
(1999) 03 BOM CK 0100
In the Bombay High Court
Case No : Criminal Appeal No. 196 of 1995

Anand Narayan Mallav	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 165, 235, 313
Evidence Act, 1872 — Section 3, 45, 59
Penal Code, 1860 (IPC) — Section 300, 302, 323, 324, 84

Citation : (1999) 5 BomCR 612 : (1999) BomCR(Cri) 612 : (1999) 2 MhLj 839

Hon'ble Judges : Vishnu Sahai, J; Smt. Ranjana Desai, J

Bench : Division Bench

Advocate : Shekhar Ingawale holding, for Harshad V. Nimbalkar and Mrs. Pratibha R. Ghorpade, for the Appellant; I.S. Thakur, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Through this appeal the appellant challenges the judgment and order dated 3rd March, 1995, passed by the 4th Additional Sessions Judge, Solapur, in Sessions Case No. 225 of 1994, convicting and sentencing him in the manner stated hereinafter :--

"(i) u/s 302 I.P.C. to imprisonment for life; AND

(ii) under sections 324 and 323 I.P.C. to undergo three months R.I. on each count."

The substantive sentences of the appellant were ordered to run concurrently.

2. In short the prosecution case runs as under:

The informant Narayan Mallav (P.W. 2) is the father of the appellant. Narayan Mallav had a son elder to the appellant named Dattatraya, the deceased. Kaushalya Mallav (not examined) is the wife of Narayan Mallav and Kamini Dattatraya Mallav (P.W. 7) is the widow of the deceased Dattatraya. The said persons resided jointly in House No. 9/194 in Raviwar Peth in the town of Solapur.

At the time of incident Dattatraya was employed as a Typist-cum-Clerk in the office of the S.D.O. Kurduwadi. It is said that the appellant had failed twice in the higher secondary examination and used to quarrel with the informant.

On 8th August, 1994, at about 8 a.m. Narayan Mallav wanted to proceed to the temple on a cycle. The appellant asked him not to do so as he wanted the cycle. He abused him. On this Dattatraya reprimanded him and reminded him that since he was maintained by Narayan Mallav he should not abuse him. On this score there was a quarrel between the appellant and Dattatraya. Thereafter as usual Dattatraya went to Kurduwadi, where he was employed. He returned back at 9/9.30 p.m.

On 9th August, 1994, at about 5.30 a.m. all the members of the family got up from their sleep. Since Dattatraya had to go to his office late, he slept on a cot in the room of the informant. At about 7.30 to 7.45 a.m. the appellant came to Kamini Dattatraya Mallav in the kitchen and asked her as to what time Dattatraya would be leaving for his work. She replied that he would be leaving at 11.00 a.m. Thereafter the appellant went to the room where Dattatraya was sleeping. One or two minutes later, Kamini, Narayan and Kaushalya heard cries of Dattatraya "Dada". They rushed. They saw that the appellant who was having a big knife in his hand was inflicting blows with the same on Dattatraya, When they intervened they were injured. It is said that Dattatraya ran out from the room where he was assaulted and reached near the gate of the house and there also the appellant inflicted knife blows on his person. He was seen on the gate inflicting knife blows on Dattatraya by P.S.I. Shankar Nimbole P.W. 8 who with the help of police constable Rathod who was passing by the Road apprehended him with the knife.

3. The evidence of P.S.I. Shankar Nimbole (P.W. 8) is that alongwith the appellant and the knife he proceeded to Jail Road Police Station and handed over both the appellant and the knife at about 8.25 a.m. the same day to P.H.C. Rashid Shaikh (P.W. 11) at the said police station.

4. The evidence of Narayan Mallav shows that immediately after the incident he went to Rajendra Chowk, brought a rickshaw from there; put Dattatraya in it; and took him to General Hospital, Solapur where the Doctor pronounced him dead.

The evidence of Narayan Mallav also shows that at General Hospital, Solapur, the police came and his F.I.R. (Exhibit 16) was recorded.

In this connection it would be pertinent to refer to the evidence of P.S.I. Suresh Dimal (P.W. 15), who stated that on 9th August, 1994, on receiving information from P.H.C. Shaikh, he proceeded to General Hospital, Solapur, where he found Dattatraya Mallav to be dead and recorded the F.I.R. of Narayan Mallav (P.W. 2) the father of Dattatraya.

On the basis of the F.I.R. a case u/s 302 I.P.C. was registered against the

appellant.

5. The injuries of Kaushalya Mallav, Kamini Mallav and Narayan Mallav were medically examined the same day at 9.10 a.m., 9.45 a.m. and 10 a.m. respectively at General Hospital, Solapur by Dr. Vasudeo Madgundi (P.W. 10) who found an incised wound 2" x 1/2" which was superficial on the person of Kaushalya; a C.L.W. 1 1/2 c.m. x 1/4 c.m. between 4th and 5th fingers of left hand on Kamini; and an incised wound 2 1/2 c.m. x 1 c.m., superficial on the left little finger of Narayan Mallav.

In the opinion of Dr. Vasudeo Madgundi the injuries of Kaushalya and Narayan were attributable to a sharp object and those of Kamini to a hard and blunt object. They were caused between 24 hours.

Dr. Madgundi also stated that the injuries of Kaushalya and Narayan could be caused by Article No. 5 (the knife recovered from the appellant by P.S.I. Shankar Nimbole).

The postmortem examination on the corpse of the deceased Dattatraya was conducted on 9th August, 1994, by Dr. Ashok Kanaki (P.W. 9), who found on it the following antemortem injuries:--

- (1) Stab injury on the chest right infraclavicular region (2nd I.C.S.) 2 1/2" x 1 1/2", cavity deep, oblique;
- (2) Stab injury on the abdomen, epigastric region 2 1/2" x 2" cavity deep, vertical, coils of intestine protruding out.
- (3) Stab injury near right coastal margin 1 1/2 x 1/2" cavity deep, vertical omentum protruding out:
- (4) Incised wound at left lateral aspect chest, 1" x 1/2" skin deep oblique.
- (5) Two superficial I.W. on right forearm 2" x 1/2" each, muscle deep, oblique.
- (6) Stab injury at left scapular region 2 1/2" x 1", muscle deep, oblique.
- (7) Stab injury below (above injury No. 6) 1" x 1/2" cavity deep, oblique.
- (8) Stab injury on back near left lumbar region 1 1/2" x 1/2", deep oblique with another S.I. above it 1/2" x 1/4" muscle deep.
- (9) Stab injury at lumbar region at spine 1" x 1/2" muscle deep, transverse with I.W. to right side 1/4" x 1/4" skin deep.

On internal examination Dr. Kanaki found massive internal damage involving the right lung, severing of small intestines and the left kidney.

In Dr. Kanaki's opinion, the deceased died on account of shock and haemorrhage due to multiple stab wounds suffered by him.

6. The investigation was conducted in the usual manner by P.H.C. Rashid Shaikh

(P.W. 11) and P.S.I. Suresh Dimal (P.W. 15). The former prepared panchnama of recovery of knife handed over to him by P.S.I. Shankar Nimbole (P.W. 8) and also that of seizure of blood stained clothes of the appellant. The latter performed the inquest panchnama of the corpse of the deceased, interrogated the eye witnesses and Dr. Burte (D.W. 1). On completion of the investigation on 18th November, 1994 the latter filed a charge sheet against the appellant.

7. The case was committed to the Court of Sessions in the usual manner where the appellant was charged for offences punishable under sections 302 and 324 of the I.P.C. etc. He pleaded not guilty to the said charge and claimed to be tried. The defence set forth during trial was of insanity.

During the course of the trial in all the prosecution examined 15 witnesses. Four out of them namely Narayan Mallav, Ramchandra Linge, Kamini Mallav and P.S.I. Shankar Nimbole (P.Ws. 2, 6, 7 and 8 respectively) were examined as eye-witnesses.

In defence one witness namely Dr. Dilip Burte (D.W. 1) was examined to prove that the appellant was insane at the time of the incident.

The learned trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated above. Hence this appeal.

8. We have heard Mr. Shekhar Ingawale holding for Harshad V. Nimbalkar and Mrs. Pratibha R. Ghorpade, for the appellant and Mr. I.S. Thakur, learned Additional Public Prosecutor for the respondent. We have also perused the depositions of the prosecution witnesses; the material exhibits tendered and proved by the prosecution; the statement of the appellant recorded u/s 313 Cr.P.C.; the evidence of D.W. 1 Dr. Dilip Burte; and the impugned judgment. After utmost circumspection we have reached the conclusion that there is no merit in this appeal and it deserves to be dismissed.

9. So far as the involvement pf the appellant in the incident is concerned the same has been squarely brought home by the evidence of the four eye witnesses namely Narayan Mallav, Ramchandra Linge, Kamini Mallav and Shankar Nimbole (P.W. 2, 6, 7 and 8 respectively).

It is pertinent to point out that Narayan Mallav and Kamini Mallav resided in the house wherein the incident took place and thus were very natural witnesses of the same.

Ramchandra Linge and Shankar Nimbole were also natural witnesses of the incident inasmuch as the former was a tenant in the same building wherein Narayan Mallav was a tenant and his house was hardly 4 feet away from Narayan Mallav's house and the latter's house was only 30" x 40" from the house of Narayan Mallav.

10. The evidence of Narayan Mallav and Kamini Mallav shows that a day prior to

the incident (8-8-94) Narayan Mallav wanted to proceed to temple on a cycle and the appellant, who wanted the cycle quarrelled with Narayan Mallav and abused him. On this the deceased Dattatraya asked, the appellant not to abuse Narayan Mallav. On this there was an altercation between the appellant and Dattatraya. Next morning about 5.30 a.m. all the family members woke up. Thereafter Dattatraya went and slept in the room of Narayan Mallav. At about 7.30 and 7.45 p.m. the appellant came and enquired from Kamini as to when Dattatraya would be leaving for work. Kamini replied that he would be leaving at about 11 a.m. About one or two minutes later Narayan, Kamini and Kaushalya heard the cries of Dattatraya "Dada" and rushed to the room where he was sleeping. They saw the appellant assaulting him with a big knife and when they intervened they were also injured. During course of being assaulted Dattatraya ran, came to his gate and there also the appellant assaulted him with the knife.

Ramchandra Linge and Shankar Nimbole stated that they saw the appellant assaulting Dattatraya with the knife at his gate. They also deposed about the spot arrest of the appellant with the knife.

11. We have gone through the evidence of these four eye-witnesses and we find it to be implicitly reliable. It is corroborated by the nature of the antimortem injuries found on the person of the deceased and also by those on the person of Narayan, Kamini and Kaushalya. In para 5, we have set out their injuries extensively and to avoid repetition we are not reiterating them. Their naked perusal would show that they could be caused by knife. Apart from medical evidence, assurance to the ocular account is rendered by the circumstance that the appellant was apprehended on the spot with a blood stained knife which was seized under a panchnama and sent to the Chemical Analyst who found thereon blood of B group, namely blood group of the deceased.

The appellant has neither been able to demolish his spot arrest or recovery.

The prompt F.I.R. of the incident lodged by Narayan Mallav and recorded the same morning at General Hospital, Sholapur by P.W. 15 P.S.I. Dimal wherein the appellant is named and the broad features of the prosecution set out also lends assurance to the ocular account.

12. It is pertinent to point out that none of the four eye witnesses had any rancour or animus against the appellant.

In fact Narayan and Kamini were the father and sister-in-law respectively of the appellant. In our view unless the appellant had participated in the incident in the manner deposed to by them, they would have not falsely deposed against him.

Ramchandra Linge and Shankar Nimbole also nursed no grudge against the appellant and since they were not inimical to him they like Narayana and Kamini would also not have falsely implicated him.

13. In our view the learned trial Judge acted correctly in finding the involvement of the appellant in the incident established beyond reasonable doubt.

14. This brings us to the defence of insanity pleaded on behalf of the appellant. It is significant to point out that this defence has not been pleaded by him in his statement u/s 313 Cr.P.C. But we hasten to add that we should not be understood to mean that it was obligatory for him to have pleaded it. That is not the law. The law only requires that by a preponderance of probabilities it should have been established.

To substantiate the defence of insanity Dr. Dilip Burte (D.W. 1) was examined. The learned trial Judge in paragraphs 20 to 45 of the impugned judgment has given cogent reasons for not extending the appellant the benefit of plea of insanity.

15. The evidence of Dr. Dilip Burte (D.W. 1) shows that he examined the appellant for the first time on 16-2-91 and diagnosed him to be a case of Schizophrenia and started his treatment. Thereafter he examined him on 19-6-93, 31-7-93, 2-9-93, 3-4-94, 6-4-94, 31-5-94 and 7-7-94. Dr. Burte stated that Schizophrenia is a major psychiatric disease and its attack can come any time and when a person suffers from a Schizophrenia attack he does not understand what he is doing.

16. We have gone through the evidence of Dr. Burte and we find that he has categorically stated in paragraph 8 that in order to decide whether a person has committed an act under insanity, three factors are to be considered:--

(i) His conduct immediately prior to committing the act; (ii) His condition at the time of commission of act; and (iii) His conduct immediately after commission of act; Dr. Burte frankly and candidly stated that he had not observed these conditions with respect to the appellant on or about 9-8-1994.

17. Section 84 I.P.C. provides thus:--

"84. ACT OF A PERSON OF UNSOUND MIND.---Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law".

A perusal of the section would show that if a person at the time of commission of the offence by virtue of unsoundness of mind is incapable of knowing the nature of the act or what he was doing was either wrong or contrary of law, he would be entitled to the benefit of plea of insanity.

In the instant case the evidence of Dr. Burte does not show that at the time of the incident, by virtue of unsoundness of mind, the appellant did not comprehend the nature of his act or what he was doing was either wrong or contrary to law.

18. It is true that the defence has tried to get this burden discharged through the evidence of Narayan Mallav (P.W. 2) father of the appellant, who during course of his cross-examination by defence Counsel, admitted the following facts:--

- (a) The accused was suffering from fits of insanity and during such fits did not understand what he was doing;
- (b) The accused was being treated by Dr. Girish Burte;
- (c) The accused had great affection for the deceased;
- (d) On the preceding night the accused took meals after the deceased came and talked with him;
- (e) In the preceding night when he (Narayan Mallav) woke up to urinate he saw the appellant sitting on a cot and the appellant told him that three persons were assaulting him but actually no one was there. His impression was that the appellant had a fit of insanity; and
- (f) When the deceased was lying at the gate of the house, the appellant was enquiring as to who was he and was also saying that he had attempted to assault him.

19. It is pertinent to point out that the A.P.P. sought permission to cross-examine Narayan Mallav and during cross-examination by him Narayan Mallav admitted that neither in his F.I.R. nor in his statement u/s 161 Cr.P.C. had he stated that the appellant was insane nor had mentioned about his conduct the previous night. He also admitted that it was his desire to see that he did not remain in jail.

20. It is pertinent to point out that the three other ocular witnesses in categorical terms have stated that the appellant was normal and not insane at the time of the incident.

21. Having analysed the entire evidence in relation to the plea of insanity, we feel that the appellant has failed to discharge the burden of proving the defence of insanity by preponderance of probabilities.

22. So far as the question of offence is concerned there can be no manner of doubt that it would fall within the four corners of Clause Thirdly of section 300 I.P.C. the breach of which is punishable u/s 302 I.P.C.

It is true that the autopsy surgeon Dr. Kanaki has not stated that the injuries of Dattatraya were sufficient in the ordinary course of nature to cause death but a naked perusal of the injuries leads to irresistible inference that they were sufficient in ordinary course of nature to cause death. In this connection it would be pertinent to refer to the decision of the Supreme Court reported in Brij Bhukhan and Others Vs. The State of Uttar Pradesh, , wherein in paragraph 6 the Supreme Court has held that where a perusal of the injuries per se demonstrates they were sufficient to cause death in the ordinary course of nature, the absence of the statement of the Doctor to the said effect would be of no consequence.

The evidence of the eye-witnesses also shows that the appellant intended inflicting these injuries.

Hence the act of the appellant would fall in the dragnet of Clause Thirdly of

section 300 I.P.C.

23. For the said reasons, we find no merit in this appeal and dismiss the same. The appellant is in jail and shall remain there till he serves out his sentence.

24. Appeal dismissed.