
(2004) 02 BOM CK 0017
In the Bombay High Court
Case No : Criminal Appeal No. 349 of 2000

Bapu Tatoba Ahiwale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (2004) CriLJ 2364

Hon'ble Judges : V.S. Palshikar, J;P.V. Kakade, J

Bench : Division Bench

Advocate : M.R. Deshpande, for the Appellant; B.R. Patil, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Kakade, J.—The appellant has preferred this appeal against the judgment and order dated 8-3-2000 passed by the Addl. Sessions Judge, Sangli, in Sessions Case No. 227 of 1998 wherein the appellant was convicted for offence punishable u/s 302 of the I.P.C. and sentenced to suffer life imprisonment and to pay fine of Rs. 5000/-. In default to undergo R.I. for 5 months.

2. The facts giving rise to the present case, in brief, are thus--

Complainant Prakash Patil was running a factory under the name and style as "Rubber Plast Industries" in M.I.D.C. Kupwad, since 1991. In the year 1998, there were 9 workers in the factory of the complainant. It was being run in two shifts. The deceased as well as PW-3 Balasaheb Umdale were also the workers in the factory in the year 1998. On 1-8-1998, the deceased, accused and PW-3 Balasaheb Umdale were working in the second shift. At about 7.30 a.m. Balasaheb Umdale informed the complainant about the quarrel between the accused and the deceased over a woman by name Sangita with whom accused had illicit relations. It appears that the deceased also desired to have relations with her which aspect gave rise to the quarrel between them. Hearing this from

witness Balasaheb, the complainant changed the shift of accused and asked him to work in day shift on next day i.e. on 2-8-1998. Thereafter at about 11.00 a.m. the complainant went to his house. On 2-8-1998 at about 8.30 a.m. the complainant went on work as usual, however, it was learnt that father of one Chandrakant -- one of the workers, was serious and then it was informed that he had expired. Therefore, the factory was closed and all workers went for funeral, After the funeral, they returned, The complainant went to his house. Even though the complainant has asked the accused to work in the first shift on 2-8-1998, he did not come to work in the first shift on that day. At about 5.30 p.m., the complainant asked witness Shedbale to wait in the factory till arrival of the workers in the second shift as till that time workers of second shift had not come. At about 7.30 p.m. the deceased, accused and Balasaheb Umdale had already started the "work. The complainant asked them whether they will work or will stop the work. The complainant was informed that they would work till meals time and will stop the work and thereafter complainant went to home. At about 12.15 midnight, Balasaheb went to the complainant's house and informed him that accused had assaulted the deceased by means of iron bar on his head on the place where the deceased was sleeping. Complainant was also informed that accused had given threats of killing him. Then complainant and Balasaheb went to the factory and saw that deceased was lying in a pool of blood. Complainant went to the house, called others and thereafter informed the police, whose complaint was filed by M.I.D.C. Kupwada Police Station. Offence was registered at C.R. No. 50 of 1998 against the accused u/s 302 of the I.P.C. Investigation commenced, in which course the inquest panchnama was made and the body was sent for post-mortem examination. Statement of witnesses were recorded. Panchnama of scene of offence was also prepared. The accused was found on 12-8-1998 at Pune and was brought to Sangli. He was put under arrest. Incriminating articles seized in the course of the Investigation and were sent to the C.A. for examination, whose report was received and is part of the record. On completion of the investigation, the charge-sheet was sent to the Court of law. The learned Magistrate committed the case to the Court of Session.

3. The Addl. Sessions Judge framed charge against the accused for the impugned offence for which he pleaded not guilty, Defence of the accused was that of total denial of any criminal liability. The prosecution led its evidence at length on which basis the learned trial Judge was seen sufficient to bring home the guilt for the impugned offence and accordingly proceeded to pass the order of conviction and sentence in the aforesaid manner, Hence the appeal.

4. We have heard Shri Deshpande, learned counsel for the appellant and Shri B. R. Patil, learned P.P. for the State, at length. We have also perused the entire evidence on record.

Perusal of the entire evidence on record is sufficient to show that PW-3 Balasaheb Umdale is the eye-witness on whose testimony the entire case is balanced. Witness Balasaheb has stated that he along with accused and

deceased were working in the factory till 10.00 p.m. on 2-8-1998 and thereafter they had taken meals and slept in workshop on a table. At about 12.00 midnight, witness heard the shout and also heard noise of something heavy was dashed against the table. There was a door between the office and the said work-shop which was open and the light was on. The witness, saw that the accused was beating deceased Raju by means of Iron rod on his head. Therefore, Balasaheb asked the accused not to beat Raju and told that he would call the owner, but accused Bapu asked him not to go. Then he rushed towards the witness with the said Iron bar. However, Balasaheb rushed outside and on bicycle went outside the factory but the accused chased him and caught hold of bicycle and dashed it on the ground but Balasaheb snatched his bicycle from the accused and went to the house of the complainant and informed him about the incident, Therefore, Balasaheb and complainant returned to the factory and saw that deceased Raju was lying in a pool of the blood and the accused was nowhere to be found. Thereafter police were called and complaint was filed. Witness Balasaheb also narrated the details about the quarrel of the accused, and the deceased on account of illicit relations of accused with one woman by name Sangita as they both desired to keep Illicit relations with her but it was the deceased who had intervened the said relations, which was the reason for the accused to cause assault.

5. This evidence is duly corroborated by the testimony of PW-5 who has stated that Balasaheb came to him and told that accused was beating the deceased and when they went to the factory, they noticed that deceased was lying dead in a pool of blood. PW-5 also gave details as to how he was informed about the enmity between the accused and the deceased over the woman by name Sangita and, therefore, it was the complainant who had asked the accused person to come in the first shift from that day so as to avoid quarrel between the accused and the deceased. However, unfortunate incident occurred during that very night. The contents of the F.I.R. are found to be giving full corroboration to the version put forth by the complainant himself as well as eye-witness Balasaheb on all material aspects. Therefore, there is absolutely no reason to disbelieve the version put forth by the eyewitness Balasaheb duly corroborated by the evidence of PW-5 the complainant and his complaint was recorded Immediately which is at Exh.45-A at the police station.

6. It was submitted on behalf of the appellant that there were several discrepancies in the evidence and thus eye-witness account cannot be relied upon to bring home the guilt. However, we have critically perused the entire evidence on record and found that there are no material discrepancies or contradictions in the evidence so as to disbelieve the prosecution evidence. This is especially so when the evidence of witness Balasaheb is found to be trustworthy and sufficient to Inspire confidence. It is to be noted that Balasaheb or the complainant who is the owner of the factory had no enmity against the accused and they have testified to what has occurred in the course of the Incident candidly. It is also to be seen that the F.I.R. was promptly lodged and,

therefore, there was absolutely no reason for the witnesses to concoct the story and implicate the accused falsely.

7. For the reasons recorded above, we hold that the reasoning given and the findings recorded by the learned trial Judge are just, legal and proper and, therefore, would brook no interference.

In the result, the appeal stands dismissed.