction. On proceeding further they saw the two Lunas which overtook them were parked on the road facing Yavatmal and one person who was lying on the ground at the end of the road, was Udey Shankar dixit and the appellant was assaulting him with knife. Anil and Suresh were standing nearby. after seeing the incident for about a minute or so. arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7) proceeded to their village Bhari and there they came to know from the villagers that the person who was assaulted on Yavatmal-Pandhar Kawada road was, Ramesh Patil.

5. Suresh (PW 1) who returned at about 6.30 p.m. from the village Waihatola learnt from Kashinath (PW 4) that Ramesh Patil was murdered and his body was lying in front of Malani Park. one kilometer away from Yavatmal. He then went to the spot where he met Partap Paraskar (PW 19). After seeing the dead body of Ramesh Patil, both of them went to Yavatmal City Police Station where Suresh (PW 1) lodged a written report Ex. 34 at about 7.55 p.m. The SHO registered the crime under Section 302 IPC; recorded the formal FIR Ex.200 and proceeded towards the place of incident for investigation. the inquest panchanama was held on the dead body of Ramesh Patil and it was sent to the Civil Hospital for post mortem examination. During the investigation, the appellant was arrested on January 8, 1984. The statements of Arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7) were recorded on January 8, 1984. The appellant was placed in a test identification parade arranged by the Executive Magistrate on 21st January, 1984 wherein Arvind Mangrulkar (PW 6) identified the appellant. During the course of investigation, the appellant made a statement under Section 27 of the Evidence Act which led to the recovery of a knife. After completing the necessary investigation, the appellant alongwith seven other accused persons was put up for trial.

6. The appellant denied the charge levelled against him and claimed to be tried. According to him, he was falsely implicated in the present crime due to enmity. He denied that he was identified by the alleged eye witnesses during the T. I. parade. He is innocent and he be acquitted.

7. The prosecution in support of its case examined as many as forty witnesses, of whom, Arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7) were witnesses of fact. In addition to the above evidence. the prosecution has relied upon several other circumstances to which reference will be made at the appropriate places.

8. At the outset, it may be stated that both the courts below accepted the evidence of Arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7) as trustworthy and credible who gave

an eye account of the assault caused on Ramesh Patil.

9. At the outset, it may also be stated that there is no challenge to the fact that Ramesh Patil died an unnatural death due to several injuries sustained by him in an incident which took place on January 6, 1984, at about 6.30 p.m. Suffice it to mention that Dr. Shainesh Chandra (PW 8) who held the autopsy over the dead body testified that Ramesh Patil (since deceased) had sustained as many as 37 incised ante mortem injuries of which not less than ten were on vital parts of the body and that those injuries were sufficient in the ordinary course of nature to cause death. We feel no hesitation in holding that Ramesh Patil died a homicidal death.

10. Entire prosecution story to prove the complicity of the appellant, hinges upon the two star witnesses of fact i.e. arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7). Mr. U.R. Lalit, Learned Senior Counsel appearing for the appellant while assailing the evidence of these two eye witnesses urged that their testimonies were totally incredible and no reliance whatsoever could be placed on their evidence. While supplementing this argument, he urged that they were partisan witnesses having hostile relations with the appellant. He urged that although both these witnesses claimed to have witnessed the assault caused on Ramesh Patil yet they did not disclose the same to anyone till 8th of January, 1984. their silence was totally opposed to the human conduct and in the facts and circumstances of the case, it would be unsafe to rely upon their evidence. We see on substance whatsoever in any of these submissions. It is true that the statements of both these witnesses under Section 161 of the Code of Criminal Procedure were recorded on 8th January, 1984, although, the First Information Report was lodged on 6th January, 1984 at about 7.55 p.m. within the shortest possible time. Both these witnesses in their evidence on oath had stated that they were scared of the appellant and his associates who had identified them at the time of incident. They further stated that the appellant and his associates were arch rivals of Ramesh Patil and his associates who were the members of Hanuman Vyayam shala. They admitted that after reaching their village Bhari, they quietly went to their respective houses and did not disclose the fact of assault caused on Ramesh Patil to anybody. They further admitted although they attended the funeral and were in the company of berieved members of the family yet did not disclose the fact of assault by the appellant on Ramesh Patil to anybody. They then stated that only when the appellant came to be arrested on 8th January, 1984, they came forward for recording their statements under Section 161 of the code of Criminal Procedure. Both the courts below have considered these circumstances very carefully and concurrently held that the apprehension expressed by both these witnesses could not be said to be untrue. This being a finding of fact, it would not be possible for us to interfere with the said finding in an appeal filed under Section 136 of the constitution and it is not possible to discredit their evidence.

10. It was then urged by Mr. Lalit that there was enormous delay in lodging the First Information Report. This submission is again devoid of any merit because the incident in question took place at about 6.30 p.m.. and after getting the information, Suresh (PW 1), the cousin of Ramesh Patil lodged a complaint with the city police station Yavatmal at 7.55 p.m. (Ex.200). Till the lodging of this complaint, there was no clue as regards the assailants and obviously their names could not figure therein. It is only during the

course of investigation, when the appellant came to be arrested on 8th January, 1984, Arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7) came forward to give the eye account of the assault caused on Ramesh Patil and their statements under Section 161 of the Code of Criminal Procedure came to be recorded on the same day. In our opinion, there is no delay whatsoever in lodging the First Information Report.

11. Mr. Lalit then urged that the panch witnesses examined by the prosecution were from the stock of Hanuman Vyayam Shala and no independent panch witness was called for by the investigating officer. Taking support from this fact, Mr. Lalit urged that the entire investigation was not at all fair and the investigating machinery took the side of the complainant party. Learned Counsel, therefore, urged that the evidence collected by investigating officer was of partisan witnesses and it would be unsafe to accept such tainted evidence. Both the courts below were very much aware of the fact that the eye witnesses examined by the prosecution were from the village Bhari and friends of Ramesh Patil yet after careful scrutiny of their evidence accepted the same as credible and did not suffer from any infirmity. By way of abundant precaution, we have also gone through the evidence of both these eye witnesses and record our complete agreement with the appreciation of their evidence done by the courts below. Despite strenuous efforts, Mr. Lalit was unable to point out to us how the investigation was tainted one. It is, therefore, not possible to hold that the investigation was tainted one.

12. In addition to the above ocular evidence, there is one more circumstance which was relied upon by the courts below, viz., the presence of human blood stains of 'A' group that of the deceased on one of the Luna motor cycle. Arvind Mangrulkar (PW 6) and Dadarao Thakre (PW 7) in their evidence had stated that when they were proceeding from Yavat Mal to village Bhari at about 6.00 p.m., they saw Udeyshanker Dixit alongwith one pillion rider on Luna of blue colour and the appellant on another Luna of brown colour with the pillion rider who overtook them. When they came near Malani park, they saw the appellant and his associates were assaulting Ramesh Patil with knives. It is true that no blood stains were found on the Luna on which appellant was riding, however,, the fact remains that the other Luna on which Udeyshankar Dixit was riding and was identified had the human blood stains of 'A' group. This fact was corroborative circumstance in favour of the prosecution and the courts below have committed no error in relying upon this circumstance.

13. Mr. Lalit then contended that there is no evidence on record to show that there was any light available at the place of occurrence to enable the two eye witnesses to identify the appellant. This submission is again devoid of merit because both the eye witnesses have stated in their evidence that there was sufficient light available from the lamp post at Malani Park. We see no reason to disagree with the finding of fact recorded by the courts below in this behalf.

14. After careful consideration of the submissions by Mr. Lalit and on going through the judgments of the courts below and the materials on record, we are satisfied that the high Court had committed no error in affirming the conviction and sentence of the appellant. There is no substance in the appeal and it is accordingly dismissed. The appellant, who is on bail, shall surrender to his bailbonds to serve out the remaining period of his sentence.

JUDIS