

(1996) 06 BOM CK 0054

In the Bombay High Court

Case No : Criminal Appeal No. 387 of 1983

Dattatraya Ramchandra Patil and Another

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 235, 313

Evidence Act, 1872 — Section 3, 45, 59

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (1997) BomCR(Cri) 154

Hon'ble Judges : Vishnu Sahai, J;S.S. Parkar, J

Bench : Division Bench

Advocate : Nitin V. Pradhan, S. Khot and Kuriakose, for the Appellant; I.S. Thakur, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Vide judgment and order dated 27th May, 1982 passed in Sessions Case No. 87 of 1981, the learned Additional Sessions Judge, Sangli convicted and sentenced the appellants in the manner stated hereinafter:

- (i) Appellant Dattatraya Ramchandra Patil u/s 302 I.P.C. to suffer R.I for life; and
- (ii) Appellant Dadasaheb Anandrao Patil u/s 324 I.P.C. to suffer R.I. for 1 year and to pay a fine of Rs. 100/-, in default to undergo R.I. for 1 month.

Hence this appeal.

It may be mentioned that vide the aforesaid judgment, the learned trial Judge acquitted accused Anandrao Ramchandra Patil.

2. The appellants and the acquitted accused on one hand and the prosecution witnesses Shivling Ganpati Patil P.W. 3, Yashwada Hingmire P.W. 9, Subhadra Hingmire P.W. 10 and the deceased Babasaheb Dhondiram Hingmire were residents of a common village viz. Murale. The elections to the Village Panchayat Murale were held about 2 years prior to the incident. Acquitted accused Anandrao was elected as a sarpanch at that time unopposed. The informant Shivling

Ganpat Patil was a member of the Village Panchayat. There is a Society called Murale Vividh Karyakari Seva Sahakari Society. The election to the society was held two months after the Panchayat election. In that election party men of acquitted accused Anandrao and those of Shivling Patil contested. Shivling Patil was elected as Chairman of that society. The deceased Babasaheb Dhondiram Hingmire was one of his supporters. Anandrao was instigating some of the members of the society not to pay the due of the society. On account of elections pertaining to the Society the relations between Shivling Patil on the one hand and Anandrao on the other became strained.

It is alleged that the festival of Bendur was being celebrated in the month of Ashadh, on full moon day. On that day bullocks and other cattle are taken in a procession in Murale village. Since the last 2 to 3 years prior to the incident the informant's bull and that of the deceased were taken together in a procession.

On 15-7-1981 whilst the festival of Bendur was being celebrated in Murale at about 5 p.m. the bulls of the informant were taken in procession. Both the informant and Anandrao had taken out the procession of their bulls. The informant came across the procession of Anandrao at the corner of the road. At about 8.30 p.m. both the processions came near the society office. They were to go further to Rudrappa. The informant suggested to Anandrao that he should take his procession by one side and they would take their procession by the other side. Since the beating of drums was going on one bull from the procession of Anandrao got scared and started running helter, skelter. The informant asked Anandrao and appellant Dadasaheb to control the bull but they pleaded their inability. At that time appellant Dattatraya Ramchandra Patil and the deceased Babasaheb Hingmire were also there. Anandrao and Dadasaheb told the informant that they were responsible for the bull running helter, and accused him of becoming conceited. The informant replied as to what was the basis on which he said that. On that appellant Anandrao is alleged to have assaulted Babasaheb with a stick and to have given one blow by stick to the informant. Thereafter appellant Dattatraya Patil inflicted a scythe blow on the left knee of Babasaheb Hingmire and Dadasaheb Patil inflicted an axe blow on the right upper arm of the informant. On receiving the scythe blow Babasaheb fell down in front of the society office.

This incident is alleged to have been seen by P.W. 9 Yashwada, the mother of the deceased and Subhadra P.W. 10, the wife of the deceased. Some other witnesses also saw it but during the trial they became hostile. The incident is said to have been seen by them in the electric light which was near the society office. After the incident was over the informant ran to his house.

At his house Maruti Magne and Jagannath Burgale, P.W. 12 came to see him. He told them to send information to his brother Sadashiv at Sangli for sending a truck. Maruti and Jagannath brought back the bull of the informant and also told the informant that Babasaheb Hingmire who was lying unconscious in front of the society office had been removed to his house by Kaka Burgale P.W. 7 and others.

Thereafter Maruti and Jagannath went away.

At about 9.30 p.m. the truck came to the informant's house and on the same the informant and Babasaheb Hingmire came to Tasgaon. On the way the informant's brother Sadashiv met them and sat in the same truck with them.

2-A. The F.I.R. of the incident was lodged by Shivling Ganpati Patil on 16-7-1981 at 1.30 a.m. at Police Station Tasgaon. The F.I.R. is at Exhibit 21 and in the same the appellants and the acquitted accused have been named. On the basis of the F.I.R. Police Head Constable Bhupal Kamble registered an offence u/s 307/326 read with 34 I.P.C. He sent both Shivling Patil and Babasaheb Hingmire for medical administration to the Medical Officer of Tasgaon.

3. P.W. 15 Dr. Dattatraya Kadam medically examined both Shivling Patil and Babasaheb Hingmire. The injuries of Babasaheb were examined by Dr. Kadam at 2 p.m. on 16-7-1981. The following injuries were found on his person:

"Stab incised wound oblique over left leg, over left popliteal fossa, postero laterally 6 1/4 c.m. x 5 c.m. x 7 c.m. Lateral condyle of the lower end of left femur exposed, muscles exposed, blood clots present inside and around the wound."

At 2.15 a.m. on the same day he examined Shivling Patil and found on his person one incised wound, oblique 5 c.m. x 1 1/2 c.m. muscle deep over right arm, accompanied by profuse bleeding and spouting of blood and blood-clots inside the wound. He also noticed severe tenderness.

It appears that Babasaheb Hingmire was already dead when he was examined by Dr. Kadam. The said doctor performed autopsy on 16-7-1991 between 11 a.m. to 2 p.m. He found that the deceased had suffered the following injuries:

"(1) Stab incised wound, oblique over right leg, over right popliteal fossa, postero laterally 6 1/4 c.m. x 5 c.m. x 7 c.m. deep, lateral condyle of the lower end of left femur exposed, muscles exposed, blood clots present inside and around wound.

On dissection - Capsule had been cut laterally of the left knee, joint muscles has been cut obliquely, probable age within 24 hours and probable cause sharp cutting object."

In his opinion the deceased died on account of shock and haemorrhage due to cutting of left popliteal vessels and due to injury over popliteal fossa.

4. The investigation was conducted by Jamadar, Ananda Bala Patil P.W. 24 and Sub-Inspector Mahadeo Shivram Dixit P.W. 27. In the morning of 16-7-1981 Ananda Patil went to Tasgaon dispensary where he prepared the inquest panchanama and took into possession the blood stained clothes of the deceased. He thereafter went to the place of the incident and prepared the spot panchanama. In front of the society office and on the road leading to the house of Shivajirao Patil he found pool of blood and blood stained earth. He took it into possession. He thereafter recorded the statements of some witnesses. P.S.I. Mahadeo Dixit on 16-7-1981 himself took over the investigation from Jamadar

Patil. The same day he arrested the acquitted accused Anandrao and took into possession his blood stained clothes. On 20-7-1981 he arrested the appellants under a panchanama. On 23-7-1981 on the pointing out of appellants Dattatraya Patil and Dadasaheb Patil he recovered a scythe and axe respectively and on that of Anandrao a stick. He sent the recovered articles to the chemical analyst. On 16-9-1981 he received the report of the Chemical Analyst. On 1-10-1981 he was transferred and the investigation was taken over by P.S.I. More P.W. 29. After receiving the report of the chemical analyst on 18-11-1981 P.S.I. More submitted charge-sheet against the appellants and the acquitted accused Anandrao.

5. The case was committed to the Court of Sessions in the usual manner. In the trial Court the appellants and Anandrao were charged u/s 302 read with 34 I.P.C. and 326 read with 34 I.P.C. An alternative charge against the appellant Dattatraya Ramchandra Patil was also framed u/s 302 I.P.C.

In the trial Court, apart from tendering sizable documentary evidence the prosecution examined as many as 30 witnesses. In defence no witness was examined.

6. The learned trial Judge after considering the evidence on record and hearing submissions of learned Counsel for the parties acquitted co-accused Anandrao on the ground that he had been assigned the part of assaulting the deceased and the injured with a stick but the medical evidence did not disclose on their person any injury attributable to stick. He however, convicted and sentenced the appellants in the manner stated above.

Hence this appeal.

7. We have heard Mr. Nitin Pradhan for the appellants and Mr. I.S. Thakur A.P.P. for the State of Maharashtra at considerable length. We have also perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses; the statements of the appellants recorded u/s 313 Cr.P.C. and the impugned judgment. After giving our anxious consideration to the matter we feel that this appeal partly deserves to be allowed. In our view, appellant Dattatraya Ramchandra Patil deserves to be acquitted u/s 302 I.P.C. and should be convicted u/s 304 Part I.P.C. We are also of the view that the conviction of appellant Dadasaheb Anandrao Patil u/s 324 I.P.C. warrants to be confirmed but instead of sending him to jail to serve out the residual portion of his sentence, the ends of justice would be squarely satisfied if he is ordered to pay some fine.

8. Mr. Nitin Pradhan, learned Counsel for the appellants vehemently urged that the learned trial Judge faulted in convicting and sentencing the appellants and instead should have acquitted them because on the person of acquitted accused Anandrao there was an injury on the head which was promptly examined and which had not been explained by the prosecution. He further urged that the failure of the prosecution to explain the injury of Anandrao should persuade us to hold that he was a victim of aggression at the hands of the deceased and if at all, he and the appellants, in self defence assaulted the prosecution party. Mr.

Pradhan also urged that with respect to the same incident Anandrao lodged an F.I.R. on the basis of which a case u/s 337/325 I.P.C. etc. was registered at Police Station Tasgaon at 4 a.m. on 16-3-1981 and there is evidence to show that a charge-sheet in the same has been submitted.

9. Mr. Pradhan invited our attention to the statement of Dr. Kadam P.W. 15 who had medically examined Anandrao and also brought to our notice the injury report of Anandrao prepared by the said doctor. It appears from a perusal of material on record that Anandrao was medically examined at 12.30 a.m. on 16-7-1989 and three C.L.Ws of the dimensions of 2 cm. x 11/4 cm., 11/2 cm. x 1/4 cm. and 21/2 cm. x 1/4cm., all bone deep, were found on his parietal region.

10. The two fold question which arises in this appeal is firstly whether the evidence adduced by the prosecution witnesses is credible or not and secondly whether the failure of the prosecution to explain the injury of Anandrao would give rise to the inference that if at all the appellants participated in the incident they acted in their right of private defence of person or not.

11. We would first examine the question as to whether the evidence of the prosecution witnesses is credible or not and if the prosecution has succeeded in proving its case beyond reasonable doubt.

In paragraph 2 of the judgment we have given in great detail the prosecution version of the incident and we do not wish to reproduce the same verbatim. Broadly speaking the prosecution case is that when the bull of the appellants and of the acquitted accused Anandrao started running helter skelter, the informant reprimanded them and on that they launched an assault on him and the deceased Babasaheb Hingmire. With regard to the manner of assault it has been stated by the prosecution witnesses that appellant Dattatraya Ramchandra Patil assaulted Babasaheb Hingmire with a scythe; appellant Dadasaheb Patil assaulted the informant Shivling Patil with an axe; and the acquitted accused Anandrao with a stick assaulted both the Babasaheb Hingmire and Shivling Patil. As said earlier since none of the two victims sustained any injuries attributable to stick the learned trial Court gave Anandrao benefit of doubt, by way of abundant caution.

In our view this would have no adverse bearing on the residual portion of the prosecution case because the principle *falsus uno falsus omnibus*, as has been held by the Apex Court repeatedly, is not applicable to our country.

12. With respect to the participation of the appellants we are satisfied that the eye-witnesses Shivling Ganpati Patil P.W. 3, Yashwada Hingmire P.W. 9, and Subhadra Hingmire P.W. 10 have given a credible and trustworthy account (some other eye witnesses were examined but they turned hostile). The manner of assault as given out by them namely appellant Dattatraya Ramchandra Patil assaulted the deceased Babasaheb Dhondiram Hingmire with a scythe and appellant Dadasaheb Anandrao Patil, assaulted the injured Shivling Patil with an axe is corroborated by the nature of injuries received by them. In paragraph 3

we have set out the injuries.

13. Corroboration to the ocular account is also rendered by the prompt F.I.R. of the incident which was lodged at 1.30 a.m. on 16-7-1981 at Police Station Tasgaon by Shivling Patil, within five hours of the incident taking place. In the F.I.R. appellant Dattatraya Ramchandra Patil has been assigned the part of assaulting the deceased with scy the and appellant Dadasaheb Anandrao Patil of assaulting Shivling Patil with an axe.

The importance of a prompt F.I.R. cannot be over emphasized. The same in our view, substantially eliminates an adulterated account in the prosecution story creeping in therein.

Probabilities are also in tune with the prosecution version of the incident. We are not prepared to believe that the eye-witnesses would have shielded the real assailants of the deceased and the injured and instead falsely implicated the appellants.

Assurance is lent to the prosecution case by the circumstance that on the place of the incident a trail of blood was found by police Jamadar Ananda Patil when he visited it on the morning of 16-7-1981. As said earlier Ananda Patil had taken in possession blood stained earth from the place of the incident.

14. In our view there was ample material on record, proving the involvement of the appellants in the present incident.

15. We now propose examining Mr. Nitin Pradhan's contention about the failure of the prosecution witnesses to explain the injuries sustained by Anandrao giving rise to an inference that the appellants may have acted in exercise of the right of private defence of person. We have carefully considered this submission and for the reasons mentioned hereinafter we are not inclined to accept its.

It is true that the burden on the defence is not as onerous as that on the prosecution. It is also true that unlike the prosecution it does not have to establish its case beyond reasonable doubt but all the same the law is well settled that the defence has to prove by preponderance of probabilities that the incident may have taken place in the manner suggested by it. The sole question is whether only and wholly on the basis of the unexplained injury of acquitted accused Anandrao can it be concluded that the defence has discharged that burden? Our answer is in the negative for the reasons mentioned hereinafter.

16. In the instant case although Anandrao lodged an F.I.R. but he did not state in the same that after a stone was hurled at him by the informant Shivling Patil P.W. 3 he and the appellants assaulted him and the deceased in exercise of the right of private defence of person. In the F.I.R. of Anandrao Patil there is a ominous silence with respect to the injuries sustained by Shivling Patil and the deceased.

The piece of evidence from which Mr. Pradhan wants us to infer that Anandrao

and the appellants acted in the exercise of right of private defence of person is the suggestion in cross-examination made to P.W. 3 Shivling Patil that he had hurled a stone on the head of Anandrao and thereafter there was a melee and the enemies of Shivling and the deceased assaulted them. This suggestion was emphatically denied by the witness.

Even otherwise from it we cannot infer that the appellants acted in self defence. It will be relevant to point that no suggestion from which an inference of right of private defence of person can be raised has been given to any of the eye witnesses. Further, neither Anandrao nor the appellants have pleaded right of private defence of person in their statements u/s 313 Cr.P.C. In this connection it would be pertinent to point out, as contended by Mr. I.S. Thakur A.P.P., that the injuries received by Anandrao appear to have been caused in a different incident from that in which the informant and the deceased were injured. Mr. Thakur invited our attention to the F.I.R. lodged by Anandrao, Exhibit 57, wherein he stated that the incident took place at about 7.30 p.m. and also to the F.I.R. and the statement of Shivling Patil wherein it has been stated that the incident took place at about 8.30 p.m.

17. For the reasons mentioned above, in our view, it cannot be said that applying the yardstick of preponderance of probabilities, the appellants have succeeded in showing that they may have acted in the exercise of the right of their private defence of person. It is not an immutable requirement in law that the failure of the prosecution to explain the injuries of accused is always fatal to its case. It would all depend on the facts of each case. In the instant case it is inconsequential. It appears that the injuries of Anandrao were caused in an incident which had taken place one hour earlier; as urged by the learned Additional Public Prosecutor.

The failure on the part of prosecution to explain the injuries of accused would only assume significance after it has been established that they were caused during the course of incident. This is not the case here. Even otherwise on the solitary circumstance of injuries of Anandrao being unexplained it cannot be inferred that the appellants may have acted in exercise of right of self defence of person.

In our view the failure of the prosecution to explain the injuries of Anandrao is not fatal to the prosecution case.

Consequently we reject the aforesaid submission of Mr. Pradhan.

18. One of the questions which still remains to be adjudicated upon is whether the learned trial Judge acted correctly in convicting the appellant Dattatraya Ramchandra Patil u/s 302 I.P.C. Our answer to this is in the negative for the reasons mentioned below:

Firstly the incident was the off-shoot of a sudden quarrel which erupted on account of an altercation taking place between the informant Shivling Patil on

one hand and the appellants and the acquitted accused Anandrao on the other when the bull of the latter ran helter-skelter.

Secondly a perusal of the ocular account shows that only a solitary blow with the scythe was inflicted by appellant Dattatraya Ramchandra Patil on a non-vital part of the body of the deceased, viz., the left leg. In our view, if Dattatraya Ramchandra Patil wanted to kill the deceased he would have assaulted him on a vital part of the body and would also have repeated the blow, for the evidence shows that the deceased did not die on the spot but succumbed subsequently to his injuries. A perusal of the post mortem report pertaining to the deceased and the statement of Doctor shows that the deceased died on account of cutting of popliteal vessels due to injury over left popliteal fossa. It appears that on account of the cutting of the vessels there was an incessant loss of blood resulting in the death of the deceased. In our view, this act of the appellant would not fall within the ambit of any of the four clauses of section 300 I.P.C., the breach of which is punishable u/s 302 I.P.C. We however, feel that when the appellant inflicted an injury with scythe on the left leg of the deceased which must have been forceful, because left femur and muscles were exposed, he had the knowledge that by the blow the muscles of the deceased could be cut and the deceased might die on account of incessant loss of blood. In such a situation we feel that the act of the appellant Dattatraya Ramchandra Patil would fall within the ambit of section 304 Part II I.P.C. alone and not u/s 302 I.P.C.

19. So far as the act of the appellant Dadasaheb Anandrao Patil, in assaulting Shivling Patil on the left arm is concerned we feel that the learned trial Judge acted correctly in convicting him u/s 324 I.P.C.

20. The question which arises is as to what should be the sentence which requires to be imposed on the appellants. We cannot lose sight of the following facts:---

(a) that the incident took place nearly 15 years ago; (b) it was an off shoot of a sudden quarrel; (c) only one injury and that too on a non-vital part of the body of the deceased, namely, left leg was inflicted; and (d) there is nothing to indicate that either of the two appellants are previous convicts or have any criminal antecedents. In our view the ends of justice would be squarely satisfied if the appellant Dattatraya Ramchandra Patil is sentenced to undergo two years R.I. and to pay a fine of Rs. 20,000/- and in default of payment of fine to further undergo two years R.I. u/s 304, Part II I.P.C. and the jail sentence of appellant Dadasaheb Anandrao Patil u/s 324 I.P.C. is reduced to the period already undergone by him and in lieu of the remaining portion of his sentence he is directed to pay a fine of Rs. 5,000/-. If the total fine of Rs. 25,000/- imposed by this Court is paid by the appellants the whole of it shall be paid as compensation to P.W. 10 Subhadra Babasaheb Hingmire, the widow of the deceased and in case she is not alive then to such other legal heirs of the deceased who are entitled under law to receive it.

21. In the result this appeal is partly allowed and partly dismissed. We set aside the conviction of the appellant Dattatraya Ramchandra Patil and his sentence of life imprisonment u/s 302 I.P.C. We acquit him on that count. Instead we convict him for an offence u/s 304 Part II I.P.C. and direct him to undergo a jail sentence of 2 years R.I. and to pay a fine of Rs. 20,000/-, in default to further undergo 2 years R.I. although we uphold the conviction of appellant Dadasaheb Anandrao Patil u/s 324 I.P.C., but we reduce his sentence to the period already undergone by him and direct that in lieu of the remaining portion of his sentence he shall pay a fine of Rs. 5,000/-. Fine shall be deposited by both the appellants within a period of 6 months from today in the trial Court and the whole of it i.e. Rs. 25,000/- (Rupees twenty five thousand only) shall be paid as compensation to the widow of the deceased Subhadra Babasaheb Hingmire P.W. 10, and in case she is not alive to such other legal heirs of the deceased who are entitled to receive it. As soon as the appellants deposit the fine the trial Court shall inform Subhadra Hingmire P.W. 10, about this compensation. In case she is no more, then such legal heirs of the deceased who are entitled to receive the compensation would be informed by the trial Court and the amount would be paid to them.

Appellant Dattatraya Ramchandra Patil is on bail. He shall be taken into custody forthwith to serve out his sentence. Appellant Dadasaheb Anandrao Patil is also on bail. He shall continue to remain on it. However, if he does not pay the fine within a period of 6 months from today he shall be taken into custody to serve out his sentence.