

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 473 OF 2004

JOAO @ BADGI FERNANDES

Appellant (s)

VERSUS

STATE OF GOA

Respondent(s)

(With office report )

Date: 15/02/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s)

Mr. Rajesh Kumar, Adv.  
Mr. Sarv Mitter, Adv.  
Mr. Sriram Krishna, Adv.  
for M/S Mitter & Mitter Co.,Adv.

For Respondent(s)

Ms. A.Subhashini,Adv.

UPON hearing counsel the Court made the following  
O R D E R

This appeal is dismissed in terms of the signed  
order.

(Sukhbir Paul Kaur)  
Court Master

(Veena Khera)  
Court Master

(Signed Order is placed on the file)  
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.473 of 2004

Joao @ Badgi Fernandes

...Appellant

Versus

State of Goa

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O R D E R

T.S. THAKUR, J.

This appeal by special leave arises out of a judgment and order dated 15.12.2003 passed by the High Court of Bombay, at Panaji, Goa, in Criminal Appeal No.42 of 2003 filed by the State, whereby the High Court has partly allowed the appeal, and while affirming the acquittal of the appellant for offences punishable under Sections 307 and 302 of the IPC convicted him under Section 304 Part II of the IPC, and sentenced him to undergo rigorous imprisonment for a period of five years, with a fine of Rs.2000/- and compensation of Rs.10,000/- made payable to the widow of the deceased.

The prosecution case, in brief is that on 10th May, 2001 at about 11.00 p.m. the appellant and the co-accused- Mansukh Gujarati @ Mansukh Merabai Karkodia followed the deceased-Ajay Pal Singh on a motorcycle to the latter's house with a view to assault him. They grappled with the deceased near the gate of his house. In the course of this scuffle the appellant is alleged to have stabbed the deceased in the right thigh and caused a grievous injury to him that resulted in his death while he was being taken to Goa Medical College, Bambolim for medical help. The accused was also alleged to have attempted to kill Shri Yogesh Kumar Singh, brother of the complainant, who had allegedly sustained a knife cut injury on the right side of his chest. A complaint was made by Sanjay Kumar Singh (PW4), the other brother of the deceased, to the Calangute Police Station on the basis of which a case for offences punishable under Sections 302 and 307 read with Section 34 IPC, was registered against the appellant and his companions and investigation taken up. In due course the police filed a charge-sheet against the accused before the Magistrate who committed the appellant to stand trial before the Court of Sessions Judge, North Goa, Panaji, while the co-accused-Mansukh Gujarati @ Mansukh Merabai Karkodia absconded and was declared a proclaimed offender.

At the trial, the prosecution examined as many as 12 witnesses in all to prove its case. The appellant did not lead any evidence in his defence. The Sessions Judge eventually came to the conclusion that the prosecution had not been able to establish the charges framed against the appellant, and accordingly acquitted the appellant of the same. The acquittal was then questioned by the State in Criminal Appeal No. 42 of 2003 before the High Court of Bombay at Goa. The High Court by its judgment and order

dated 15.12.2003, upheld the acquittal of the appellant for the offences punishable under Sections 307 and 302 IPC, but convicted the appellant for an offence punishable under Section 304 Part II and sentenced him to undergo rigorous imprisonment for a period of five years besides fine and compensation as indicated above. The present appeal assails the correctness of the said judgment and order.

We have heard learned counsel for the parties at some length, who have taken us through the evidence on record, apart from the two judgments, one each delivered by the two courts.

In support of its case the prosecution relies mainly upon the depositions of Sanjay Kumar Singh (PW4), Ratan Singh (PW6), Asha Pal Singh (PW8) and Yogesh Singh (PW9). Sanjay Kumar Singh (PW4) has in his statement narrated the sequence of events and testified that the deceased Ajay Pal Singh was his brother. The deceased and his three brothers including the witness were residing at Calangute in a rented house at the time of the incident. They were running a Bar and Restaurant and a Punjabi Dabba at Calangute. On 10.5.2001, at about 10.30 p.m., his brother Ajay Pal Singh, after attending to the customers in the restaurant which is situate close to the Punjabi Dabba, took the key of the Sumo jeep and went home which is at a distance of about 2 ½ kms. from their business establishments. Some time later the witness received a phone call from Asha Pal

Singh (PW8), his sister-in-law that he should come immediately as some thieves had entered the house. Sanjay

Kumar Singh (PW4) immediately rushed towards his residence on a scooter. When he was at a distance of about 20 to 25

metres from his house, he crossed two persons who were running in the opposite direction and whom he identified as the appellant and one Mansukh Gujarati. On reaching home, he saw the Sumo jeep parked near the gate of the house and his brother Ajay Pal Singh-deceased, fallen on the ground nearby. He also saw his father, Rotan Singh (PW6), and

Yogesh Singh (PW9), trying to lift his brother. He asked his brother Ajay Pal Singh as to what had happened to which his brother replied that he had been assaulted with a knife on his thigh on the right side.

The deceased told that

when he was alighting from the jeep, he was assaulted by

two persons, who suddenly came near him.

The witness tied

a cloth over the wound to stop the flow of blood.

The

witness also stated that he saw a motorcycle bearing registration No.GA-01-Q-0070 lying in front of the Sumo

Jeep. Rotan Singh (PW6) informed the witness that in their

attempt to stop them from running away, the accused persons

assaulted Yogesh Singh (PW9) with stones and Rotan Singh

(PW6), with a knife.

The witnesses also described how the

deceased was removed to the Calangute Police Station and

from there to the Goa Medical College and on being declared

dead how he returned to the Police Station to file a complaint, in which both the appellant and his companion,

Mansukh Gujarati @ Mansukh Merabai Karkodia were named.

The first information report, it is noteworthy, not only described the incident in detail but even mentioned

the fact that the deceased had informed the witness Sanjay Kumar Singh that the injury sustained by him had been

inflicted by the appellant with a knife. There is nothing

in the cross-examination of this witness that could

possibly discredit his deposition especially as regards the

fact that the witness had seen the appellant running with a

knife in his hand and Ajay Pal Singh telling the witness about the persons who had assaulted him.

The deposition of Asha Pal Singh (PW-8) wife of the deceased is also consistent and was found reliable by the High Court. According to this witness she and her brother-in-law were watching T.V. after dinner when she heard the sound of a vehicle near her house and noise of a quarrel. She was on the first floor of her house from where she saw that two persons had caught hold of her husband and were assaulting him with a knife. She ran inside to inform Rotan Singh (PW6) and Yogesh Singh (PW9), both of whom went downstairs to see what was happening and tried to separate the persons who were fighting with the deceased. Asha Pal

Singh (PW8) further states that she saw her husband fall to the ground and even her brother-in-law-Yogesh Singh (PW9). It was at this stage that Rotan Singh (PW6) told her to inform Sanjay Kumar Singh who was at the restaurant. She telephonically informed Sanjay Kumar Singh and asked him to rush home quickly. The witness further states that the two assailants came to the house on a bullet motor cycle and that her father-in-law had prevented the motor cycle from being taken away. In the meantime Sanjay, her brother-in-law, arrived while the appellant and his companions ran away from the spot. The witness saw the appellant from the gallery of the house on the first floor almost directly above the place of occurrence.

To the same effect is the deposition of Rotan Singh (PW6) and Yogesh Singh (PW9). Both of them have narrated the sequence of events that led to the death of the deceased on account of the stab injury sustained by him.

The High Court has on a careful and detailed examination of the evidence come to the conclusion that while the charge of attempt to murder punishable under Section 302 IPC have not been made out the appellant was guilty of an offence punishable under Section 304 Part II

IPC.

On behalf of the appellant it was argued that while the presence of the appellant on the spot was not in dispute the question as to who out of the two accused persons had actually stabbed the deceased was not answered by the evidence. It was urged that the motor cycle which was lying on the spot no doubt belonged to the appellant, but that by itself did not suggest or prove that it was the appellant who had stabbed the deceased. We regret our inability to accept that submission. The High Court has in our view correctly analysed the evidence and rightly concluded that the witnesses had identified the appellant who was carrying a knife. It is also noteworthy that the appellants did not offer any explanation for his presence on the spot that too at an odd hour late in the evening. Recovery of the knife and the deposition of the witnesses clearly prove that it was the same knife which was held by the appellant at the time of the incident. The fact that the prosecution witnesses, namely, Rotan Singh (PW6) and Yogesh Singh (PW9) had grappled with the assailants physically and tried to prevent them from removing the motor cycle shows that the said witnesses had observed the incident from close quarters. Even the deposition of Asha Pal Singh (PW8) is both natural and credible as a witness to the incident, having observed the incident from the gallery of the house and from nearby, after she came down the stairs to the place where the deceased had fallen.

In the totality of the above circumstances, we do not see any perversity in the appreciation of the evidence or the conclusion drawn by the High Court much less any miscarriage of justice to warrant our interference in exercise of our powers under Article 136 of the Constitution. This appeal accordingly fails and is hereby dismissed.

.J.

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(T.S. THAKUR)

.....J.

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(GYAN SUDHA MISRA)

New Delhi  
February 15, 2012