Prabhu Babaji Navle vs State Of Bombay on 19 September, 1955

Equivalent citations: AIR1956SC51, 1956CRILJ147, AIR 1956 SUPREME COURT 51

JUDGMENT

Bose, J.

1. The appellant Parbhu was indicted for the murder of his sister-in-law Mst. Parvati. Parbhu's sons, Babu and Bhika, his brother Ganpat and Ganpat's son Vishnu were also charged.

2. The Sessions Judge convicted Parbhu and his two sons under Section 302, read with Section 34, Penal Code, and acquitted the other two. All three were sentenced to transportation.

3. The High Court allowed the appeals of the sons and acquitted them. The conviction of the father under Section 302, read with Section 34, was maintained.

4. That at once raises the conundrum that arises in this class of case. The appellant was not charged for having committed the murder himself, nor does the evidence indicate that he was charged for having shared the common intention of four named persons and for having participated in the crime. If these four persons are all acquitted, the element of sharing a common intention with them disappears; and unless it can be proved that he shared a common intention with the actual murderer or murderers, he cannot be convicted with the aid of Section 34.

Of course he could have been charged in the alternative for having shared a common intention with another or others un known. But even then, the common intention would have to be proved either by direct evidence or by legitimate inference. It is impossible to reach such a conclusion on the evidence in this ease once the co-accused are eliminated because the whole gravamen of the charge and of the evidence is that the appellant shared the common intention with those other four and not with others who are unknown.

5. The facts are as follows. It will be convenient to set out a family tree as the parties are all related.

BABUJI |

| | |
Prabhu | Ramchandra (died) | Ganpat
(accused 1) | W : Parvati | (accused 2)
| (murdered) |

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    |                    |                Vishnu
    |                Draupadi             (accused 4)
    |        (daughter from a former wife)
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    |               |
  Babu            Bhika
(accused 3)     (accused 5)
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6. The three brothers Parbhu, Ram-chandra and Ganpat lived in separate houses which adjoined each other. They were separate in estate and cultivated their lands separately. After Ramchandra's death, his widow Parvati (the murdered woman) inherited his estate and she leased out the lands that had come to her to Parbhu and Ganpat on a half crop share basis.

She was paid her half share in the first year but after that the two brothers retained possession of the lands and refused to give her anything. She was then advised to adopt a son to defeat the claims of Parbhu & Ganpat. The prosecution case is that Parvati was murdered on account of the enmity thus engendered and to defeat the adoption.

7. It may be observed in passing that the adoption would not have made much difference to the legal rights because the brothers had no right to immediate possession apart from a lease. Parvati had the right to possession during her life time and after her death the right would have passed to her husband's daughter Draupadi, so, unless the parties were ignorant of the law and their rights, or unless they are not governed by the 'lex loci', the question of adoption would hardly be a relevant factor.

However, there is no doubt that there was enmity because the two brothers were in wrongful possession of the land and quite evidently resented Parvati's efforts to regain it.

8. From there we come at once to the occurrence. The woman was murdered on the evening of 8-7-1952 when the sun was setting just as she was about to take her evening meal. She was a young girl of 18. The only person who saw the actual murder was Sunderbai, P.W. 5, a girl of 15. She was a close neighbour of Parvati and was related to her by marriage. Parvati had asked her to come and dine with her that evening. Her story is this.

9. They were both inside a room of the house sitting down ready to eat. But before they could begin, the third accused Babu entered the room with an axe and struck Parvati with it on the back of her head. Parvati fell down and then "accused 1, 4 and 5" (Parbhu, Vishnu and Bhika) "came in and I ran out of the room. Near the door outside was standing accused 2 (Ganpat). He said 'do not come out until she is completely done with' ". In cross-examination she says:

> "The accused (1, 4 and 5) did not talk to me or to the deceased Parvati. Accused No. 3 had struck her with the butt end of the axe before accused 1, 4 and 5 entered her house".

10. Now if this were to be believed, there would be evidence to connect the others with Babu and sufficient to indicate the prior concert that Section 34 requires. But both Courts are agreed that this girl is not a trustworthy witness and they refused to accept her evidence without corroboration. The assessors concurred in that estimate of her. The learned Sessions Judge is clear that her story about the second accused Ganpat is an afterthought and, holding that Ganpat was not there, he acquitted him. He has given strong reasons for so holding and the High Court also remarks that she "subsequently" tried to involve the second accused, "a possibly innocent man".

11. Now if the second accused is eliminated, then the words of incitement that he is said to have uttered also go; and those words coupled with the fact that a guard was stationed at the door are the only things that suggest prior concert. Eliminate them and what is left? Simply this: accused 1, 4 and 5 came into the room after the 3rd accused had struck down Parvati and felled her to the ground.

They did nothing. They said nothing. They simply came there. Surely that is not inconsistent with innoncence? What is more natural than for men to rush to the scene when they hear that another is beating a young girl and then to stand stunned with shock when they find that she has been killed. That would be natural enough with any man. How much more so when a father hears that a hot-headed son has left to be labour an enemy with an axe.

12. But even that is not all, for the presence of the 3rd accused, who is said to have done the actual killing, was doubted, as also that of the other three; and all four have been acquitted. Eliminate them and then all we know, so far as Sunder's evidence is concerned, is that the first accused entered the room, presumably alone, and was a witness after the event to a murder committed by some third party with whom he is not shown to have had even a nodding acquaintance.

13. The Sessions Judge and the High Court say that Sunder says that the first accused and the others had lathis in their hands: even that would have been something; but Sunder does not say that. She does not mention a lathi at all. Her entire evidence on this point consists of the passages we have set out above. That is hardly the care expected of Judges when men's lives are at stake.

14. There are only two more witnesses, neither eye-witnesses to the actual occurrence.

15. Raoji (P.W. 3) is Parvati's father. He was sitting on the 'ota' of Kushaba's house. Kushaba is a neighbour and is the person whom Parvati had decided to adopt despite his 45 years and her 18. His house is 25 or 30 paces from the house of the accused, and so presumably about the same distance from Parvati's house, as their houses are contiguous. Now Raoji's evidence is this:

> "I was sitting on the Ota of Kushaba's house..... .Sundera.. ...came and told me that accused 1, 3, 4 and 5 killed Parvati. I at once went to Parvati's house; near the door was standing accused 2; he said to the persons inside 'do not return unless she is completely done with'. The door was bolted from inside. I pushed the door; it did not open. Thereafter, the inmates opened the door and out came from the house accused Nos. 1, 3, 4 and 5. Accused No. 3 had an axe and the other three had sticks".

16. Now the whole of this evidence has been disbelieved for the very sound reasons given by the learned Sessions Judge. The attempt to rope in the second accused is a patent afterthought; also it is hardly likely that the second accused would keep on repeating his exhortation for the benefit of Sunder and Raoji.

It will be remembered that Sunder says she heard him say this as she was coming out of the room on her way to Kushaba's house. Raoji hears it again when, according to him, he goes there and tries to open the door. The learned Sessions Judge says that this witness cannot be believed unless he is corroborated, and the assessors agreed with him.

There is no corroboration about the lathis and Raoji is the only witness who speaks about them; nor does the High Court rely on him for that: they rely on Sunder who does not speak of lathis; even the first information report does not mention them; nor does it include the second accused Ganpat.

Therefore, as both the Sessions Judge and the assessors are agreed that this witness cannot be believed without corroboration,and as his evidence has not been accepted as regards four of the five accused even by the High Court because he is not corroborated, the fact that he places a lathi in the first accused's hand must also go. So, all we have is that the first accused was seen to emerge from the room with persons unknown.

17 The other witness Laxman (P.W. 9) carries the case no further. All he says is:

> "I heard sound of beating coming from Parvatibai's house. I went out to see what it was. Accused 1, 3, 5 went in their house. I then went back to my house".

The fact that these accused went out of the house to see what was happening and then returned is as consistent with their innocence as is the fact that this witness did exactly the same thing.

18. Now the High Court has attached great importance to the fact that human blood was found on the appellant's dhoti "at one place", and in their opinion this is corroboration of Sunder. But corroboration of what? Only corroboration of his presence there after the crime was committed. It is no corroboration of the prior concert that Section 34 requires if the rest of the evidence is rejected, as it has been; it is no corroboration of participation in the crime.

In the picture painted by the learned Judges of the High Court, blood could equally have spurted on to the dhoti of a wholly innocent person going there in the circumstances described by us earlier in our judgment; and, until the contrary is established, we are bound to presume that the appellant's presence, in the circumstances described by Sunder, was innocent.

19. The Chemical Examiner's report about the blood stains is slovenly and perfunctory and we have noticed with regret the same slovenliness in the reports of other Chemical Examiners in some other cases that have recently come before us. The Chemical Examiner's duty is to indicate the number of blood stains found by him on each exhibit and the extent of each stain unless they are too minute or too numerous to be described in detail.

Merely to say that blood was detected on an exhibit, as this report states, is not enough. It may well lead to a miscarriage of justice compelling judges to acquit when they would have convicted had the report been more revealing. We trust these observations will be brought to the notice of all Chemical Examiners in the country. Not that they all act like this. Many give full and detailed reports as they should.

20. As we have remarked, the learned Sessions Judge was tight in holding that there was a very obvious attempt to rope in the second accused. He was not mentioned in the first information report nor was he mentioned in the Committal Court, but no less than four witnesses have sworn to his presence in the Sessions Court, and have given him a very active and important part.

The witnesses are Kushaba (P.W. 1), Raoji (P.W. 3), Parvati Kushaba (P.W.4) and Sunder (P.W. 5). It is evident that they have put their heads together to rope in the whole family, innocent or guilty. The danger of their having done that from the start in the case of the old father, whose age is given as 63, is obvious. However, we are not reassessing the evidence.

What we hold is that on the concurrent findings of the two lower courts and the consequences which necessarily flow from those findings, there is no evidence on which a finding of the prior concert that Section 34, Penal Code, requires can be based, nor is there in fact such a finding; and as the conviction cannot stand without the aid of Section 34, it must be set aside.

21. The appeal is allowed. The conviction and sentence are set aside and the appellant is acquitted of the charge made against him. He will now be set at liberty.