

(1995) 09 BOM CK 0035

In the Bombay High Court

Case No : Criminal Revision Application No. 196 of 1991

Abbas Bhikan Pathan

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 165, 378
Evidence Act, 1872 — Section 3, 59, 60
Penal Code, 1860 (IPC) — Section 302

Citation : (1996) 1 BomCR 326 : (1995) 97 BOMLR 444

Hon'ble Judges : S.G. Mutalik, J

Bench : Single Bench

Advocate : P.B. Shirsath, for the Appellant; V.B. Nayak, Assistant Public Prosecutor for respondent No. 1 and V.D. Sapkal, for the Respondent

Final Decision : Dismissed

Judgement

S.G. Mutalik, J.—The original complainant Abbas Bhikan Pathan (P.W. 1) and also the brother of the deceased Issak Bhikan Pathan has preferred the present Criminal Revision Application against the judgment and order passed by Additional Sessions Judge, Ahmednagar, in Sessions Case No. 154 of 1989, acquitting the accused - respondent No. 2 of the charges u/s 302 read with 34 of the I.P.C. on 5-7-1990.

2. The respondent No. 2 Akbar Husein Shaikh and the absconding accused Shafik Husein Shaikh and Dadamiya are brothers inter se. The complainant Abbas (P.W. 1) has two brothers by name Shabbir and Issak (the deceased). The sister of the complainant Jaitunbee is married to Dadabhai. It is alleged by the complainant that on 25-5-1989, he and his brother deceased Issak had gone to Bazar and they were returning by about 5.00 p.m. by Kazibaba Road at Shrirampur, Dist. Ahmednagar. As soon as they came in front of the shop of one Rafiq on Kazibaba Road, the respondent No. 2 and the absconding accused Shafik Husein Shaikh accosted them. The absconding accused caught hold of hands of Issak while the

respondent No. 2 took knife and stabbed Issak at three places. The complainant got frightened and rushed to Police Station. It is also the case of the prosecution that the respondent No. 1 came there with blood stained knife and presented the same in the police station. F.I.R. Exh. 16 given by the complainant was recorded and the offence came to be registered at C.R. No. 76 of 1989 u/s 302 read with 34 of the I.P.C. against respondent No. 2 and his absconding brother.

3. P.S.O. Anton Rangnath Kamble (P.W. 8) was on duty in police station, Shrirampur city. According to him at 5.30 p.m. Abbas - the complainant came to the police station and lodged the complaint about the murder of his brother. He recorded the same (Exh. 16) and registered the offence at C.R. No. 76 of 1989 against respondent No. 2. At the same time, he has further stated, that the respondent No. 2 came to police station with a knife in his hand (Article No. 1) and he attached the same under panchanama Exh. 20. The respondent No. 2 was arrested on the same day. P.S.I. Shahaji (P.W. 9) took charge of the investigation and he went to the alleged place of incident near Syed Baba square. He prepared the panchanama Exh. 9. He came to know that the deceased was removed to the Hospital. He went to the hospital however, he came to know that he was no more. The inquest Exh. 14 was drawn. The dead body was sent for post-mortem examination. He also recorded statements of some of the witnesses. The muddemal property including the dagger (Article No. 1) was sent to the office of Chemical Analyser for examination and in due course he filed charge-sheet against the respondent No. 2 and has mentioned the name of Shafik as absconding accused.

4. After framing the charge against respondent No. 2, he denied the guilt and claimed to be tried. He has denied the incident stated by P.W. 1 and other witnesses. According to him on the day of incident, he was proceeding to Police Station, at that time deceased Issak and complainant came. Deceased Issak caught hold of him from the back side and the complainant who was holding a dagger started assaulting him. For saving himself, he sat down and the blow unfortunately landed on the abdomen of the deceased. The complainant ran to the police station and lodged false complaint against him. He has not led any evidence in his defence.

5. The Additional Sessions Judge, rejected the evidence of all the prosecution witnesses and acquitted the respondent No. 2 and hence the present Criminal Revision Application is filed by the original complainant.

6. Shri Shirsath learned Advocate for the petitioner submitted that when the complainant himself has seen the incident in question and lodged F.I.R. in respect of murder of the brother, the trial Judge wrongly rejected his evidence. He further submitted that the incident in question took place at about 5.00 p.m. on the busy road. There are shops on both sides of the road and even though, the prosecution could not collect the evidence of an eye witness, still the evidence of the complainant together with the fact that the respondent No. 2 soon arrived in the police station with a blood stained dagger in his hand was

sufficient to prove the guilt of the respondent No. 2. Lastly, it is submitted that there is no proper appreciation of evidence and thus the order of acquittal passed by the trial Judge is illegal and deserves to be set aside.

7. Shri Nayak, learned A.P.P., for the State submitted that especially when on proper appreciation of the evidence of complainant and other evidence adduced by the prosecution, when the same is rejected by giving proper reasons, it is not a fit case to interfere. Shri Sapkal, learned Advocate for respondent No. 2 submitted that the High Court should not exercise revisional jurisdiction lightly. Reliance is placed on the observations in the ruling reported in Ramu alias Ram Kumar and others Vs. Jagannath, .

8. Admittedly the incident in question took place at about 5.00 p.m. on a busy road known as Kazi Baba Road. The prosecution has produced the sketch Exh. 18 of the place of incident. The incident in question took place on the front side of the shop on one Bhikan Yasin Sha. There are two more adjoining shops towards north of this shop and they belong to Rashid Ismail Sha and Kachi. Even on the southern side of the alleged place of incident, there is a road which runs east-west and just abutting a road there is shop-cum-cabin of one Alkubhai. It is also an admitted position that the road on which the incident in question took place is busy road with considerable traffic.

9. It has also come in the evidence of Shaikh Barkatali (P.W. 1) who has proved the panchanama Exh. 9 of the alleged place of incident that the width of the said road is about 20 ft. and there was heavy traffic on the road. He is a Press Reporter of Dainik Avinash Varta of Shrirampur and had gone there to collect information in respect of the incident in question. He reached at the place of incident within a short time when about 30/40 persons were already present there.

10. The complainant Abbas (P.W. 2) is the brother of the deceased. According to him, deceased Issak had sold his residence for Rs. 3,000/- to one Ramesh. The respondent No. 2, his brother - absconding accused and their parents were demanding money from them and that they refused. He has further stated that their sister Jaitunbee is married to one Dadabhai, who is the real brother of respondent No. 2 and the absconding accused Shafik Husein Shaikh. When they refused to pay the amount to respondent No. 2 and his brother - the absconding accused, they threatened the complainant and the deceased with dire consequences. He has further stated about the incident in question. It was about 5.00 p.m. when P.W. 1 and the deceased were returning from bazar by Kazi Baba Road. He has further stated that at that time both respondent No. 2 and his brother absconding accused caught hold of hands of his brother Issak. The respondent No. 2 took dagger and stabbed his brother Issak on chest and abdomen. Immediately he rushed to police station Shrirampur, and lodged the complaint. He has further stated that soon the respondent No. 2 followed him with a blood stained dagger in his hand which is used for cutting goats and in his presence he informed the police that he committed murder of Issak. In the cross-

examination he has stated that deceased Issak had purchased house which was owned by one Rashid Sha. He has also admitted that Kazi Baba Road is busy road with traffic. There are shops on both sides of the road. It is admitted by P.W. 1 that he has not stated in the F.I.R. that respondent No. 2, his brother and parents were demanding money from deceased Issak. He has also admitted that in the morning the respondent No. 2 and his absconding brother Shafik had been to their house for demanding money and that they refused to pay, they were threatened with dire consequences. He has admitted that when the respondent No. 2 and his brother - the absconding accused came to their house in the morning and threatened his brother, at that time he was not at the residence. Thus there is every reason to believe that the alleged demand made by respondent No. 2 and his brother - the absconding accused and their parents for money was nothing but the imagination. Moreover, nothing is brought on record by the prosecution as to why the respondent No. 2, his brother - the absconding accused and their parents were demanding money from the complainant and deceased Issak. Nothing is brought on record by the prosecution as to when deceased Issak sold his residence to one Ramesh for Rs. 3,000/-. Especially when the prosecution has failed to prove the alleged demand by the respondent No. 2, his brother - the absconding accused and their parents from the complainant and deceased Issak and the fiduciary relations between them inter se, it is difficult to attach evidentiary value to the evidence of the complainant in respect of their demand and the threats given to them. In the further cross-examination he has admitted that about three days prior to the incident he, his deceased brother Issak and brother of the accused beat the mother of accused, wife of brother of accused and mother-in-law of the brother of accused. He has further admitted that the respondent No. 2 is residing at Dhangar Vasti which is at some distance away. The motive alleged by the P.W. 2 Abbas is not at all proved.

11. In respect of the incident also, the evidence of the complainant is also shaky and is rightly disbelieved by the trial Court by giving proper reasons.

12. Aminabi (P.W. 3) is the widow of the deceased and she states that she came to know about the incident in question from (P.W. 6). However, she has not stated so before the police when her statement was recorded. Jahidabi (P.W. 6) has simply stated that at about 5.00 p.m. when she was going for answering nature's call, at that time she saw that some quarrel was going on between the respondent No. 2 and another person. After she returned, she saw that there were about 15 persons gathered and the deceased was lying in a pool of blood. She has admitted in the cross-examination that she was not knowing the person who died on the spot and she was also not knowing the respondent No. 2 prior to the incident in question. P.W. 7 Aziz deals in the business of hens and eggs. One Shaikh Salim is also having a shop and he also deals in hens and that his shop is situated at Ward No. 8. The respondent No. 2 was known to him. He states that on the day of incident, he was sitting in the shop of one Salim, who had gone for the marriage and hence, he was looking after his shop. He has further stated

that by about 4.00 p.m., the respondent No. 2 came to his shop and had a chit-chat with him for about 10 minutes. While leaving his shop the respondent No. 2 informed that he would be going for movie. After some time one customer came there for purchasing hen and for cutting and dressing the hen, he searched for a knife but he could not trace it. Subsequently, he identified his knife which was allegedly used by respondent No. 2 during the commission of the offence. In the cross-examination he has stated that he used to attend bazar for purchasing hens and he also used to visit Rahuri for purchasing hens and eggs. Bazar day at Rahuri is on Thursday and he used to go to Rahuri Bazar on Thursday. However, he has added that on that day he was at Shrirampur and was looking after Salim's shop. One really fails to understand as to why he closed his shop and started looking after Salim's shop. He has not stated about his close intimacy with Salim. Moreover, when it was a bazar day at Rahuri i.e. the day of the incident, it is difficult to accept his testimony that he closed his shop and started looking after Salim's shop. Moreover, there are no special marks of identification on the dagger alleged to be used by the respondent No.2. P.W. 4 Sherkhan has proved the Panchanama Exh. 20 in respect of attachment of dagger produced by respondent No. 2. No evidentiary value can be attached to the same, especially when the prosecution has failed to prove the guilt against the respondent No. 2 by adducing cogent and reliable evidence.

13. Shri Sapkal, learned Advocate for respondent No. 2 submitted that especially when the trial Judge has properly appreciated the evidence and has passed an order of acquittal, and in case if a private complainant has filed Criminal Revision Application against the impugned order, High Court need not interfere with it by setting aside the same. It is observed in Ramu alias Ram Kumar and others Vs. Jagannath, , as under:

"It is well settled that the revisional jurisdiction conferred on the High Court should not be lightly exercised particularly when it was invoked by a private complainant. This Court in number of cases has reiterated this view".

Reliance is also placed on the observations made in para 9 of the ruling reported in Chellappan Mohandas and others Vs. State of Kerala, . The observations are :

"It is well-settled that even if two views are possible the Appellate Court should not interfere in an appeal against acquittal as long as the view taken by the trial Court is not unreasonable".

It is further observed in 1995 Supreme Court Cases (Criminal) page 167, Gurmej Kaur (Smt.) v. State of Haryana. The observations are :

"At any rate a doubt arises regarding her culpability. The view taken by the trial Court cannot be said to be unreasonable. Even if the High Court was of the view that it would give a scope for different decision from that taken by the trial Court, the Appellate Court should be slow in interfering in an appeal against acquittal".

Especially when there is proper appreciation of evidence, no interference is called for in respect of the impugned order.

14. In the result, Criminal Revision Application is hereby dismissed. Rule discharged.

Application dismissed.