
(2001) 03 SC CK 0122
In the Supreme Court Of India
Case No : Criminal Appeal No. 657 of 1992

Chandu

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Evidence Act, 1872 — Section 27

Citation : AIR 2003 SC 4398 : (2002) AIRSCW 2650 : (2002) 173 CTR 251 : (2002) 253 ITR 639

Hon'ble Judges : A. S. Anand, C.J.;Shivaraj V. Patil, J;N. Santosh Hedge, J

Bench : Full Bench

Final Decision : Allowed

Judgement

A.S. Anand, C.J.-This appeal is directed against an order of conviction and sentence recorded against the appellant by the High Court of Bombay after setting aside an order of acquittal recorded in favour of the appellant by the trial court.

2. According to the prosecution case, on 14-7-1984, at about 5.30 p.m., the deceased Gautam, along with PW 3 Dinesh and PW 8 Baban went to the pan shop of Rajesh Jaiswal to purchase bidis. Rajesh Jaiswal is the brother of the appellant. An altercation ensued on the demand of payment for the bidis. During the quarrel the deceased Gautam is alleged to have assaulted Dinesh Jaiswal, a cousin of the appellant, by giving him a knife-blow on his thigh. The appellant is alleged to have gone to his house and come back with a blade of spear and assaulted the deceased by giving him a spear-blow on his chest. The deceased later on succumbed to the injury after he was removed first to the police station and then to the hospital by his brother and sister. It is also the prosecution case that the weapon of offence - spear blade - was recovered at the instance of the appellant on a statement made under Section 27 of the Evidence Act. The prosecution, with a view to connect the appellant with the crime, examined as many as five eyewitnesses. The prosecution also relied upon evidence relating to

the recovery of spear blade, the medical evidence and recovery of bloodstained clothes. The trial court, after a detailed discussion and critical analysis of the evidence found that the witnesses for the prosecution had given a "parrot-like version of the entire case" regarding assault on the deceased and had also "suppressed material facts of the case", besides making vital improvements in their version "in a systematic way". The trial court also opined that the origin of the fight, including the assault by Gautam and infliction of an injury to Dinesh Jaiswal with a knife had been suppressed by the prosecution witnesses. In the words of the trial court:

"It appears that there was some scuffle between Sushil Jaiswal and Gautam Tambe and the accused and Dinesh Jaiswal went there and rescued them and they asked Gautam Tambe and others to leave that place but they did not leave that place. It also appears that thereafter Gautam Tambe gave the knife-blow on the thigh of Dinesh Jaiswal. This fact is suppressed by all important eyewitnesses of the prosecution as is clear from sana entry at Ext. 46 and contradictions in the testimony of Manoj, PW 1 and other witnesses...."

3. The trial court while disbelieving the evidence of recovery of weapon of offence noticed:

"There is discrepancy in the description of the blade of the spear as mentioned in the seizure panchnama at Ext. 25 to that of the evidence of Dr Satish Kumar Gupta, PW 14. There is nothing on the record to explain the discrepancy in the length and breadth of the blade of the spear which was seized by PI Shukla, PW 12 and which was examined by Dr Satish Kumar Gupta, PW 14."

4. After recording these findings amongst others, the trial court found that the prosecution evidence was not reliable and that the prosecution had failed to establish its case against the appellant beyond reasonable doubt. The appellant was accordingly acquitted.

5. The Division Bench of the High Court in an appeal against acquittal filed by the State, set aside the order of acquittal. The High Court also noticed that evidence of the prosecution witnesses suffered not only from material omissions and contradictions but also that the witnesses had made systematic improvements in their testimony. The Division Bench, however, opined:

"From the examination-in-chief of PW 1 Manoj and after due scrutiny of omissions and contradictions, the version to the extent acceptable, according to us, is thus:

"There was quarrel and scuffle amongst Dinesh Jaiswal, Rajesh Jaiswal, deceased Gautam, the accused and his other colleagues. The deceased Gautam then gave a blow of knife to Dinesh Jaiswal on his thigh. The accused thereafter brought a spear blade (Article 5) and stabbed the deceased Gautam." "

6. The High Court, thus, after disbelieving the substratum of the prosecution case as also that of the defence, has evolved a new case which is neither

deposed to by the prosecution nor by the defence. It was not open to it to do so.

7. The approach of the High Court while dealing with an appeal against acquittal was wholly incorrect. While dealing with an appeal against acquittal, it was obligatory on the High Court to have considered and discussed each of the reasons given by the trial court to acquit the accused and then to dislodge those reasons. In vain have we searched through the judgment of the High Court for any reasons for dislodging the findings recorded by the trial court.

8. According to the prosecution case, the deceased Gautam gave a knife-blow to Dinesh on his thigh and while running away he struck against a bicycle and fell down. This version finds mention in the first information report itself. However, at the trial, prosecution witnesses gave a go-by to this version and, thus, concealed the origin of the fight. While the trial court took note of this serious infirmity, the High Court overlooked it completely.

9. That Dinesh was injured during the occurrence by a knife-blow given by Gautam, is supported by the sana entry, Ext. 46. The prosecution, however, did not bring on record medical evidence relating to injury of Dinesh Jaiswal. The prosecution also withheld Dinesh Jaiswal from being examined at the trial. No explanation, whatsoever, is forthcoming from the record as to why Dinesh Jaiswal was not examined at the trial. Withholding of this evidence creates a doubt about the correctness and genuineness of the prosecution version.

10. The High Court, of course, did not believe the story of recovery of the weapon of offence at the instance of the appellant but it appears to have overlooked another aspect of the case concerning a serious discrepancy with regard to the alleged weapon of offence. If the eyewitnesses are to be believed that after the deceased struck against the cycle and fell down, a spear-blow was given to him on his chest, then the medical evidence totally contradicts the ocular testimony. Dr Satish Kumar Gupta, PW 14 admitted in his cross-examination that looking to the nature of the injury, the weapon would have entered from "upward to downward laterally to right side". That could not have been the manner in which the injury would have been received by the deceased if he received it while he was lying down on the ground. On the other hand, the possibility that the deceased received the injury by the knife which he was carrying, keeping in view the dimensions of the injury, after striking against the cycle, as alleged by the defence gets probalised. Our independent analysis of the prosecution evidence has created an impression on our minds that the prosecution has not come with clean hands and evidence of the witnesses produced by it does not inspire confidence. Under these circumstances, the High Court was not justified in setting aside an order of acquittal recorded by the trial court. The view of the trial court was a reasonable view. It does not suffer from any perversity either. The High Court should not have lightly interfered with the order of acquittal. This appeal, therefore, succeeds and is allowed. The judgment and order of the High Court are set aside. The appellant is given the benefit of doubt and acquitted. His conviction and sentence as recorded by the High Court

are set aside. The appellant is on bail. His bail bonds shall stand discharged.