
(2002) 07 BOM CK 0008
In the Bombay High Court
Case No : Criminal Appeal No. 316 of 1997

Dhanraj Sonaji Panwe and Another	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2002) 104 BOMLR 55

Hon'ble Judges : V.M. Kanade, J; R.K. Batta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Batta, J.—The appellants were tried for murder of Kachu Pahclwan @ Lal man u/s 302 as also for destroying evidence by burning blood stained clothes u/s 201 of the Indian Penal Code. The prosecution had in all examined ten witnesses in support of the charge. The Trial Court relied upon the evidence of P.W. 4 Maniram as also P. W. 5 Mungilal and other circumstantial evidence on record including the recovery of chappals of appellant Dhanraj -one from the spot and the other from his house on which there were blood stains and recovery of blood stained shirt on the person of appellant Dhanraj at the time of his arrest. Appellants have challenged their conviction in this appeal.

2. We have heard learned Advocate for appellants and the learned Additional Public Prosecutor for State.

3. Learned Advocate for the appellants has urged before us that the prosecution witnesses P. W. 4 Maniram and P. W. 5 Mungilal have not actually seen the assault on account of which not much reliance can be placed on their testimony; that there is no evidence to show that chappals attached by the police - one from the spot and the other from the house of appellant Dhanraj are that of appellant Dhanraj and on the full shirt of appellant, blood of "AB" group is said to be there, yet, blood group of appellant Dhanraj is inconclusive and on the basis of sole

evidence of blood stains on the shirt attached at the time of his arrest, the appellant Dhanraj cannot be held guilty for murder even though it may raise some suspicion as against the appellant. According to him, insofar as appellant Sonaji Panwe is concerned, there is no evidence against him. He also pointed out that there was no charge against the appellants u/s 34 of the Indian Penal Code, but they have been convicted u/s 302 read with Section 34 of the Indian Penal Code. In the circumstances, it is urged that the appellants are entitled to be acquitted.

4. Learned A. P. P., on the other hand, urged before us that the prosecution has been able to establish that there was scuffle between the deceased on one side and the appellants on the other side and during this scuffle, the deceased had shouted that the knife blow was dealt on his person. He further urged that one chappal having blood stains of "AB" group was found at the spot which is the blood group of the deceased and the other chappal having blood stains was found from the house of the appellant; that the prosecution has been able to establish that there were injuries on the person of appellant Dhanraj and that on the full shirt of Dhanraj which was attached at the time of his arrest, there was blood stains of "AB" group which was the blood group of the deceased. According to him, there is ample evidence as against appellant Dhanraj to sustain his conviction and the same does not call for interference. As against the other appellant, it was urged that the evidence is that he had caught hold of the deceased while appellant Dhanraj had inflicted knife blows and applying Section 34 of the Indian Penal Code, appellant Sonaji Panwe has been rightly convicted by the Trial Court.

5. In the light of the rival contentions, we have gone through the record as also judgment of the Trial Court.

6. Though the Trial Court had in mind that the testimony of interested witnesses requires close scrutiny, but while scrutinising the evidence, the Trial Court has faltered. The prosecution had examined P. W. 4 Maniram who is cousin brother of deceased who had stated that he saw the accused and deceased Lalman pushing each other and while doing so they came near the house of Mungilal Chimote. He then stated that he saw the accused Sonaji who caught hold of deceased Lalman from his back side and all of them were fighting. Lalman, in the aforesaid scuffle, fell down. In the meanwhile he shouted that knife blow was dealt on his person. P. W. 4 Manilal then states that accused Dhanraji dealt knife blow on the person of deceased Lalman and Lalman had injuries on his abdomen and chest which were bleeding injuries and the accused ran away. In cross-examination he has admitted that it was dark. The incident is reported to have taken place at 09.00 p. m. He confirmed that he did state before the Police that appellant Dhanraj dealt knife blow on the person of deceased, but when confronted with his police statement, he could not assign any reason why the said fact was not mentioned in his police statement. He also stated that he had told to the police that deceased had injuries on his chest and abdomen, but again

when he was confronted with the police statement, he could not assign any reason as to why the said fact was not mentioned in his police statement. Thus, material part of the evidence of this witness was that he had seen accused Dhanraj having dealt knife blow on the person of Lalman and Lalman having received injury on his chest and abdomen, is an improvement made by this witness in his statement before the Court which was not stated by him at all before the Police even though his statement was recorded on the next day of the incident.

7. P. W. 5 Mungilal has stated that as he heard shouts, he came out of the house. At that time, he saw both the accused and deceased were quarrelling with each other and during the quarrel they came near his house. He saw accused Dhanraj with knife while accused Sonaji was armed with iron blade like a sword. He further stated that both the accused dealt blows of knife and sword on the person of deceased and the deceased fell down after which both the accused ran away. In his cross-examination he stated that no sooner Lalman fell down, he could reach at that place; He stated that he had told to the police that sword blow was dealt on the person of deceased, but when he was confronted with his police statement where such fact was not mentioned, he deposed that he could not assign any reason why the said fact is not mentioned therein. The police have recovered one sword from spot without handle, but according to the report of Chemical Analyser, the sword did not have any blood stains. P. W. 4 Maniram has stated that appellant Sonaji had caught hold of deceased Lalman from back side which is not spoken by P. W. 5 Mungilal. P. W. 5 Mungilal has stated that appellant Sonaji had iron blade like sword with which he inflicted blows about which P. W. 4 Maniram does not at all make any reference. Of course, both the witnesses have stated that both the appellants and deceased were quarrelling and during the said scuffle, they heard deceased shouting that he was assaulted by means of knife. Thus, the only fact which can be said to have been established by the prosecution through these witnesses is that quarrel was going on between the deceased and appellants and in this quarrel, the deceased had shouted that he was assaulted by knife. The evidence of these witnesses goes to show that they have not seen the actual assault by the accused. The improvements in the statement of P. W. 5 Mungilal have been explained by the learned Additional Sessions Judge by giving curious reason that the improvements and omissions in the statement of this witness have to be ignored since the witness is brought up in Korku community and is illiterate.

8. In addition to the above evidence, the prosecution had also relied upon certain other circumstances with which we shall deal with one by one. According to the prosecution one chappal of appellant Dhanraj was seized from the spot upon which there was blood of group "AB" which was the blood group of deceased and on the other chappal recovered from his house also there was blood of the same group. First of all, there is no evidence on record to show that the two chappals - one recovered from the spot and the other from the house, are matching each other and they were of appellant Dhanraj. The chappal which was recovered from

the spot was having Number "8" and was "Walker" make, but there is nothing to show that chappal which was recovered from the house was having Number "8" and was of "Walker" make. The chappal is said to have been recovered from the house of appellant Sonaji who is father of appellant Dhanraj. There is no evidence on record to show that chappal was of appellant Dhanraj even if we accept that the same was recovered from the house of appellant Dhanraj, because the house was occupied by others including appellant Sonaji. Moreover, on the chappal which was recovered from the house, though there were blood stains thereon, but the blood grouping on the said chappal was inconclusive as per the C. A. Report. Therefore, the prosecution has not been able to connect the appellant Dhanraj directly with the said chappals.

9. The prosecution relies upon the injuries on the person of appellant Dhanraj, but no question has been put to the appellant Dhanraj in his statement u/s 313 of the Cr. P. C. so as to use the said circumstance against him. Besides this, the injuries on his person would explain the blood stains on his clothes. Moreover, injuries on his person have not been explained by the prosecution which means that the genesis of the crime has been suppressed by the prosecution.

10. The prosecution had also relied upon blood stained shirt recovered from the person of appellant at the time of his arrest on 9.6.1995 at 2.00 p. m. As per C. A. Report, the said shirt (Exhibit 6), blood stains of group "AB" were found which was the blood group of the deceased. However, as per the said report, blood group of the appellant is inconclusive. This circumstance has also not been clearly and specifically put to the appellant Dhanraj as can be seen from question No. 14 put to him during his examination u/s 313 of the Cr. P. C. In this question, four different aspects have been clubbed together, viz. seizure of chappal under panchanama (Exh. 23); seizure of clothes of appellant Dhanraj under panchanama (Exh. 25); seizure of partially burnt banian, whitish full pant under panchanama (Exh. 30) from his house and reports of C. A. (Exhibits 57, 58). The specific part of C. A. Report relating to blood stains on the shirt (Exh. 6); blood grouping on the same as well as blood grouping of the deceased has not been specifically put to appellant Dhanraj. In our opinion, this complex question which has been put, has caused prejudice to the accused while answering the same. It is now well settled that complex and long questions should not be put to the accused in his statement u/s 313 of the Cr. P. C. The questions should be short and simple so that the accused can understand the same. We have in number of judgments earlier deprecated this practice of putting complex questions. However, still in some cases, we find that complex and long questions are being put causing prejudice to the accused. The Sessions Judges should ensure that simple and short questions are put to accused which can be understood by accused who has to answer the question

11. The police had also recovered a cut banian which was found to be burnt and on which blood stains were found, but the blood grouping was inconclusive. In the light of the evidence on record, the inconclusive blood grouping of the blood

stains found on the cut banian (Exh. 7 of C. A. Report) and chappal (Exh. 7 of C. A, Report) assumes importance. Of course, the cut banian suffers from the same infirmity as the plastic chappal since there is nothing on record to show that the cut banian belongs to appellant Dhanraj to whom it is attributed by the prosecution.

12. We have in large number of cases noticed that the blood grouping of the accused is invariably inconclusive. We fail to understand as to how the blood grouping of an accused can be "inconclusive". Blood grouping is a simple process any can be performed immediately after taking blood sample of the accused, in 10-15 minutes, in the hospitals. We are informed by the learned A. P. P. that pathological facility to ascertain the blood group are available in the Government hospitals at all district places. Why the blood samples of accused are sent to the Chemical Analyser is beyond our comprehension, unless they are sent there to help the accused since invariably the results in this respect are inconclusive? Why the police does not take blood samples in the hospitals and get blood grouping done immediately, is not understandable? Is it mere design or callousness or negligence on the part of the police agency? We must say that there is definitely something wrong somewhere on account of which the police does not get the blood grouping of the accused done from the hospital where it can be done in no time and why in all cases the blood of the accused is sent to Chemical Analyser wherein invariably the reports in respect of the blood grouping of the accused are "inconclusive". We are at a loss to note that neither the Investigating Officers nor the Police Officers supervising the investigations nor the Police/Public Prosecutors conducting the trials have ever bothered to find out why every time the blood grouping of the accused comes out to be inconclusive. May be, this lacuna is left to favour the accused or there is a fear that if the blood group of accused is determined, it may go against the prosecution, because otherwise we fail to understand as to why the Authorities have not taken any steps in this direction so far. We hope that in the interest of justice, henceforth all necessary steps shall be taken by the concerned authorities so that the blood grouping of the accused is not inconclusive. A copy of this judgment shall be sent to all Police Heads in Vidarbha region as also to the Director General of Police, Mumbai and the Additional Chief Secretary (Home), Mumbai so that this lacuna is not left in the criminal cases.

13. In the light of the material on record, we find that there is absolutely no evidence as against appellant No. 2 Sonaji and it appears that he has been falsely implicated in the case since, even according to P. W. 1 Gulma, one Mungilal and Bharat had told him that it was Bhau by which accused Dhanraj is known, who had assaulted Kachu Pahclwan. Insofar as appellant Dhanraj is concerned, we find that the evidence as against him is not sufficient in order to sustain conviction of murder u/s 302 of the Indian Penal Code.

14. For the aforesaid reasons, the appeal filed by the appellants is allowed. The conviction and sentence imposed on them by learned Additional Sessions Judge,

Achalpur vide judgment dated 26.3.1997 in Sessions Case No. 135/95 is hereby set aside and the appellants are acquitted of the charge. They shall be set at liberty forthwith in case they are not required in any other case.