
(1994) 07 BOM CK 0094
In the Bombay High Court

Bharat Yeshwant Hegade

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-07-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 185, 235
Evidence Act, 1872 — Section 114, 3, 60, 61

Citation : (1995) 1 BomCR 479

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : P.M. Mengane, for the Appellant; S.D. Rupawate, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—The appellant aggrieved by the order dated 30-12-1987 passed by the IVth Additional Sessions Judge, Solapur in Sessions Case No. 112 of 1987, convicting him u/s 307 I.P.C. and 506 I.P.C. and sentencing him to undergo five years R.I. and to pay a fine of Rs. 500/- in default to further undergo 6 months R.I. under the first count and to one year R.I. and to pay a fine of Rs. 200/- in default to further undergo R.I. for 2 months has under the second count has come up in appeal before me.

2. The prosecution case in brief is that the informant Mangala Shivaji Hegade is the wife of the Shivaji Yeshwant Hegade. Her husband Shivaji had eight brothers. One of them being the appellant. All the brothers along with their families lived in different portions of the same house. Her husband Shivaji had a second wife namely Dhondawabai. On 23-11-1986, some time in the evening the appellant demanded Rs. 200/- from Shivaji and on the latter's refusal, is alleged to have threatened him with dire consequences. The same evening after dinner at about 8 or 9 P.M. the informant and a victim slept in a concrete hall of their house. In their adjoining house room Dhondawabai is alleged to have been sleeping with a newly born child. At about 1 A.M. The informant woke up on hearing the sound of

blows of sickle and saw in electric light that the appellant was assaulting her husband Shivaji. It is alleged that on seeing this, the informant started running to inform her in-laws. The appellant is alleged to have told her to sleep, otherwise, she would be murdered. Consequently, she remained in the room till the time the appellant was there. Thereafter, the appellant ran away. The informant then came out of the room and informed her in-laws as also her brothers-in-laws who are also alleged to have woken up. hereafter, a bullock cart was arranged and in the same, she along with brothers-in-law Bajrang, Shankar and Shahaji and her mother-in-law Gitabai took Shivaji to hospital. It is alleged that that her brother-in-law Soma Hegde P.W. 6 followed them. After travelling some distance, they saw a rickshaw and on the same, Shivaji Yeshwant Hegade was brought to Civil Hospital, Solapur.

3. At the Civil Hospital, Solapur on 24-11-1986, at 2 .45 a.m. Anil Bhimrao Khadtare medically examined Shivaji. He found on his person the following injuries:

1. Incised cut-wound rt. to left oblique on rt. fore head 3".
2. Incised wound on vortex 2" x bone deep on left front to parietal region.
3. Incised wound to the left parietal 3.5" bone deep.
4. Increased wound lower end of the arm right side 3" oblique bone deep.
5. Incised wound starting above to the No. 1 injury, 5", on the rt. lateral to head.

The doctor also proved the X-Ray reports pertaining to the victim and deposed that the X-ray of skull revealed fracture of parietal bone and X-ray of the nasal bone revealed fracture of nasal bone.

In the cross- examination, the doctor denied the defence suggestion that these injuries of the victim could not result in his death.

4. From the Civil Hospital, Solapur information was sent to Salgarvasti police station. From the aforesaid police station, P.W. 10 P.S.I. Raja Waman Hullyalkar received information and immediately left for the Civil Hospital, Solapur. At 5 a.m. P.S.I. Hullyalkar recorded the F.I.R. of informant Mangala Shivaji Hegade, P.W. 4 (exh. 10). In the aforesaid F.I. R. , the appellant is named.

5. After recording the F.I.R., P.S.I. Hullyalkar went to the place of incident and prepared a spot Panchanama. He took the Iungi, pillow, blanket etc. in his possession. He also took chaddar and bulb from the place of incident in his possession. He then tried to search the appellant but, he could not be traced. On 28-12-1986, the appellant was arrested in Mandrup area. He is alleged to have admitted his involvement in the instant crime and to have disclosed and that he could get the sickle which he had used in the incident recovered. Thereafter, on 29-12-1986. (next day)the appellant tool the police party and some public panchas to a well in a field situate in Degaon Shiwar. P.S.I. Hullyalkar asked Sahaji son of Yeshwant Hari Hegade to start the engine as there was deep water

inside the well. After about 4/5 hours, water level in the well dropped to 2/3 feet. Then the appellant descended in the well and from there, he produced a blood stained sickle Panchanama of the sickle Exh. 14 was prepared. Next day that is 30-12-1986, at the pointing out of the appellant, blood stained lungi was recovered. The recovered articles were sent to the Chemical Analyser, Pune. In spite of his best and repeated efforts. P.S.I. Hullyalkar could not succeed in recording the statement of the victim, because, on account of the extremely serious injuries which he had received, he was not in a position to speak. For that reason he was not examined in trial. After the investigation, was complete, the charge -in the instant case was submitted.

6. In due course, the case was committed to the Court of Sessions. In the trial Court, charges under sections 307 I.P.C., 506 PC and section 135 of the Bombay Police Act were framed against the appellant. To the aforesaid charges, he pleaded not guilty and claimed to be tried. In the trial Court, in all 10 witnesses were examined by the prosecution. The prosecution also tendered and proved various Exhibits. The learned trial Judge believed the prosecution evidence and passed the impugned order.

7 I have heard Mr. P.M. Mengane, learned Counsel for the appellant and Mr. S.D. Rupawate Additional Public Prosecutor for the State of Maharashtra at a considerable length. I have also perused the depositions of the witnesses recorded in the trial Court and the various Exhibits tendered and proved by the prosecution in the trial Court. I have also carefully perused the impugned judgment. After giving my anxious consideration to the matter, I am of the opinion that this appeal deserves to be allowed.

8. The evidence adduced by the prosecution against the appellant can be classified under two heads:---

(a) Ocular testimony of P.W. 4 Mangala Shivaji Hegade

(b) Circumstantial evidence-motive the recovery of blood stained sickle and blood stained lungi at the pointing of the appellant.

9. The learned Counsel for appellant has made a number of submissions before me. His first submission is that in the instant case not only the F.I.R. is belated but, the time of its lodging remains a mystery. the learned Counsel submitted that the incident is alleged to have taken place at 1 a.m. on 24-11-1986. According to P.S.I. Hullyalkar, he recorded the F.I.R. of P.W. 4 Mangala Shivaji Hegade at 5 a.m. in Civil Hospital, Solapur. However, Mangala Hegade in examination in-chief stated that police scam in the hospital at 8 a.m. and thereafter, her F.I.R. was recorded. A perusal of the original F.I.R. shows that the time of registration of offence is mentioned as 6.15 a.m. In my view, It was the bounden duty of the prosecution to have the controversy about the time of lodging of F.I.R. resolved. The learned Counsel for the appellant submitted that in this boated F.I.R. of the incident, the appellant is nominated. His submission is that the delay in lodging of the F.I.R. took place because, actually actually P.W. 4

Mangala Shivaji Hegade was sleeping at the time of incident and consequently, could not know as to who the real assailant was. The learned Counsel for the appellant contended that this delay in F.I.R. was utilised for falsely nominating the appellant, in the same. The learned Counsel also submitted that the informant Mangala Hegade was highly inimical to the appellant because, it was the appellant who had accompanied the police to Goa where the victim Shivaji, husband of informant, was arrested, in a case u/s 376 I.P.C. Learned Counsel invited my attention to para 12 of the statement of the informant wherein she stated "It is a fact that Police Officer and accused Bharat had traced my Husband to a place near Goa. Dhondawabai and my husband were then brought back by Police Officer". He also invited my attention to para 6 of the statement of the eldest brother of the victim, Soma Hegade, Who wherein admitted:---

"Shivaji was prosecuted for abducting Shondawabai and for committing rape on her. It is a fact that Shivaji brought her to our house while Dhondawabai was pregnant."

The fall out from the aforesaid evidence is that the informant was extremely inimical to the appellant and therefore, the learned Counsel for the appellant is justified in submitting that this delay in the lodging of the F.I.R. could have been utilised in falsely implicating the appellant. He is also justified in contending that this delay shows that P.W. 4 Mangala did not see the incident.

10 The learned Counsel for the appellant vehemently contended that there was ample opportunity of informing the police much prior much prior to the lodging of F.I.R. In this connection, he pointed out to me the statement of Soma Hegade, the eldest brother of the victim and appellant, who para 4 stated:

"It is a fact that I did not give information about the incident at Degaon Nake, Mari Aai police chowky of Foujdat Chawadi Police station On my way of Civil hospital."

He also contended that in the medical papers pertaining to the victim which were prepared at the Civil hospital, Solapur, neither history of assault nor name of the appellant is mentioned. He also submitted that although there were two police men on duty at Solapur Hospital, but to those policemen, the name of the appellant was not given out as the person who was the perpetrator of the time. He also contended that after the victim had been medically examined, Soma Hegade or some of his other brothers who were there, could have gone and lodged the F.I.R.

11. It is in the background of the inordinately belated F.I.R. of the incident and the fact that P.W. 4 Mangala is highly inimical to the appellant that I have to evaluate her testimony and decide whether it would be safe to accept it.

12. It was also submitted on behalf of the appellant that the victim was assaulted in darkness and the claim of the prosecution that a bulb was burning while the victim was being assaulted has been manufactured by the prosecution. In this

connection, the learned Counsel pointed out that in the F.I.R., it is not mentioned that any electric bulb was burning. He contended that it was highly improbable for the appellant to put on the light, as is the prosecution case, before launching an assault on the victim because, that light would have facilitated his recognition, something obviously which he must not have wanted.

13. The learned Counsel for the appellant further submitted that the circumstance that at one place P.W. 4 Mangala stated that blood had fallen on her sari, but later on corrected herself saying that the same had fallen on her chaddar, shows that she was sleeping at the time of the incident and is drawing upon her imagination.

14. The learned Counsel for the appellant also contended that it appears that Mangala P.W. 4 falsely deposed about the motive. He invited my attention to para 10jk of Mangala's statement wherein she has stated that the eldest brother of the victim and the appellant namely Soma Hegade was the karta of the family and that being so he contended there was no reason for the appellant to have asked the victim Shivaji for money. According to the prosecution, it was on account of Shivaji's refusal to give him the money that the incident took place.

15. After carefully considering the aforesaid submissions of Counsel for the appellant and the entire statement of P.W. 4 Mangala, in my opinion, it would neither be prudent nor safe to sustain the conviction of the appellant on her solitary eye witness account.

16. I now propose taking up the circumstantial evidence adduced by the prosecution. I do not intend going into depth with regard to it, for even if the entire circumstantial evidence adduced by the prosecution is believed to be true, it would not be sufficient for conclusively inferring the guilt of the appellant.

17. First of all, I will take up the motive. The learned Counsel for the appellant submitted that neither Soma P.W. 6 nor P.W. 7 Shivaji Kodkar stated in their statements u/s 161 Cr. P.C. that the appellant demanded money from the victim Shivaji, a couple of hours before he was assaulted. In the face of this omission, in their statements u/s 161 Cr. P.C. with which they were confronted in the trial Court and not give a satisfactory explanation and also taking into consideration Mangala's statement that it was Soma who was the karta of the family (hence there was no question of the appellant asking the victim for money). I am not inclined to accept their testimony that the appellant had asked Rs. 200/- from the victim Shivaji and refusal of the victim to give it led to this incident.

18. As far as the evidence of recovery of blood stained sickle is concerned, I find the same to be an insult to my intelligence. The incident is alleged to have taken place at 1 a.m. on 24-11-1986 and the aforesaid recovery is alleged to have been made on 29-12-1986 from inside a well, in which there was very deep water on 29-12-1986. In other words, the recovery was made more than 5 weeks after the incident. The evidence is that the well from which recovery of the aforesaid sickle was made had so deep water that only after operation a

engine for about 4 and 5 hours, that the appellant descended in the well and took out the sickle. I am at my complete wits-end to understand that the sickle having remained immersed in the well which had very deep water for 5 weeks, was still found to be stained with blood and the group of that blood, ironically enough was that of the victim, namely "O" What appears to me is that the recovery of sickle was planted by the Investigating Officer, and on the sickle blood of the group of the victim namely "O" was put by the Investigating Officer.

Such being the credibility of the Investigating Officer P.S.I. Hullyalkar, there is nothing to assure me that his claim that there was actually human blood on the lungis of the appellant is not a manufactured one. When the investigation ceases to inspire confidence, everything is possible.

19. It is because of the aforesaid infirmities, both kin Ocular testimony as well as circumstantial evidence that I felt extremely hesitant in sustaining the conviction of the appellant. I felt that the instant is one of those cases in which the appellant deserves benefit of doubt.

20. In the result, this appeal is allowed. The conviction and sentence of the appellant is set aside. He is acquitted on all the counts. In case he had paid fine, the same shall stand refunded to him. The appellant is on bail. He need not surrender. His bail bonds stand cancelled and sureties discharged.