Pralhad vs State Of Maharashtra on 24 March, 1981

Equivalent citations: AIR1981SC1241, 1981CRILJ752, 1981(1)SCALE576, 1981(SUPP)SCC26, 1981(13)UJ270(SC), AIR 1981 SUPREME COURT 1241, 1981 CRIAPPR(SC) 191, 1981 SCC(CRI) 646, 1981 UJ (SC) 270

Bench: A. Varadarajan, Baharul Islam, S. Murtaza Fazal Ali

JUDGMENT

1. This appeal under Section 2 of the Supreme Court (Enlargement of Jurisdiction) Act is directed against the judgment of the Bombay High Court convicting the appellant under Section 302 Indian Penal Code to imprisonment for life after reversing the order of acquittal passed by the Sessions Judge.

2. The facts and circumstances of the case have been detailed in the judgments of the Courts below and need not be repeated here.

3. It appears that on July 31, 1974 at about 3 p.m. there was a scuffle between the appellant Pralhad and the deceased Ghanshyam in the course of which Pralhad is alleged to have caused stab injuries on the person of the deceased as a result of which he fell down and ultimately died. FIR was lodged by Tulsi Das, a brother of the deceased. After the usual investigation, charge-sheet was submitted against the accused who were put up on trial before the Sessions Judge who, however, while finding that the case of homicide as made out by the prosecution was proved, held that the complicity of the appellant in the crime had not been established beyond reasonable doubt. Thereafter, the State filed appeal in the High Court. The High Court after a very careful consideration and close scrutiny of the evidence and circumstances referred to by the learned Sessions Judge found that the case against the appellant was proved to the hilt and that the judgment of the Sessions Judge was extremely perverse.

4. We have heard counsel for the parties and have gone through the judgment of the High Court and we find ourselves in complete agreement with the view taken by the High Court. The entire fabric of the prosecution case rested on the evidence of PWs 4 and 6. The statements of these two witnesses have been placed before us in extenso and we find no reason to disbelieve their testimony. Shorn of a few contradictions or discrepancies here and there, the evidence is clearly consistent. It is not disputed that these two witnesses were absolutely independent and had no prejudice against the accused. Even the Sessions Judge while commenting on the evidence of these witnesses observed as follows :

> It is possible to argue in the present case and it was in fact argued on behalf of the prosecution that both Gulab and Jalil are independent persons in the sense that they had no interest in Ghanshyam or prejudice against the accused. Hence their evidence is fit to be believed. The fact that these two witnesses are independent is only one

aspect. Merely because a particular witnesses is independent, it does not mean that his evidence should be accepted without scrutiny.

Here, the Sessions Judge while admitting that the evidence of the witnesses was independent erred in law in holding that even though the witnesses were independent, their evidence was to be scrutinized with care. The rule of careful scrutiny applies only to inimical or interested witnesses but not to independent witnesses. Even in case of interested witnesses, the rule of scrutiny, is merely a rule of caution rather than a rule of law. The Sessions Judge relied on very minor contradictions and discrepancies and certain omissions of an insignificant nature which the witnesses had not stated before the police. On the other hand, the High Court after fully considering the evidence came to a clear finding that the prosecutions case had been proved and while relying on the evidence of PWs 4 and 6, observed as follows :

It would thus be clear that two independent witnesses Gulab (PW 4) and Jalil (PW 6), have given a consistent version to show that the assault took place. They had no axe to grind against the accused. The presumption is that the witnesses speaking under an oath are truthful unless and until they are shown untruthful or unreliable in any particular respect.

5. Mr. Bhartari who has argued this case with great vehemence submitted that the names of these two eye-witnesses were not mentioned in the FIR. The first informant not an eye-witness at all and there is no evidence to show that these two witnesses had disclosed the name of the assailant to the informant. The definite case put forward by the two witnesses in court is that immediately after they saw the assault, they were given serious threats by the accused and other villagers also advised them not to intermeddle with the affairs of the deceased and the appellant. This explains the silence of the witnesses. Thus, there being nothing to show that these witnesses had mentioned the names of the assailant to the informant Tulsi Das, they cannot be disbelieved on the ground that their names had' not been indicated in the FIR.

6. Mr. Bhatrari drew our attention to a number of other discrepancies in the evidence of the eye-witnesses which, in our opinion, are not material-not even worth mentioning. After having gone through the evidence, we are fully satisfied that the prosecution case against the appellant has been proved beyond reasonable doubt and this is certainly not a case in which it could be said that the view taken by the trial court was even reasonably possible. The result is that we see no reason to interfere with the judgment of the High Court. The appeal is accordingly dismissed.