Harshadsingh Pahelvansingh Thakore vs The State Of Gujarat on 17 September, 1976

Equivalent citations: AIR1977SC710, 1977CRILJ352, (1976)4SCC640, [1977]1SCR626, 1976(8)UJ891(SC), AIR 1977 SUPREME COURT 710, (1976) 4 SCC 640, 1977 SC CRI R 33, (1977) 1 SCR 626, 1976 CRI APP R (SC) 318, 1977 2 SCWR 407, 1977 ALLCRIC 1, 1977 SCC(CRI) 26, 1976 UJ (SC) 891

Bench: P.N. Bhagwati, Syed M. Fazal Ali, V.R. Krishna Iyer

JUDGMENT

Krishna Iyer, J.

1. Judicial summitry, when the subject of dispute is re-appraisal of evidence even on the sophisticated ground of mis-appreciation, has to submit itself to certain self-restraining rules of processual symmetry. The trial Court directly sees the witnesses testify and tests their veracity in the raw. The appellate Court, enjoying co-extensive power of examination, exercises it circumspectly, looks for errors of probative appraisal, oversight or omission in the record and makes a better judgment on the totality of materials in the light of established rules of criminal jurisprudence. As the case ascends higher, forensic review is more rarefied. Such being the restrictive approach, the Supreme Court cannot be persuaded, without stultifying the system of our judicature, to go over the ground of reading the evidence and interpreting it anew so as to uphold that which appeals to it among possible alternative views. If there is perversity, miscarriage of justice, shocking misreading or gross-misapplication of the rules, procedural and substantive, we interfere without hesitation. Of course, other exceptional circumstances also may invoke our review jurisdiction. These prefatory observations have become necessary since, usually appellants, hopefully slurring over these jurisdictional limitations, argue the whole way before us as if the entire evidence is at large for de novo examination. Such a procedure has been attempted in the present case and, for reasons just mentioned, we are disinclined to rip open the depositions to re-discover whether the evidence is reliable or not.

2. A single survivor figures as the appellant before us, from among four persons who were tried by the Sessions Court, Baroda, for offences punishable under Sections 302 read with Section 34 IPC and Section 135 of the Bombay Police Act. Accused 3 and 4 secured acquittal before the Sessions Court and accused 2 won his appeal before the High Court. Concurrent findings of guilt notwithstanding, the first accused has secured special leave by jail appeal.

3. Shri L.C. Goyal, appearing as amicus curiae, has urged before us that the appellant is entitled to acquittal like the rest of the accused. The few facts, to explain why we make short shrift of this case,

may be narrated. The murderous episode, preceded some days earlier by a minor incident, which took place on February 7, 1974 at about 10.30 p.m. The deceased Vasant and his friends were returning from the side of a cinema house, Krishna Talkies. Sitting on the footpath and in keeping with the hour and the company, the group took hot drinks, the deceased having consumed considerable potions. The drunk was led by his comrades towards his house when a bunch of persons including the four accused confronted them. A tipsy altercation often sparks the plug of tantrums and violence. Here the prosecution version is that accused No. 1 Baba and the deceased Vasant began the brawl with a heated verbal exchange, followed by mutual fisting but climaxed by the 1st accused planting his knife on the left chest of the victim. The others too joined in the attack, accused 2 with knife and accused 3 with fist. The last man only shouted to incite them into giving blows. Hardly had the victim Vasant fallen when the accused assailants took to their heels. The injured was shortly hospitalised but soon succumbed to his wounds. Eye-witnesses testified, medical evidence was adduced and the homicide brought beyond reasonable doubt.

4. The trial court had framed charges with offences under Section 302 read with Section 34 IPC. The post-mortem certificate revealed two transverse incised wounds penetrating the chest cavity. There were quite a few other incised wounds in less lethal parts of the anatomy. However, in the opinion of the doctor all the injuries were ante-mortal and the chest wounds were sufficient in the ordinary course of nature to cause death. The deceased passed away due to shock and haemorrhage caused by the stab wounds, especially on the chest.

5. Both the courts below have affirmed in substance the case set forth by the prosecution about the occurrence. Concurrent findings of fact carry considerable weight at the Supreme Court level that to shake our credence is too demanding a forensic exercise. Shri Goyal persistently drew us into the details of testimony to persuade us into a contrary conclusion from that recorded by the trial Court and, after due examination, approved by the High Court.

6. While the murder is the tragedy, the discovery of the murderer beyond doubt is the judicial function. So much so, the essential enquiry turned on who the culprits were. The learned Sessions Judge absolved accused nos. 3 and 4 of the offences on the score of absence of reliable evidence on record as regards any part played by accused nos. 3 and 4'. Nevertheless, he held accused Nos. 1 and 2 to be guilty of jointly murdering Vasant taking the view that they 'had taken under and unfair advantage of the fact that the deceased was unarmed,, and had acted in a cruel manner by inflicting 7 or 8 injuries with knives'. The sentence that followed however was rigorous imprisonment for life on the ameliorative circumstance that the attackers had acted in the heat of passion. The High. Court, in fair discharge of its appellate function, sedulously studied the evidence bearing on the murder and the murderers. Hardly any flaw in, appreciation has emerged from the argument of the counsel for the appellant, in regard to the truth of the occurrence and nothing short of grave mistakes or palpable omissions can induce us to dissent from this finding. Even so the High Court has been at great pains to screen the testimony with reference to their credibility, motivation and probability so that their finding may not be faulty on the score of insufficient evidence of involvement of any of the two accused. Such a searching scrutiny yielded fruitful result for the second accused and he drew the dividend of acquittal at the High Court level on account of mistakes of the 'might-have-been' category. We express no opinion as to whether every dubious 'maybe' or

passing hesitancy can be exalted to the level of 'reasonable doubt' in criminal jurisprudence. The conviction of the guilty is as much part of the administration of justice as the acquittal of the innocent. The judicial art takes no sides where the truth is in fair measure manifest. Anyway, accused No. 2 having been acquitted, we are concerned with the solitary, appellant before us.

7. Counsel Shri Goyal pressed upon us what he regarded as a sure-fire contention that if there was no specific evidence of the appellant having inflicted the fatal stab on the chest he was entitled to share the acquittal with the rest even if there was abundant proof of several persons including him having set upon the deceased and killed him using lethal weapons. In the present case more than one knife was used, more than one man was in the attacking party and more than one incised wound was inflicted. While we can make short work of the submission by holding, as we do, that there is clear testimony that the chest stab which was fatal in the ordinary course was the handiwork of the appellant, we make the legal position clear that when a murderous assault by many hands with many knives has ended fatally, it is legally impermissible to dissect the serious ones from the others and seek to salvage those whose stabs have not proved fatal. When people play with knives and lives, the circumstance that one man's stab falls on a less or more vulnerable part of the person of the victim is of no consequence to fix the guilt for murder. Conjoint complicity is the inevitable inference when a gory group animated by lethal intent accomplish their purpose cumulatively. Section 34 IPC fixing constructive liablility conclusively silences such a refined plea of extrication. (See Amir Hussain v. State of U.P. , Maina Singh v. State of Rajasthan . Lord Sumner's classic legal shorthand for constructive criminal liability, expressed in the Miltonic verse 'They also serve who only stand and wait' a fortiori embraces cases of common intent instantly formed, triggering a plurality of persons into an adventure in criminality, some hitting, some missing, some spletting hostile heads, some spilling drops of blood. Guilt goes with community of intent coupled with participatory presence or operation. No finer juristic niceties can be pressed into service to nullify or jettison the plain punitive purpose of the Penal Code.

8. Counsel also argued that since three out of the four accused have secured acquittal the invocation of Section 34 is impermissible. The flaw in this submission is obvious. The Courts have given the benefit of doubt of identity but have not held that there was only one assailant in the criminal attack. The proposition is plain that even if some out of several accused arc acquitted but the participating presence of a plurality of assailants is proved, the conjoint culpability for the crime is inescapable. Not that the story of more than one person having attacked the victim is false, but that the identity of the absolved accused is not firmly fixed as criminal participants. Therefore it follows that such of them, even if the number dwindled to one, as arc shown by sure evidence to have knifed the deceased, deserve to be convicted for the principal offence read with the constructive provision.

9. We therefore hold that the appeal deserves to be and is hereby dismissed. We appreciate the unsuccessful but industrious enthusiasm of Shri L. C. Goyal who has served as amicus curiae.

10. Before parting with this case we may draw attention to a sociological thought. There is evidence in the case of high spirits and consumption of alcohol. Intoxicating beverages subvert sobriety and the drinking habit which begins with enjoyment of exuberance escalates into consumption of intemperate potions by tempting degrees ultimately holding the bacchanalian votary captive. The

deleterious nexus between alcohol and violent crime is fairly obvious and these days, when drunken delicats and delinquencies are alarmingly on the increase, the State must be doubly concerned to control intoxicating liquors as part of the strategy of defusing crime explosion and as proof of bearing true faith and allegiance to Article 47 of the Directive Principles of State Policy.