
(2001) 03 BOM CK 0107
In the Bombay High Court
Case No : Criminal Appeal No. 282 of 1995

Baban Marotrao Thakre and Others	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Evidence Act, 1872 — Section 3, 59, 8
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2001) 5 BomCR 884

Hon'ble Judges : T.K. Chandrashekhara Das, J;A.B. Naik, J

Bench : Division Bench

Advocate : M.V. Hardas, M.R. and R.M. Daga, for the Appellant; S.G. Loney, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—The appellants were convicted and sentenced for life u/s 302 read with section 34 of Indian Penal Code and also to pay a fine of Rs. 500/- in default R.I. for 2 months each. The accused Nos. 1 to 3 in Sessions Trial No. 24 of 1993 are the appellants. They were tried for the aforesaid offence alongwith acquitted accused Sanjay Madhukar Gadge (accused No. 4). Accused Nos. 5 and 6 were also implicated for the offence u/s 120-B of the Indian Penal Code. However, accused Nos. 4 to 6 were acquitted of their offence by the trial Court.

2. It is the case of the prosecution that there was an enmity between deceased Katheshwar and accused No. 6 Bhaskar Marotrao Thakre and accused Nos. 1 to 5 are the nearest relatives of accused No. 6. On 13-10-1992 Police Head Constable Wahane was on duty on S.T. Bus Stand Karanja at about 8 to 8.15 a.m. He heard the shouts from outside the main gate of the bus stand. He rushed towards the main gate and saw the three persons namely Baban, Rajendra and Ganesh were assaulting Katheshwar by means of knife. Deceased fell down on the ground in a pool of blood. On hearing the shouts of Wahane all of the accused ran away

alongwith the knife. Wahane then tried to lift Katheshwar but he could not do so. Katheshwar was not able to speak and he could not move. There were numerable injuries on his person. His clothes were stained with blood. Immediately Wahane has given a phone message of the incident about 8.30 a.m. to Police Station Karanja which was received by Head Constable Madhukar. He has taken the entry of the phone message in the Station Diary vide Ex. 114 and subsequently P.C. Wahane had lodged the complaint of the incident which was treated as First Information Report in this case (Ex. 104). It is the further case of the prosecution that Baban, Rajendra and Ganesh surrendered to the Police Station with the knife immediately. There upon Wahane arrested them under the arrest panchanama. He also seized 4 S.T. tickets from the accused Baban. Knives were blood stained. They wore clothes having blood stains and there were injuries on the hands of Baban and Rajendra. Police Inspector Rathod who has investigated the offence rushed to the spot alongwith other staff. The dead body of Katheshwar was lying on the bus stop. Inquest of the dead body was done in the presence of the panchas. He also prepared a spot panchanama. He seized blood mixed earth and 3 pairs of chappals lying on the spot. Then the dead body was sent for postmortem alongwith other articles. Dr. Khatri performed the postmortem and report (Ex. 135) was received. He noticed 12 injuries on the dead body and according to him death is caused due to multiple injuries. He also certified that the injuries were ante mortem. There after P.I. Rathod seized shirt and pant of accused Ganesh vide seizure panchanama (Ex. 97), clothes and boot of accused Baban vide seizure panchanama (Ex. 98) and pant, shirt and chappal from accused Rajendra vide seizure panchanama (Ex. 99). He also sent Baban, Rajendra and Ganesh for collecting their blood samples. After the formalities of the investigation over and recording the statements of the witnesses, it is revealed that Sanjay was also included among the assailant. He was arrested on 17-10-92. After investigation is over the charge-sheet was led before the trial Court. Accused denied the charges and claimed to be tried and after the trial the appellants were convicted in the manner indicated above.

3. Mr. Hardas learned Counsel for the appellants took us to the ocular account of P.W. 5 and P.W. 8 and points out that their ocular accounts about the offence are most unreliable. He took us to the evidence of P.W. 8 H.C. Wahane. According to him he was serving in Police Station Karanja from 1988 to 1993. He was knowing the deceased. He also knew the accused Baban, Rajendra, Ganesh and Bhaskar. They all reside at village Karli which is under the jurisdiction of Umbarda (Bit) and he used to visit Police Patil Bhaskar. According to him he was on duty at the S.T. Stand Karanja from 00.30 hrs. night. In the morning at about 8 to 8.15 a.m. he heard shouts from the main gate. He went there, he found Katheshwar was lying on the ground. Baban, Rajendra and Ganesh were assaulting him by means of knife. He tried to intercept them and tried to caught Baban, Rajendra and Ganesh, but they ran away with knives. According to him about more than 30 injuries were there on the person of Katheshwar. There was bleeding. Then he immediately send a message on phone to Police Station at about 8.30 a.m. On

account of that Police Inspector and staff reached the spot. He went to the Police Station to lodge a report without waiting the police to come. After lodging of the report accused Baban, Rajendra and Ganesh came to Police Station. He arrested them under arrest panchanama (Ex. 95). He also seized 4 S.T. tickets from the pocket of Baban. He noted the number of tickets. He also seized knife from Rajendra. He also seized the knife from Ganesh. Those knives were blood stained. He also noticed the injuries on the right thumb of Baban and on the palm of Rajendra.

4. In the cross-examination, he stated that he is staying at a distance of 2 Kms from the bus stop. During the cross-examination he was asked to identify the accused but he could not identify the accused. When he was asked to show accused Ganesh, he pointed out towards Rajendra. Learned Counsel for the appellant Mr. Hardas vehemently argued that P.W. 8 who could give the Police Inspector the name of the accused and who claimed that he knew the accused for the last 4-5 years, it is quite startling that such witness could not identify the accused when he was examined by the Court. Mr. Hardas argued on his inability to identify the accused and argued that the very presence in the scene of this witness as he claimed is doubtful. We find considerable force in his argument. The absence of P.W. 8 at the time of incident is further confirmed by the way in which the P.W. 5 the another eye-witness had spoken about the incidence examined before the trial Court.

5. P.W. 8 Wahane had stated that he had phoned the Police Station that deceased was attacked and said phone message was recorded by P.C. Madhukar in the station diary. He also stated in his evidence that he has phoned from the S.T. Bus Stand wherein every phone is registered in a register kept in the S.T. Bus Station. We have already observed that the original of the Station Diary has not been produced, apart from that P.C. Madhukar was not examined. The S.T. register or the person-in-charge of the phone also was not examined before the Court, therefore, the claim made by P.W. 8 that he informed the Police Station on phone cannot be believed.

6. P.W. 5 Ramdas stated in his evidence that he knew the deceased and the accused. On 13-10-1992 he boarded the bus from Pinjar and got down at the bus station Karanja. He reached there at 8 a.m. He was waiting for his bus to go to his village. In the mean time the bus from Wadhona to Karanja came to the bus stand. Deceased alighted from the bus. Baban, Rajendra, Ganesh and Sanjay also got down from that bus. All the 4 persons have caught Katheshwar and all the above persons started assaulting him with knife. Katheshwar fell down, then also the assailants continued to inflict knife blows on him. There after they went towards the city. He was seeing the incident from the distance of 15 to 20 ft. Thereafter he came to his village Karli. His statement was recorded only by the police on 15-10-1992, prior to that he has not narrated the incident to any one else. He says that after 30 to 45 minutes from the incident the bus came and he went to his village. The learned Counsel for the appellant points out certain

improbabilities of his statement. P.W. 8 has said that immediately after his phone to the Police Station P.I. Rathod came there but at the same time even though P.W. 5 was waiting on the bus station for about 30 to 45 minutes, after the incident, he did not see P.I. Rathod and other police men. Another doubtful circumstance that emanates from the statement of P.W. 5 is that though P.W. 8 was there throughout the incident and tried to intercept the accused and tried to caught hold of them, P.W. 5 has not spoken in his evidence as to whether P.W. 8 was there or not. P.W. 8 also did not say that he saw P.W. 5 at the scene of occurrence. This has created a very serious doubt in the mind of the Court that their presence at the time of occurrence as claimed by them is doubtful.

7. P.W 6 in his evidence has stated that on 13-10-1992 he was called at the bus stand Karanja at about 8.30 to 9.00 a.m. The dead body of Katheshwar was lying there. Police has prepared inquest panchanama in his presence. Three pairs of chappals were lying on the spot. Police seized these articles and also blood stained earth. In the cross-examination he stated that P.I. Rathod and his writer were present on the spot. Number of persons gathered on the spot. He was enquiring from the persons gathered there about the incident. The preparation of panchanama took 2 hours. During this period no one has stated about the incident. When writing was started, after half an hour one constable and head constable came to the spot and at that time P.I. Rathod got angry against them. He was scolding H.C. Wahane, whether he was serving to sleep at home or doing his duty. P.I. Rathod told him that he will lodge a complaint against him and get him dismissed and at that time head constable Wahane beg pardoned. This evidence is assuming importance in the light of the suggestion put to P.W. 8 by the defence Counsel. It was suggested to him, whether he had been to his house for sleep, indicating that he was not on duty on the spot as he claimed. It is also to be noted that in the cross-examination of this witness he stated that there are 30 to 35 injuries on the person of the deceased where as the medical report shows that there were only 12 injuries. He also admitted in his cross-examination that one Kadarsha was present at the time of the incident and he has witnessed the incident and he has informed him that he had seen the incident. He has admitted that Kadarsha has given information to him on the spot but at the same time this Kadarsha was not examined by the prosecution for the reasons best known to them.

8. We have scrutinised ocular accounts of these eye-witnesses with utmost circumspection. It appears to us that defence version is most probable than the prosecution case. The learned A.P.P. tried to defend the conviction that the blood stained clothes were seized from the person of the accused and chemical examination shows that those stains belonged to the group of the deceased. Except this circumstance no other reliable evidence could be pointed out by the A.P.P. to sustain the prosecution case. The peculiar way, in which the prosecution case is built up make its case most unreliable and improbable. Entire attempt of the prosecution falls to the ground the moment we disbelieve P.W. 8. The behaviour of P.S.I. Rathod towards P.W. 8 will go to show that there were

enormous efforts on the part of the police to save P.W. 8 from his latches on account of the absence during the night at the bus station. The over anxiety of the prosecution even led to the ridiculous position that the star witness could not identify the accused even at the witness box. Eye-witness P.W. 5 cannot also be relied upon either. It is to be noted that his statement was recorded after 2 days of the incident. He did not claim to have seen P.W. 8 at the time of the occurrence and I.O. did not depose before the Court how he happened to come across P.W. 5 as an eye- witness. We have noticed in the evidence of P.W. 12 I.O. that he went to village Karli in connection with the investigation of the crime and then find out P.W. 5. The most misfortune part of the case is that where the accused were surrendered before the police, still it did not get a reliable eye-witness for the offence. The way in which the accused claimed to have surrendered the police itself is also very doubtful. P.W. 8 says that because of his interception the accused took on their heels from the scene and they ran away from the scene to surrender before the police. This is quite unbelievable considering the ordinary nature of human conduct. It is quite incomprehensible that the assailant who fled away from the scene would straight way go to the Police Station and surrendered with the weapons. In appreciating the evidence one thing is clear in this case. The prosecution has not come up with the genesis of the offence where the prosecution has not come up with the real story, the benefit of doubt should always go to the accused as we noted earlier a genuine doubt has been created with regard to the presence of the eye-witness on the scene. In an attempt to cover up the guilt of the P.W. 8 for not attending his duty, it has destroyed the reliability of the prosecution story. Where the doubt is created in the prosecution case its benefits should necessarily go to the accused.

9. In the result appeal is allowed. Impugned judgment is set aside. Appellants are acquitted of their offences. They are directed to be released forthwith unless they are required in any other case. Fine if any paid has to be refunded to them.