BHARWAD JAKSHIBHAI NAGJIBHAI AND ORS. ETC. A

v.

THE STATE OF GUJARAT ETC.

AUGUST 24, 1995

[M.K. MUKHERJEE AND G.T. NANAVATI, JJ.] B

Criminal Law.

Indian Penal Code, 1860.—S.324 and S.326 read with S.149; S. 302 read with S.149—Unlawful assembly—Group rivalry—Clash-one killed and two assaulted—15 accused and brought to trial—Trial Court acquitted all—High Court reversed finding in respect of 7—Reversal of acquittal by High Court—Not normal when two views of evidence possible—Permissible when approach of Trial Court is manifestly in error in appreciation of evidence. C

S. 149 I.P.C., 1860—Applies not only to offences actually committed in pursuance of common object but also to offences which the unlawful assembly knew were likely to be committed. D

Indicia to ascertain Common object—Nature, number and location of injuries indicia to ascertain—Use of the weapon—Use of blunt and not sharp edge shows object not murder but to cause grevious hurt. E

The relationship between the Bharwad and Patel communities became strained after the Bavla Nagar Panchayat elections. On 2nd June, 81, at about 6 P.M., 40-50 members of Bharwad community armed with sticks, dharias and farsis attacked 3 members of the Patel community killing one and injuring 2. One of the injured lodged a complaint with the police and a case was registered. 15 were brought to trial. Before the Trial Court evidence of the injured, eye witnesses, doctors etc. were examined. The Trial Court appraised the evidence by treating the assault on the three members as distinct and unconnected, relied on minor discrepencies and discounting evidence of eye witnesses acquitted all the 15. F G

The High Court admitted the Appeal against only 7 of the accused and discharged the rest. The High court accepted the prosecution case that successive assaults on the 3 persons were part of the same transaction and outcome of a common object and not isolated incidents as held by Trial H

A Court. On reappreciation of evidence the High Court came to the finding that there was unlawful assembly; that the 7 accused formed part of that assembly; their common object was not murder but causing grevious injury, taking into consideration the nature of the injury and evidence of witnesses; that the Trial Court departed from the basic principles of appreciation of evidence of eye witnesses. The Court therefore set out the B principles for appreciation of evidence of particularly injured eye-witnesses as enunciated by this court in various judgments, considered the evidence on that basis. The High Court then convicted all the 7, under S.148 and S.326 I.P.C. read with S.149 I.P.C. and some under s.324 and s.326 I.P.C. Simpliciter and rest under S.149 I.P.C.

C

Against the order of the High Court 2 Appeals were filed before this Court-one by the 7 convicted persons and the other by the injured who had lodged the police complaint. On behalf of the accused Appellants it was argued that merely because the High Court took a different view, it cannot set aside the aquittal; the conviction under S.326 I.P.C. Simpliciter or with D S.149 was not justified because evidence shows that common object was only to cause simple hurt and the accused carried only latis; that since already 14 years had lapsed and 10 months imprisonment had been served, sentence be altered. On behalf of the other appellant it was submitted that conviction should have been under S.302 read with S.149 I.P.C., that facts E showed that the object of the unlawful assembly was murder; the sentence was inadequate and should be enhanced.

Dismissing the Appeals, this Court

HELD : 1. The finding of the High court that the 7 accused Appel- F lants were members of an unlawful assembly which caused injuries to three members of the Patel community is unassailable. This court has carefully gone through the entire evidence on record. [30-F-G]

Appabhai v. *State of Gujarat* AIR (1988) SC 696; *Bhoginbhai Hirjibhai* G v. *State of Gujarat* AIR (1983) SC 753; *Sohrab* v. *State of M.P.*, AIR (1972) SC 2020 and *State of U.P.* v. *Anil Singh*, AIR (1988) SC 1998, referred to.

2. The nature, number and location of injuries are some of the indicia to ascertain the common object and for that matter the offences committed. According to both the doctors, the injuries found on the person H of the deceased were possible by hard and blunt substance. Considering

the nature of the injuries inflicted on the three persons and the discrepency about the utterrences of the mob, this Court agrees with the reasoning of the High Court that it could not be conclusively inferrred that the common object of the assembly was to commit the murder. If really a mob of 50-60 persons wanted to commit murder, nothing prevented them from inflicting severe injuries on the person of and the 2 victims, more so, when some of them were armed with sharp cutting and dangerous weapons. The fact that accused Appellants 1-7 used blunt edges of the weapons and not their sharp edger goes a long way to show that they did not share a common intention to kill when they assaulted him. [33-A-C]

3. Law is well settled that normally Appellate Court does not disturb the order of acquittal in a case where two views of the evidence are reasonably possible. But the above principle is not applicable where the approach of the Trial Court in dealing with evidence is manifestly erroneous and conclusions unreasonable and perverse. The High Court was fully justified in reversing the order of acquittal as the Trial judges approach in appreciation of evidence was patently wrong and perverse. Some of the reasons given by the Trial Judge are of such flimsy character that they did not merit consideration in the Appellate Court. The Trial judge was not justified in relying on minor discrepencies regarding details to discard the evidence of eye-witnesses which the High Court noticed and rightly ignored. [29-B-D; 30-D-E]

4. S.149 IPC, applies to offences not only actually committed in pursuance of common object, but also offences that members of the unlawful assembly knew was likely to be committed. It would be impossible in the facts of this case to hold that the members of the unlawful assembly did not know that grevious hurt was likely to be committed. [33-F]

5. The order of conviction passed by the High Court is upheld. Though the sentence is lenient, the fact that since the offences were committed, more than 14 yrs. have elapsed and during this long period the Appellants have gone through the ordeal of a protracted criminal trial and of the two appeals, this court is not inclined to enhance the sentence. [34-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 381 of 1989 Etc.

From the Judgment and Order dated 8/13/14.2.89 and 10.3.89 of the

A Gujarat High Court in Crl. A. No. 584 of 1982.

G. Ramaswamy, U.R. Lalit, E.C. Agrawala, Ms. Poornima Bhat Kak, Mahesh Agrawal, Ms. Pooja Anand, Anant Palli, Mrs. Neelam Kalsi, Vimal Dave, K. Kumar, Lekh Raj Rohalia, Yashank Adhyaru and Anip Sachthey for the appearing parties.

B

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. Fifteen persons were put up for trial before the Additional Sessions Judge, Ahmedabad (Rural) at Narol for rioting with deadly weapons, committing the murder of Govindbhai Girdharbhai C and attempting to commit the murders of Arvind Kumar Kanjibhai and Vinodchandra Keshavlal. The trial Judge acquitted them of all the charges and aggrieved thereby the State of Gujarat preferred an appeal. The High Court admitted the appeal against seven out of the fifteen acquitted and dismissed it summarily as regards others. The appeal was ultimately al- D lowed and all the seven accused were convicted under sections 148 and 326 read with section 149 IPC for causing grievous hurt to Govindbhai. For the injuries caused to Arvind and Vinod some of them were convicted under sections 324 and 326 IPC (simpliciter) respectively and the rest with the aid of section 149 IPC. For the above convictions rigorous imprisonment E ranging from 1 to 3 and fines were imposed with a direction that the substantive sentences shall run concurrently. Assailing their convictions and sentences the seven accused have filed one of these two appeals (Criminal Appeal No. 381 of 1989. The other appeal (Criminal Appeal No. 382 of 1989) has been filed by Arvind for setting aside the acquittal of the seven accused in respect of the charges under section 302/149 and 307/149 F (two counts) and convicting them thereunder; alternatively, for enhancement of their sentences for the convictions recorded against them by the High court. Both the appeals have been heard together and this judgment will dispose of them.

G Bereft of details the prosecution case is as under :

In December, 1980 there was an election of Bavla Nagar Panchayat which was mainly contested by two groups, one consisting of the members of the Bharwad community and the other of Patels. In that election success of the Patels was more pronounced than that of the Bharwads. Since then H the relations between the two communities, who reside in two separate

localities, in the town of Bavla were strained. On June 2, 1981 at or about 6 P.M. about 40 to 50 members of the Bharwad community, including the accused persons, came out of their locality armed with deadly weapons like sticks, *dharias* and *farsis* and proceeded towards the market shouting that they would beat and kill the members of the Patel community. With that object in view they attacked three persons of Patel community in succession. The first attack was on Govindbhai who, owing to the injuries inflicted upon him, expired on the following day, that is, on June 3, 1981. The second attack was on Arvind who saved his life by entering into the shop of one Bipinbhai. Lastly the mob went to the shop of Vinod, dragged him out and assaulted him.

Immediately after he was assaulted, Arvind went to Police Station and lodged an information about the same. On that information Sub-Inspector Chauhan (PW 12) of Bavla Police Station registered a case and took up investigation. Arvind and the other two injured were taken to V.S. Hospital, Ahmedbad and admitted therein. As it was subsequently revealed that the assaults on Govindbhai and Vinod were parts of the same transaction, S.I. Chauhan carried out a joint investigation in respect of all the three assaults and on completion thereof submitted chargesheet.

The accused-appellants pleaded not guilty to the charged levelled against them and asserted that they had been falsely implicated.

To bring home the charges levelled against the accused- appellants, the prosecution examined the two injured Arvind (PW 4) and Vinod (PW 9), Bipinbhai (PW 5), Anil Kumar (PW 6) and Natwarbhai (PW 7) as eye witnesses to prove one or the other episode of the entire incident. Besides, other witnesses including doctors, were examined to corroborate their evidence. No. witness was, however, examined on behalf of the defence.

The learned trial Judge discussed the evidence adduced by the prosecution and concluded that none of the eye-witnesses could be relied upon. The High Court in its turn reappraised the evidence and held that findings of the trial Judge were perverse.

Mr. Ramaswamy, the learned counsel appearing for the accused-appellants criticised the judgment of the High Court on the ground that it ought not have set aside the judgment of the trial Judge merely because a different view of the evidence could be taken, more so, when the latter was

based on a detailed and proper discussion and appreciation of the evidence. The other contention of Mr. Ramaswamy was that even if it was assumed that the High Court was justified in setting aside the acquittal it was not at all justified to convict the accused-appellants under Sections 326 IPC simpliciter or with the aid of Section 149 IPC as from the evidence of the eye-witnesses and the doctors the only conclusion that could be drawn was that the accused persons shared the common object of committing the offence of simple hurt punishable either under Section 323 IPC or, at best, under Section 324 IPC. In that view of the matter, Mr. Ramaswamy submitted, the convictions of the accused-appellants were liable to be accordingly altered; and having regard to the fact that since the offences were allegedly committed more than fourteen years had elapsed and each of the accused-appellants had already served about 10 months of imprisonment the substantive sentence imposed upon them might be reduced to the period already undergone.

Mr. Lalit, the learned counsel appearing in support of the appeal preferred by Arvind, on the other hand contended that having reversed the order of acquittal for justifiable reasons, the High Court ought to have convicted the accused-appellants under Section 302 read with Section 149 IPC for causing the death of Govindbhai. According to Mr. Lalit the facts and circumstances leading to the death of Govindbhai unmistakably proved that the common object of the unlawful assembly was to commit his murder and consequently, as members of the unlawful assembly, each of the accused persons was liable to be convicted under Section 302 read with Section 149 IPC. To bring home his contention Mr. Lalit submitted that the evidence on record clearly established that to wreak their vengeance the accused-appellants along with other members of their community and armed with deadly weapons covered a distance of about 4 kms. and recklessly and brutally assaulted three members of the Patel community, one of whom was dragged out of his shop. Mr. Lalit urged that when those facts and circumstances were considered in the light of the injuries sustained by Govindbhai the only conclusion that could be drawn was that the common object of the unlawful assembly was to commit murder. Mr. Lalit next urged that even if it was held that the common object of the unlawful assembly was to cause grievous hurt to Govindbhai, at least, the accused-appellant Nos. 1 and 2, namely, Bharwad Jakshibhai Nagjibhai and Bharwad Bhikhabhai Nathabhai must be held to be guilty of the offences under Section 302 read with Section 34 IPC as the injuries caused by them with

an iron ringed stick and *dhariya* respectively resulted in his death. Mr. Lalit lastly submitted that in case the findings of the High Court regarding the nature of offences committed by the accused-appellants were to be held unexceptionable, the sentence of imprisonment for 3 years imposed for the conviction under Section 326 IPC for assault on Govindbhai was wholly inadequate. Needles to say, the learned counsel appearing for the State supported the entire judgment of the High Court.

Law is now well settled that through the Code of Criminal Procedure does not make any distinction between the powers of the Appellate Court while dealing with an order of conviction or of acquittal, normally the Appellate Court does not disturb an order of aquittal in a case where two views of the evidence are reasonably possible. But the above principle of is not applicable where the approach of the trial judge in dealing with the evidence is manifestly erroneous and the conclusions drawn are wholly unreasonable and perverse. In the instant case we find that the High Court was fully conscious, and did not transgress the bounds. of its appellate powers while dealing and reversing the order of acquittal.

As already noticed the prosecution case was that the successive assaults on Govindbhai, Arvind and Vinod were parts of the Same transaction and outcome of one and the same common object and not isolated incidents. Surprisingly however, the trial Judge appraised the evidence of the eye witnesses treating the three incidents of assault as distinct and unconnected with each other. The High Court was, therefore, fully justified in observing that the basic approach of the trial Judge in appreciating the prosecution evidence was absolutely erroneous, as it proceeded as if the three assaults were for different motives or common objects.

With the above observation, the High court posed the basic questions as to whether the prosecution succeeded in proving that 40-50 members of Bharwad community formed an unlawful assembly and considering the evidence of the eye witnesses answered it in the affirmative. The High Court also observed that even the defence did not seriously challenge the above part of the prosecution case and that the learned counsel appearing for the accused did not dispute that question. Before us also Mr. Ramaswamy in his usual fairness, did not also join issue with the above finding of the High Court.

The next question, which the High Court took up for consideration,

A was whether the seven appellants were members of the unlawful assembly. In dealing with this question and answering the same in favour of the prosecution the High Court first set out at length the basic principles the trial Judge was generally required to follow for appreciating the evidence of eye witnesses and particularly of injured eye witnesses after culling the same from the judgments of this Court in *Appabhai* v. *State of Gujarat*, AIR (1988) SC 696, *Bhoginbhai Hirjibhai* v. *State of Gujarat*, AIR (1983) SC 753, *Solrab* v. *State of M.P.*, AIR (1972) SC 2020 and State of U.P. v. *Anil Singh*, AIR (1988) SC 1998. The High Court then discussed the evidence of the eye witnesses threadbare in the light of other evidence and, after detailing the significant departures the trial Judge made from those principles, C concluded that he was not at all justified in discarding their evidence.

To appreciate whether the above conclusion of the High Court is sustainable or not we have carefully gone through the entire evidence on record. Having done so we find that the High Court was fully justified in reversing the acquittal as the trial Judge's approach in appreciation of D evidence was patently wrong and perverse. While on this point we may also mention that some of the reasons given by the trial Judge are of such flimsy character that they did not merit any consideration in the appellate Court. Besides the trial Judge was not at all justified in relying upon minor discrepancies regarding details to discard the evidence of the eye witnesses E which the High Court noticed and rightly ignored. However, to avoid prolixity we refrain from detailing or discussing the perverse findings of the trial Judge more particularly when we find the High Court has dealt with them properly and exhaustively.

F Now that we have found that the finding of the High Court that the seven accused-appellants were members of an unlawful assembly which caused injuries to three members of the Patel community is unassailable we have to next ascertain, keeping in view the respective contentions of the learned counsel appearing in support of the appeals, whether the finding of the High Court that the common object of that assembly was to cause G grievous hurt - and not to commit murder - is correct or not. In arriving at the above finding the High Court observed :

> "In our view looking at to the evidence on record as it stands, it would be difficult to infer that the common object of the unlawful H assembly was to kill members of the patel Community. In any set

of circumstances benefit of doubt is required to be given to the accused because of different versions given by different witnesses with regard to the words uttered by the members of the unlawful assembly. Further the fact that the dharia blow is not given by a sharp edge to the deceased and witness Arvindbhai and also no Patal injury is caused by dharia to witness Vinubhai suggests that their common object was not to kill members of Patel community. PW. 7 Natwarlal Mangaldas has deposed that members of the unlawful assembly were uttering "beat the Patels on sight". Same is the version given by witness Dahyabhai. Same is the version given by injured witness Vinubhai Keshaval Patel. From this it can not be definitely stated that the common object of this unlawful assembly was to kill any members of the Patel community, but it can be safely inferred that their common object was to belabour and beat members of the Patel community. In this view of the matter in our view the respondents i.e., the accused Nos. 1, 2, 5, 7, 9, 10 and 13 who are members of unlawful assembly and identified as such by the witnesses and whose presence at the scene of offence is proved beyond reasonable doubt would be liable to be punished for the offence under Section 326 read with Sec. 149 of the Indian Penal Code in view of injuries to deceased Govindbhai."

Since the nature, number and location of injuries inflicted are some of the indicia to ascertain the common object, and for that matter the offences committed. It will be appropriate at this stage to detail the medical evidence adduced during the trial. It appears from the evidence of Dr. Vijay Ratilal Sheth (PW 13) who first examined Govindbhai in the hospital that he had the following injuries on his person:

(i) bleeding from nose and right ear.

(ii) contused lacerated wound 5" x 1" 1/2" over right occipital region.

(iii) bruise 8" x 2" over back of right thigh.

(iv) swelling over right maxilla 3" x 3".

(v) a bruise over right forearm and

(vi) fissure fracture of right parietal bone, and the post-mortem examination report of Dr. Mukesh Shah (PW 11) shows that besides the

above external injuries the deceased had the following internal injuries :

(i) huge naemotoma over the scalo over occipital and right parietal region.

(ii) fracture of right parietal and right temporal bones with a second fracture of anterior cranial fosse on rightside just near the mid-line and

(iii) diffused subdural and subarachadid haemorrhage, with brain congested.

According to both the doctors the injuries found on the person of the deceased were possible by hand and blunt substance.

So far as the injuries on the other two victims are concerned Dr. Seth (PW 13) stated that Arvindbhai had the following injuries on his person:

(i) contused lacerated wound 4" x 1/2" over right frontal region

(ii) contused lacerated wound 3" x 1/2" x 1/2" over left occipital region

(iii) contused lacerated wound 1" x 1/4 x 1/4" on base of left thumb and

(iv) tenderness over the left forearm and the left knee.

The other injured Vinodchandra was examined by Dr. Kirit Shukla (PW 14) and his examination revealed the following injuries on his person:

(i) contused lacerated wound on forehead 5" I/2"x 1/2".

(ii) contused lacerated wound over occipital region 1/2" x 1/2" x 1/2".

(iii) pupils of both eyes were equally reacting to light.

(iv) rounded bruises over chest.

(v) bruise on front of abdomen 6" x 1" and 6" x 1",

(vi) tenderness over right forearm and wrist with a fracture

(vii) pointed wound over left leg 1 x 1 cm. and

(viii) tenderness over left heel. A

Considering the nature of injuries inflicted on the above three persons and the discrepancy about the utterances of the mob we are in complete agreement with the reasoning of the High Court as quoted earlier and the conclusion drawn therefrom that it could not be conclusively B inferred that the common object of the assembly was to commit the murder. If really a mob of 50-60 persons wanted to commit murders nothing prevented them from inflicting severe injuries on the persons of Govindbhai and the two victims, more so, when some of them were armed sharp cutting and dangerous weapons. The fact that the accused-appellants Nos. 1 and 2 used blunt edges of the weapons and not their sharp edges C goes a long way to show that they did not also share a common intention to kill Govindbhai when they assaulted him. We are, therefore, unable to accept the contention of Mr. Lalit that the members of the unlawful assembly shared the common object or accused- appellants Nos. 1 and 2 shared the common intention of committing the murder of Govindbhai. D

Coming now to the contention of Mr. Ramaswamy that the facts and circumstances of the case, particularly the fact that most of the members of the assembly only carried ordinary sticks, a few of which, according to the prosecution were recovered from the houses of the accused-appellants clearly indicated that the common object of the unlawful assembly was only E to cause simple hurt we can only say that even if we accept his contention, still the accused-appellants would be liable for the offence of causing grievous hurt as Section 149 IPC applies not only to offence actually committed in pursuance of the common object but also the offence that members of the unlawful assembly knew was likely to be committed; and F it would be impossible in the facts of this case to hold that the members of the unlawful assembly did not know that grievous hurt was likely to be committed by an unlawful assembly, as large as the one with which we are concerned here some of whom were armed with dangerous weapons. Accordingly, even if the common object be not placed as high as murder as contended by Mr. Lalit, the conviction of the accused- appellants under G Section 326 IPC simpliciter on 326 read with 149 IPC, as the case may be, for the assaults on Govindbhai and Vinod has got to be upheld.

That brings us to the question of sentence as raised by Mr. Lalit. It is undoubtedly true that considering the manner in which the accused-ap- H

A pellants assaulted Govindbhai the sentence of three years imposed by the High Court for that offence errs on the side of leniency. But then, we cannot be oblivious of the fact that since the offences were committed more than 14 years have elapsed and during this long period the appellants have gone through the ordeal of a protected criminal trial and of the two appeals. Having given our anxious consideration to these competing claims we do not feel inclined to enhance the sentence.

B

In the result both the appeals are dismissed. The accused - appellants, who are on bail, shall now surrender to their bail bonds to serve out the sentences imposed by the High Court.

I.M.A. Appeals dismissed.