

(2018) 10 BOM CK 0174

In the Bombay High Court

Case No : Criminal Revision Application No.126 Of 2003

Bablu Hiranman Landge & Anr.

APPELLANT

Vs

Devidas Ramchandra Gade & Anr.

RESPONDENT

Date of Decision : 29-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 324

Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 10 BOM CK 0174

Hon'ble Judges : Sarang V. Kotwal, J

Bench : Single Bench

Advocate : S.G. Deshmukh, Chandrakirti S. Zende, S.S. Kaushk

Final Decision : Dismissed

Judgement

1. The Respondent No.1 in this Criminal Revision Application was the original accused in Regular Criminal Case No.53/01 on the file of Judicial

Magistrate First Class, Court No.1, Pune. At the conclusion of the trial, the learned trial Judge vide his Judgment and Order dated 07/03/2002

convicted the Respondent No.1 for commission of offence punishable u/s 324 of the Indian Penal Code. The Respondent No.1 was sentenced to

suffer rigorous imprisonment for six months and to pay a fine of Rs.500/Â? and in default to suffer simple imprisonment for three months.

2. The Respondent No.1 preferred Criminal Appeal No.80/02 before the Court of Sessions, Pune. The learned Additional Sessions Judge vide his

Judgment and Order dated 03/02/2003 allowed the Appeal, setting aside the conviction and sentence passed against the Respondent No.1. The

Respondent No.1 was acquitted of the charges framed against him. The sentence awarded to him was set aside.

3. The present Criminal Revision Application was preferred by first informant and the victim in the incident Bablu Landge as well as by Bablu's

mother, Smt.Mainabai Landge, who had witnessed the incident. After the Revision Application was admitted, both the Revision Applicants had

expired and therefore vide order dated 30/04/2015 passed in Criminal Application No.368/13 in Revision Application, this Court allowed the name of

the present Applicant i.e. Smt. Papita Kalyani Mane to be brought on record in place of original Applicants Bablu Landge and Smt.Mainabai Landge.

4. The prosecution case in brief is as follows Â?:

The first informant Bablu's niece i.e. Mainabai's granddaughter was married to Respondent No.1's brother Rohidas. On every night Rohidas used to

drop his wife Poonam at the place of Bablu and Mainabai, due to which there used to be frequent quarrels between the two families. Mainabai

wanted Rohidas to maintain Poonam properly. She was against him dropping Poonam to their house every night. It is the prosecution case that on

29/03/2001 in the late evening there was a quarrel between Rohidas and Mainabai. Mainabai then went to Padamji Police Chowky to make complaint

against Rohidas. According to the prosecution case, the Respondent No.1 came near the house of Bablu and Mainabai and he is alleged to have given

blow of sickle on the head of Bablu. Bablu and Mainabai then went to Padamji Police Chowky, from where they were directed to Sassoon Hospital at

Pune. Bablu went to Sassoon Hospital and took treatment. He had seven stitches on his head. According to Bablu, the police did not take his

complaint on that night. On 03/04/2001, Bablu was issued medical certificate in respect of his injury. After getting the medical certificate Bablu

approached Samarth police station. On this occasion his FIR was registered. The investigation was conducted. Respondent No.1 was arrested on

03/04/2001 itself. At the instance of Respondent No.1, the sickle was recovered from his house. Statements of various witnesses were recorded. Spot

Panchanama was conducted and at the conclusion of the investigation, chargeÂ? sheet was filed.

5. The trial was conducted before the Court of J.M.F.C., Pune. During the course of trial, the prosecution examined P.W.1 Bablu Hiranman Landge as

the victim and the first informant. P.W.2 Mainabai Hiranman Landge as one of the eyewitness and the mother of the victim. P.W.3 Balu Shankar

Dodke and P.W.4 Shivaji Laxman Chavan did not support the prosecution case and were declared as hostile witnesses. P.W.5 PSI Anant Kondiba

Darekar was the Investigating Officer and had conducted the investigation in respect of C.R.No.53/01 registered at Samarth Police Station. P.W.6

Dr.Arjun Govindrao Mukutrao was the CMO at Sassoon Hospital, who had examined P.W.1 Bablu Landge and had issued the injury certificate.

6. P.W.1 Bablu Landge had deposed that on 29/03/2001, he came to his house at about 10.00 p.m. He came to know that Respondent No.1's brother

had abused P.W.1's mother and sister. The crowd had gathered in front of his house. After the crowd had left, he was sitting in front of his house. At

that time, the Respondent No.1 came from behind and gave a blow of sickle on his head, due to which he suffered head injury. Respondent No.1 ran

away. At that time one Raju and 3 to 4 persons were present there. He further deposed that he went to the police along with his mother, sister and

wife. He has categorically deposed that he lodged his complaint in the police chowky. The complaint purportedly lodged by him is produced on record

at Ex.13. He has further deposed that thereafter the police sent him to Sassoon hospital. He had 7 stitches on his head. P.W.1 then identified the

sickle produced before the Court as the weapon with which he was attacked. In the cross-examination, he was given several suggestions in respect

of the strained relations between the two families because of Poonam. In the cross-examination he admitted that on the same date of incident, his

complaint was not taken by police. He further admitted that from 29/03/2001 to 03/04/2001 he was in Pune. But during this period, he had not gone to

police station. He could not assign any reason as to why the police had not taken his FIR till 03/04/2001. He has denied the portion in the FIR where it

was stated that his mother had gone to the police station to lodge the FIR when he had come back to his house.

7. P.W.2 Mainabai Landge is the mother of P.W.1. She has claimed to be an eyewitness to the incident. She has deposed that at about 10.00 to 10.30

p.m. on the day of incident she along with Parvati Landge, Sarla and Papita was present and they were standing on the platform of her house. At that

time, P.W.1 came home. He had pacified the quarreling parties and was sitting in front of his house. At that time, Respondent No.1 came there and

gave blow of sickle on his head from behind, due to which he suffered bleeding injury on the head. She has further deposed that thereafter they went

to Padamji Police Chowky. The police sent them to Sassoon Hospital. In the cross-examination she stated that Padamji Police Chowky had issued 'Yadi' to Sassoon Hospital.

8. P.W.3 Balu Shankar Dodke and P.W.4 Shivaji Laxman Chavan have not supported the prosecution case. They were examined as the Panchas who were present when the recovery of sickle was effected at the instance of Respondent No.1 from his house. P.W.5 PSI Anant Kondiba Darekar was the Investigating Officer, who has deposed about the investigation carried out by him. He has produced the Panchanama under which, the sickle was recovered at the instance of the present Respondent No.1. In the cross-examination he has categorically admitted that on 29/03/2001 he was attached to Padamji Police Station and on that day P.W.2 Mainabai had filed NC case. He has further admitted that on 29/03/2001 till 03/04/2001 neither the complainant nor P.W.2 had come to the police chowky to give any complaint.

9. P.W.6 Dr.Arjun Govindrao Mukutrao has deposed about the injuries suffered by the first informant. There were three injuries. The first injury was incised wound on the right parietal region 6 x 1 x ½ cms. There was an abrasion on lateral aspect of left elbow 2 x ½ cms and also a blunt trauma to left index and middle finger. This witness has deposed that the informant Bablu was brought to Sassoon Hospital by his sister Smt.Papita Kalyani. In the cross-examination he has admitted that Bablu did not have any medical 'Yadi' issued by the police and that Bablu had not mentioned the name of the assailant. He has further admitted that all these three injuries were not possible by one and the same weapon. The medical certificate is produced on record at Ex.27.

10. The defence of Respondent No.1 was that of total denial. The learned Trial Judge after recording the evidence and statement of Respondent No.1 u/s 313 of Cr.P.C., heard the arguments of both the sides. The learned trial Judge concluded that the prosecution had proved its case beyond reasonable doubt against the Respondent No.1. The learned Trial Judge relied on the evidence of both P.W.1 and P.W.2. He further relied on the evidence of Investigating Officer in respect of recovery of the weapon. The learned Trial Judge also took into consideration the medical evidence. The learned Trial Judge found that the medical evidence was consistent with the

ocular evidence. Based on this consideration, the trial Court convicted and sentenced the Respondent No.1.

11. As against this, the Appellate Court found that neither P.W.1 nor P.W.2 was a truthful witness. They were not consistent with each other. The

Appellate Court took into consideration fact that the FIR was lodged much belatedly and the explanation offered by P.W.1 and P.W.2 was not acceptable.

12. I have heard learned Counsel Mr.S.G. Deshmukh for the Applicant and Mr.Chandrakirti S. Zende i/b. Mr.Jayesh Kocheta for Respondent No.1. I

have also heard Ms. S.S. Kaushik, learned APP for the State of Maharashtra. With their assistance I have read both the judgments of the Courts

below. I have carefully gone through the record and proceedings and I have perused the evidence tendered in this case.

13. Mr.Deshmukh submitted that the reason given by learned Trial Judge while convicting the Respondent No.1 was proper. He has submitted that

the delay in lodging the FIR was properly explained. There was an evidence of recovery against the Respondent No.1. He has further submitted that

the injury suffered by victim was corroborated by medical evidence and there was no reason as to why the victim should implicate the Respondent

No.1 falsely. He further submitted that the evidence of P.W.2 did not suffer from any infirmity. He therefore argued that the judgment of the

Appellate Court was not proper and was required to be set aside.

14. Having given due consideration to the facts of the case and arguments advanced on behalf of the Applicant, I am of the opinion that the view

taken by the Appellate Court was a possible view. The prosecution case mainly relies on the evidence of P.W.1 and P.W.2. P.W.1 in his FIR has

categorically stated that his mother i.e. P.W.2 had gone to police station to lodge her complaint about the earlier quarrel when the present incident had

taken place. Hence P.W.2 could not be present to witness the incident. Therefore his evidence before the Court, that P.W.2 i.e. his mother had

witnessed the incident, is obviously not correct. He further deposed that he had gone to police chowky after the incident and with the 'Yadi' issued by

the police chowky had further gone to Sassoon Hospital, where he was treated. This statement is again is belied by the evidence of P.W.5 PSI

Darekar, the Investigating Officer. P.W.5 was present at the said police Chowky on

29/03/2001 and he has deposed that P.W.1 had not come to his police chowky and no 'Yadi' was issued to him. Even Medical Officer has deposed that P.W.1 was brought to Sassoon Hospital by his sister and there was no police Yadi with him. Thus, it is quite clear that P.W.1 is not telling the truth. P.W.1 in his FIR has mentioned that when he reached police chowky after the incident, at that time P.W.2 had already left the police chowky after lodging her complaint. He has referred to the complaint in respect of the quarrel between Respondent No.1's brother and P.W.2. But this averment shows that P.W.2 could not be present at the scene of offence when the incident had occurred. In light of these facts even P.W.2's evidence cannot be termed as truthful and is required to be discarded.

15. As was rightly urged before the Trial Court and Appellate Court, no other independent witness was examined. The evidence of these two witnesses show that there were persons who were present at the scene of occurrence when the incident had taken place and yet none of these witnesses is examined during the trial.

16. As far as the recovery of the weapon is concerned, the weapon was not sent for chemical analysis and therefore there is no connection between the incident and the weapon. The Panchas for recovery have not supported the prosecution case. Therefore there is no corroborative piece of evidence in that behalf.

17. The medical evidence shows that apart from the incised wound on the head, there were two other injuries. P.W.1 has not stated anything as to how he had suffered these injuries. Therefore it cannot be said that the medical evidence is absolutely corroborating the ocular evidence. The medical officer has stated that the P.W.1 had not named the assailants when he was treated.

18. The FIR was lodged on 03/04/2001 though the incident had occurred on 29/03/2001. Thus, there was delay of 3 days in lodging the FIR. P.W.1 and P.W.2 have tried to explain the delay by deposing that when they had initially gone to the police chowky, their FIR was not taken, but instead 'Police Yadi' was given. This statement is falsified by the entire evidence as discussed above. The Investigating Officer has further deposed that from 29/03/2001 till 03/04/2001 neither of these witnesses had come to the police station to lodge the FIR. P.W.1 has admitted in the cross-examination

that he was in Pune throughout this period, but had given no explanation as to why the FIR was not lodged.

19. The Appellate Court has taken into consideration all these aspects in the proper perspective. I am unable to term his judgment as 'perverse'. I do

not find any reason to disagree with the Appellate Court in this matter. I do not find any substance in present Revision Application. With the result, the

following order is passed :

ORDER

The Rule issued on 18/11/2003 is discharged and Criminal Revision Application is dismissed.