

PETITIONER:
YUSUF MUSA CHAUHAN & ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 13/02/1996

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
RAY, G.N. (J)

CITATION:
JT 1996 (3) 10 1996 SCALE (2)98

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI. J.

This appeal by special leave has been filed by the convicted accused against the common judgment and order passed by the High Court of Bombay in Criminal Appeal Nos. 938 and 939 of 1978. Cr.A. No. 938/78 was filed by accused Nos. 1 and 2 and Cr.A. No. 939/78 was filed by accused Nos. 3 to 6. The High Court dismissed both the appeals and confirmed the conviction and sentence recorded by the Court of Sessions, Greater Bombay. Cr.A. No.887/79 filed by accused Nos. 7 and 8 was allowed and they have been acquitted. Appellant No.6 (accused No.6) died during the pendency of this appeal.

Harbhajan Singh alias Bodha for whose murder the appellants have been convicted was residing at Arthur Villa situated at a distance of about 20 feet from the junction of Gaothan lane No.1 and Swami Vivekanand Road (S.V. Road). S.V. Road in the main road running through Andheri, a suburb of Bombay. and Gaothan lane Nos.1, 2 and 3 are its lanes. Gaothan lane No.2 where accused Nos.1, 3, 4, 6 and acquitted accused Nos.7 and 8 were residing is about 30 feet away from Gaothan lane No.1. Gaothan lane No.2 wherein accused Nos. 2 and 5 were residing is little ahead of Gaothan lane No.2. Bodha was residing with his widowed mother Surjit Kaur and five brothers, namely (1) Sukhwinder Singh, (2) Rajinder Singh, (3) Harbinder Singh, (4) Jitender Singh and (5) Surender Singh. Bodha had a friend named Afzal, who was earlier residing in Arthur Villa but later on shifted to Varsova, a nearby suburb.

On 22.4.1977, at about 7 P.M. Afzal left his house at Varsova and went to Andheri to meet his married sister. Then at about 9 P.M. he went to Golden Gate Restaurant situated on S.V. Road. Bodha met him there, They remained there till some time before 11 P.M. As Afzal wanted to catch the last bus leaving Andheri for Varsova at about 11.05 P.M., they left the restaurant and came near the bus stop

which was in between Gaothan lanes No.1 and 2 on S.V. Road. Afzal stopped at the bus stop and Bodha proceeded further towards his house. When he reached near the junction of S.V. Road and Gaothan lane No.1, he was attacked by a crowd of about 10 to 12 persons, including the 8 accused and some injuries were caused to him. Afzal saw the assault on his friend and run to his rescue. On seeing Afzal approaching them the assailants turned their attention towards Afzal and assaulted him with the weapons which they were carrying. Afzal received number of injuries, became giddy and fell down in the nearby gutter. Meanwhile, Bodha started running towards his house. Accused-appellants Nos.1 to 6 ran after him. Appellant No.1 had an open knife in his hand and appellant No.2 was armed with a big iron 'zara' (a utensil with many holes, ordinarily used by cooks and confectioners). Bodha pushed open the front door of his house, crossed the first room, went into the second room and while he was trying to open the door of kitchen, appellants Nos.1 and 2 who had followed him right inside his house, assaulted him again. Appellant No.1 gave a knife blow on the chest of Bodha and Appellant No.2 gave a 'zara' blow on his head. The two appellants then ran away from there. Bodha fell down at that very spot as a result of the injuries received by him. Appellant Nos. 3 and 6 who had also chased Bodha did not enter the house but remained standing outside abusing Bodha and uttering threats when Kuldip Kaur, sister of Bodha and Rajinder Singh went near the door, appellant No.6 asked them to bring Bodha out as he wanted to take revenge as Bodha had some days before the date of the incident beaten them. On Kuldip Kaur informing them that Bodha had received serious injuries and had become unconscious, appellant Nos.3 to 6 also ran away. Seeing the serious condition of her son, Surjit Kaur sent her younger son Surender Singh to call her brother Harbans Singh who was residing close by. Harbans Singh on being informed about the incident immediately contacted the police control room. The control room informed the mobile police van moving in that area. P.S.I. Nanaware who was the incharge of the mobile van reached Arthur Villa within 5 to 6 minutes. Finding the condition of Bodha serious, he removed Bodha with some of his family members in the van to Cooper hospital. The Doctor who examined Bodha found him dead. So he informed police constable Kadam who was on duty about Bodha's death. Constable Kadam sent a telephone message to Andheri Police Station. Within a short time the investigation started. Accused Nos. 3 to 6 were taken into custody at about 5 A.M. Accused Nos. 1 and 2 were arrested on 24.4.1977 and Accused Nos. 7 and 8 were arrested on May 5, 1977.

All the appellants and acquitted accused Nos.7 and 8 were tried by the learned Additional Sessions Judge, Greater Bombay, in Sessions Case No.207 of 1977 for the offences punishable under Sections 147, 148, 302 read with 149, 307 read with 149, 449 read with 149 and 450 read with 149 of the Indian Penal Code. In the alternative they were also charged under Sections 307 read with 34 and 302 read with 34 I.P.C. Appellant Nos. 1 to 6 were also charged under Sections 449, 450 both read with Section 34 I.P.C. The learned Additional Sessions Judge convicted all the accused for the offences with which they were charged.

All the convicted accused filed appeals in the High Court challenging their conviction and sentence. On re-appreciation of the evidence, the High Court also found with respect to the first part of the incident near the junction of the road that the evidence of Harbinder Singh (PW5) in toto and that of Afzal (PW6) in part i.e. except regarding

identification of the accused was rightly relied upon as it received corroboration from the find of blood. three 'zaras' out of which two were stained with human blood, one blood-stained razor and blood-stained bush shirt of Afzal from near that junction. As regards the assault on Bodha which took place inside the house, the High Court came to the conclusion that the evidence of Kuldip Kaur (PW2), Rajinder Singh (PW4), Surjit Kaur (PW3) and Charanjit Singh (PW9) was reliable and trustworthy. The High Court agreed with the finding of the Sessions Court that Appellant Nos. 1 to 6. had formed an unlawful assembly common object of which was to commit murder of Bodha and that in prosecution of that object the killed Bodha and injured Afzal. The High Court, therefore, dismissed the appeals of Appellant Nos. 1 to 6. With respect to Accused Nos. 7 and 8 evidence of Afzal (PW6) and Robin (PW8) was not found to be reliable. The High Court, therefore, set aside the conviction of those two accused and acquitted them.

Mr. Mohta, learned senior counsel for the appellants submitted that the High Court has not properly appreciated certain aspects which would show that in all probability deceased Bodha and Afzal were attacked by unknown persons and not by the appellants. He submitted that the prosecution was not able to suggest any motive for Appellant Nos. 1 to 6 to form an unlawful assembly and kill Bodha. He also submitted that the version of Afzal (PW6) and Harbinder Singh (PW5) was that Bodha and Afzal were assaulted by a crowd of about 12 to 15 persons, that 4 to 6 persons in the crowd had iron zaras with them and that Bodha was given only zara and fist blows. He further submitted that if Bodha and Afzal were really injured by the appellants then Afzal would not have failed to give their names when he gave his first statement to the police, as the appellants were known to him since long. He also submitted that having disbelieved the evidence of Afzal the High Court should not have accepted the evidence of Harbinder Singh (PW5) regarding the identity of the assailants, more particularly, because he was a chance witness. It was also submitted that deceased Bodha had a criminal record as disclosed by the evidence on record and in all probability he was beaten by the members of the public and/or his enemies. The learned counsel challenged the finding recorded by the High Court that the evidence of eye-witnesses Kuldip Kaur (PW2), Rajinder Singh (PW4), Surjit Kaur (PW3) and Charanjit Singh (PW9) was reliable and trustworthy and submitted that the fatal assault on Bodha must have been outside his house and these witnesses had not seen the same. He submitted that if they had seen the incident then they would not have failed to inform P.I. Nanaware (PW25) that Appellant Nos. 1 and 2 had given blows to Bodha and that Appellant Nos. 3 to 6 at that time were standing outside abusing and threatening Bodha and members of the family, while they were going together in the police van to Cooper Hospital. He also submitted that the evidence of Police Constable Kadam (PW24) who was on duty at the Cooper Hospital, discloses that before sending information to Andheri Police Station he had inquired from Rajinder Singh (PW4) about the names of the assailants but Rajinder Singh could not disclose their names. He submitted that no blood was collected from inside the second room where according to the eye witnesses the assault had taken place and that would also go to show that in fact the fatal assault on Bodha was not inside his house but had taken place outside. The learned counsel submitted that the conduct of these eye-witnesses in not preventing Appellant Nos. 1 and 2 from giving blows to Bodha and not

raising an alarm creates a serious doubt regarding their claim that Appellant Nos. 1 and 2 had followed Bodha inside the house and given blows there.

We have carefully gone through the evidence and judgment of the High Court. We find that all the aspects emphasized by the learned counsel have been considered by the High Court and the findings by it are supported by good reason. It is now well-settled that when there is direct evidence of trustworthy eye-witness absence regarding motive loses its importance as a circumstance in favour of the accused. Though there is no evidence to show what actually prompted the appellants and acquitted accused Nos.7 and 8 to cause the death of Bodha on that day, evidence of Kuldip Kaur (PW2) and Rabinder Singh (PW4) discloses that Appellant Nos. 3 to 6 were abusing Bodha and uttering threats and Appellant No. 6, Yasin, was shouting that he wanted to take revenge against Bodha as Bodha had assaulted them previously. It is not in dispute that assault on Bodha and Afzal took place near the junction of the lane with the S.V. Road. It is also not in dispute that there was sufficient light at the said place. The evidence of Harbinder Singh (PW5) that in the crowd of 12 persons which attacked his brother Bodha and Afzal he had seen the appellants has remained unshaken. It was possible for this witness to identify the appellants as they were all known to him since his childhood. His explanation regarding his presence at that time has been accepted by both the courts below and his evidence on that point has also remained unshaken. This witness had no reason to falsely involve the appellants and let go the real assailants. Merely because the High Court did not accept the evidence of Afzal (PW6) as regards his and Bodha's assailants for the reason that he had not disclosed the names of assailants in his first two statements and had not given any rational explanation for that omission. it would not be proper to say that the High Court should have rejected the evidence of Harbinder Singh also.

The versions of witnesses Harbinder Singh and Afzal that during the first part of the incident Bodha was given only 'zara' and fist blow cannot be considered as improbable or unnatural. On seeing Bodha near the junction of the lane the assailants ran towards him. Bodha must have not remained stationary. Therefore, it all depended upon which of the assailants were able to reach him first. Moreover, when they saw Afzal rushing towards them, they left Bodha and started beating him. If under these circumstances no injury was caused to Bodha at that time by a weapon like a knife or razor. it cannot be said that on the ground of improbability or unnaturalness their evidence should have been discarded. The evidence of witness Muneshwar (P.W.7) discloses that the iron zaras were removed from the rear portion of his shop which is near the place of the incident after he had closed it at about 10.30 P.M.

The contention raised by the learned counsel for the appellants that in all probability Bodha was fatally assaulted near the junction or outside his house but not inside and that none of the persons claiming to be the eye witnesses had really seen the incident, deserves no serious consideration because except a bare suggestion to some of the eye-witnesses there is no material on record on basis of which it can be said that the blow which proved to be fatal was given outside and not inside the house. As the High Court has pointed out, apart from the evidence of the eye-witnesses the evidence of Ratan Lal Jain and the investigating Officer and also the Panchnama of the scene of

offence (Exhibit 47) discloses that there was a pool of blood in the second room. Only because the Investigating Officer committed to collect the blood scrapping from the second room it cannot be concluded that the evidence of those witnesses on this point was false. As the second part of the incident is proved to have taken place inside the house. obviously, the inmates of the house must have seen what happened before their eyes. Presence to Surjit Kaur (P.W.3) and Rajinder Singh (PW4) inside the house could not have been doubted. Presence of Kuldeep Kaur (PW2) was, however, challengeable on the ground that she being a married woman was likely to be at her husband's place. Kuldeep Kaur and her mother have explained in their evidence as to why she was at her mother's place and that explanation has been accepted by both the courts below. Apart from the inmates of the house there is evidence of P.I. Nanaware (P.W.25) who was incharge of the mobile van and who had reached Arthur Villa within about five minutes, that he had seen Kuldeep Kaur in the house. That part of his evidence has remained unchallenged. Her statement was recorded by the police between 1.30 A.M. and 2.30 A.M. on that night as deposed by P.I. Naik (P.W.28). She had given full details regarding the incident including the names of the appellants and the two acquitted accused if she had not seen the incident she could not have within a short time invented the story and would not have falsely involved the accused as she had no enmity with them. Even after close scrutiny of her evidence the High Court found it reliable and we see no reason to differ from that finding. The High Court has also after closely scrutinizing the evidence of Rajinder Singh and Police Constable Kadam (P.W.24) come to the conclusion that Kadam was telling lies when he stated that when he inquired from Rajinder Singh at the Cooper Hospital as to who were the assailants of Bodha he could not name them. The contention of the learned counsel that evidence of Charanjit Singh (P.W.9) should not have been accepted as being a police man though in a different state he would not have remained a mere spectator if he was really present when Bodha was attacked inside the house. The witness has explained that it all happened suddenly and when Bodha came running inside the house he was reading a book. Thus, there was hardly any time before he could have intervened. We are of the opinion that the High Court has not committed any error in relying upon these eye-witnesses.

The finding recorded by the High Court that the appellants were members of an unlawful assembly and that they caused death of Bodha in prosecution of their common object is also unassailable. Not only they had run towards Bodha when they saw him near the junction of the lane and attacked him there but they also chased him right upto his house and even inside it by Appellant Nos. 1 and 2. Initially, all of them were armed with weapons and some of them had caused injuries to Bodha and also Afzal who had come to his rescue. When Bodha was chased Appellant No.1 was carrying an open knife in his hand and Appellant No.2 had a zara with him. Though Appellant Nos. 3 to 6 had not carried weapons when they had chased Bodha their conduct in uttering threats and challenging Bodha to come out so that they could take revenge is indicative of the fact that they were all acting in prosecution of their common object. The High Court was, therefore, right in confirming their conviction and sentence.

In the result, this appeal fails and is dismissed.

JUDIS