
(1977) 03 BOM CK 0039
In the Bombay High Court

Balshiram Rambhau Awate

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-03-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (1978) CriLJ 821

Hon'ble Judges : Deshmukh, J;Aggarwal, J

Bench : Division Bench

Judgement

Deshmukh, J.—This is an appeal by the accused who has been convicted u/s 307 I.P.C. and sentenced to suffer R.I. for four years and to pay a fine of Rs. 1,000 in default to suffer further R.I. for one year. We are inclined to dismiss this appeal summarily. However, it appears to us that an offence of perjury seems to have been committed by at least three witnesses against whom appropriate action has not been taken by the trial Court. It is, therefore, necessary to record our reasons why we not only dismiss the appeal summarily but decide to hold a summary inquiry for the purpose of taking appropriate action u/s 340 of the Cr. P. C 1073.

2. The accused is the elder brother of victim Damodar. Very briefly stated the prosecution case was that a meeting was arranged on the Otta of one Chaskar in the village Mhalunge for the purpose of effecting a partition of property between the victim Damodar and his elder brother Balshiram the accused. Some leading villagers were present for the purpose of bringing about partition which included the Police Patil Atmaprakash (P.W. 8), Kotwal Dhondiba Bodhe (P.W. 2) and the victim Damodar Rarnbhau Awate (P.W. 1). During the discussions over the partition of the land in the village, accused Balshiram raised a question about rendering accounts by Damodar of his earnings in Bombay. Damodar is alleged to have rendered some accounts, but the accused was not satisfied. This at once led to the next action of the accused in picking up an axe and giving a blow with it on the chest of the victim Damodar, The blow was so powerful that Damodar

collapsed and within a short time became unconscious. He was first taken to Dr. Adhav, a local physician, who gave some aid but finding the condition of Damodar rather serious, he advised that Damodar be removed to Sassoon Hospital, Pune at once. Accordingly he was removed from the village but was taken to Ruby Nursing Home, a private hospital in Pune. One Dr. Pethe treated him there. He was an indoor patient from 14th April to 1st of May 1976. The injury was 5"X2" bone deep below the left clavicle going medially up to midline. Two ribs were also fractured. The medical evidence was sufficient to prove that but for the timely help rendered, the victim may not have survived. The offence was one u/s 307 I.P.C.

3. For proving such an offence, number of witnesses who were present at the scene of the offence were examined by the prosecution. They had all given certain statements in investigation which induced a belief in the prosecution that they could be examined as eyewitnesses. Accordingly they were summoned. However, when they entered the witness box, each one of them staged a complete volte-face. It may be noted that even Damodar, who is the victim and who would have died but for the medical aid, somehow reconciled with his brother, the accused, and said that there was a meeting for effecting a partition in which he was hurt. But he does not know who gave him that blow as he fell unconscious.

4. So far as Police Patil and the Kotwal are concerned, they came out with the full story of the prosecution in examination-in-chief. When it came to their cross-examination, to quote the learned Judge "the witnesses simply acted as an echo of the defence lawyer". Whatever question was put to them as a leading question they answered in the most expected manner. This created a situation where the examination-in-chief of these two witnesses showed that the accused before the Court was a culprit who used the axe and which axe fell down on the spot and the Police Patil picked up the axe and handed it over to the Kotwal for safe custody. However, the Police Patil substantially changed his version. Immediately after the incident and after making arrangements for the medical help to the victim the Police Patil himself goes to Ghodegaon Police Station and lodges the complaint, Ex. 17. He affirms there the full story as it took place in his presence. However, in cross-examination he changes the whole version by saying that he was initially present when the partition talk began but he received a message from his house for lunch, when he went away in the midst of deliberations. When he returned back after lunch he found Damodar lying injured and one Vasant told him that it was the accused who used the axe. The Kotwal also disowned that he was present or that the actual assault had taken place before his eyes,

5. Faced with such a record, we must say that the learned trial Judge has taken a very proper view on the appreciation of the evidence. It is quite permissible in circumstances like this to remove chaff from grain, as they say, and find out what portion of the evidence is actually true and believable, in doing so the learned trial Judge has no doubt used the F.I.R., Ex. 17, as if it were a positive

statement of the Police Patil. It was undoubtedly a prior statement and prior statement could always be used either for contradiction or corroboration. In that sense, the prior statement ought to have been taken into account. However, by and large the trial Judge has adopted a very rational view and having seen through the entire game of the prosecution witnesses, he was right in believing the examination-in-chief of the Police Patil as well as the Kotwal and convicting the accused. Thus we find that there is no substance in this appeal, which must be summarily dismissed.

6. However, we are sorry to find that the learned trial Judge having taken a correct view of the situation did not proceed logically to issue notices to at least three of the prosecution witnesses for having committed perjury. Two courses were open to him. He could have taken action u/s 344 Cr.PC summarily and arranged to punish them there and then. It was also open to him to hold a summary inquiry u/s 340 (1) of the Cr.PC and decide whether a complaint should be filed. In this regard the learned trial Judge has shown some inaction. We find that the Police Patil and the Kotwal being public servants could not be allowed to run away scot-free from the Court in spite of committing perjury. In the same manner victim Damodar who has received several injuries at the hands of his brother cannot play fast and loose with the Court. We are thus satisfied that it is necessary to take action against these three witnesses for having committed the offence of perjury. We would therefore hold a preliminary inquiry in that behalf as contemplated by Sub-section (1) of Section 340 Cr.PC

7. We ascertained from Shri Desh-mane, counsel for the appellant, that the trial Court has neither filed a complaint nor has it rejected any application in that behalf, as none seems to have been made to it. It is lawful for us to act under Sub-section (2) of Section 340 Cr.PC Accordingly, we direct that show cause notices be issued against witnesses Damodar Rambhau Awate (P.W. 1), Atma" prakash Awate (P.W. 8) the Police Patil and Dhondiba Bodhe (P.W. 12) the Kotwal of the village. The record and proceedings of the case be called for at once. Notices to these three witnesses should be made returnable on 6th of April 1977.