

(2023) 06 BOM CK 0064
In the Bombay High Court
Case No : Criminal Appeal No.783 Of 1998

Goutam Gopal Jadhav

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 207, 307, 326, 335, 452, 506
Code Of Criminal Procedure, 1973 — Section 315
Evidence Act, 1872 — Section 27

Citation : (2023) 06 BOM CK 0064

Hon'ble Judges : R.N.Laddha, J

Bench : Single Bench

Advocate : Dhruti M. Kapadia, A.R.Kapadnis

Final Decision : Dismissed

Judgement

R.N.Laddha, J

1. In this Appeal, judgment and order of the learned Additional Sessions Judge, Ratnagiri, in Sessions Case No.33 of 1994, is the subject matter of challenge. The accused/appellant was found guilty of offences punishable under Sections 335 and 452 of the Indian Penal Code, 1860 (for short, 'IPC'). He was sentenced to suffer rigorous imprisonment for two years and a fine of Rs.500/- and rigorous imprisonment for two years and a fine of Rs.500/- with default stipulations, respectively.

2. It is the case of the prosecution that on the evening of 8 November 1992, accused Gautam went to injured Gangaram's house and abused him. Later that night, when Gangaram was washing his hands after dinner, Gautam suddenly yanked his pants and stabbed him in the stomach with a knife, causing a bleeding injury. Nirmala saw the attack after she heard the noise and came out of her house. Gautam then ran away. Injured Gangaram then went to Dattaram Jadhav's yard, where he met Yashoda, his sister-in-law. On asking, Gangaram told her that Gautam had assaulted him. Gangaram was taken to the hospital at

Guhagar.

3. Yashoda lodged the FIR at 1.45 a.m. on 9 November 1992, and the police registered the crime vide CR No.60 of 1992 for the offence punishable under Sections 307, 326, 504 and 452 of the IPC. The investigation commenced thereon. The police arrested the accused, interrogated the witnesses and recorded their statements. They also seized the clothes of the injured Gangaram and the accused Gautam, which they wore at the time of occurrence. The accused Gangaram made a disclosure leading to the recovery of the weapon of offence, i.e. knife. The police visited the scene of a crime and prepared Panchnama in the presence of public witnesses. While drawing Panchnama, police seized plain earth and earth mixed with blood. All the incriminating articles were sent to the Regional Forensic Science Laboratory, Pune.

4. As the investigation revealed the complicity of the accused, the investigating officer lodged a charge-sheet against him. The learned Magistrate, after ensuing compliance under Section 207 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), committed the case to the Court of Sessions, where the charge was framed against the accused for the offences punishable under Sections 307, 452 and 504 of IPC. The accused abjured his guilt and had put the prosecution to the task of establishing levelled charge with the requisite standard of proof.

5. At the trial, to bring home the charge against the accused, the prosecution examined as many as ten witnesses, viz. Yashoda Sakharan Jadhav (PW 1), the first informant; Gangaram Rajaram Jadhav (PW 2), an injured; Prakash Shankar Kadam (PW 3), a public witness to the arrest Panchnama; Shankar Dhakatu Jadhav (PW 4), a public witness to the spot-cum-seizure Panchnama, Prabhakar Laxman Jadhav (PW 5), a public witness to the memorandum statement; Jagannath Manohar Bagkar (PW 6), a public witness to the seizure Panchnama of clothes of the accused; Nirmala Narayan Jadhav (PW 7), the alleged eye witness to the occurrence; ASI Harishchandra Ragho Ketkar (PW8), who recorded complaint (Exhibit 32) of Yashoda Jadhav; Dr Subhash Purushottam Javalgikar (PW 9), Medical Officer at Guhagar who examined injured Gangaram and PI Bhaskar Kashinath Mhatre (PW 10), an Investigating Officer.

6. After the closure of the evidence from the prosecution side, a statement of the accused under Section 313 Cr.P.C. was recorded. After evaluating the evidence, the trial Court believed the prosecution witnesses, and considering the circumstances and the nature of the injury sustained by the injured, the learned trial Court convicted the accused/appellant for the offence punishable under Sections 335 and 452 of IPC.

7. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned trial court, the appellant has preferred the present appeal.

8. We have heard Ms Dhruti Kapadia, learned Counsel for the appellant, and Mr A.R.Kapadnis learned Additional Public Prosecutor for the State.

9. The evidence of an injured witness, Gangaram (PW2), was crucial among ten witnesses examined by the prosecution. He testified that he was at his home around 7.00 p.m. on the day of the incident when the accused, Gautam came and abused him before returning to his own house. But the accused came back soon after and grabbed his pant, making him fall to the ground. Then, the accused stabbed him in the stomach with a weapon. He also said he went to the Police Patil Dattaram Jadhav's house, where he met his sister-in-law Yashoda (PW 1) and told her what happened. After that, he lost consciousness. He stated that Nirmala (PW 7) resides in a shed on his property.

10. The evidence of Gangaram (PW 2) receives complete support from the medical evidence. The evidence of Dr Javalgikar (PW 9) and the injury certificate (Exh.46) confirm the medical findings. He had observed a penetrating incised injury on the abdomen 3 inches above the umbilicus, measuring 2.5 cm. x 1 cm. He said the injury was grievous and was caused within six hours by a sharp object. Dr Javalgikar (PW 9) was not cross-examined to explain how Gangaram got this injury, so the learned trial Court has rightly concluded that the medical evidence corroborated the version of the injured.

11. The testimony of injured Gangaram (PW 2) is supported and corroborated by several pieces of evidence from Yashoda (PW 1) and Nirmala (PW 7). Yashoda (PW 1) says that she saw Gangaram lying on the ground in Dattaram Jadhav's house courtyard with a bleeding injury on his stomach. She claims that Gangaram told her that accused Gautam stabbed him in the stomach. Thereupon, Gangaram was taken to the hospital at Guhagar. She went to the police station and lodged a complaint (Exh.32) against the accused. Surprisingly, it was brought out in the cross-examination of Yashoda that on the day of incident at about 8.00 p.m., she had been to the house of Dattaram Jadhav, where she found Gangaram lying in the courtyard of Dattaram and heard him say that accused Gautam attacked him. Even though Yashoda did not witness the assault, her evidence proves that Gangaram was injured in Dattaram's courtyard at the relevant time and that she reported the incident against the accused. Nirmala (PW 7) also did not see the assault, but her evidence proves that the accused was present at Gangaram's house before the assault happened.

12. The learned Counsel for the appellant argued that the appellant was innocent of any crime. But then there is a question as to why Gangaram (PW 2) would falsely accuse the appellant/accused of attacking him. In this respect, no probable explanation has been offered by the appellant. Furthermore, Gangaram (PW 2), being an injured witness, stands on a higher pedestal, and unless shown to be unworthy of credence, his evidence cannot be easily brushed aside.

13. In State of Uttar Pradesh Vs. Naresh and Others 2011(4) SCC 324., the principles of evaluating of the evidence of an injured witness were expounded in the following words.

"The evidence of an injured witness must be given due weightage being a

stampede witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assault in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of an injured witness to be relied upon unless there are grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein [vide: Jarnail Singh Vs. State of Punjab, (2009) 9 SCC 719 : Balraje @ Trimbak Vs. State of Maharashtra (2010) 6 SCC 673 and Abdul Sayed Vs. State of M.P. (2010) 10 SCC 259].

14. In Abdul Sayed Vs. State of M.P. (2010)10 SCC 259, it has been observed by the Hon'ble Supreme Court that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to implicate someone falsely. It has also been reiterated that convincing evidence is required to discredit an injured witness.

15. Ms Kapadia, learned Counsel for the appellant, contends that the evidence presented by the prosecution is weak because it depends only on the statements of prejudiced witnesses such as Yashoda (PW1) and Nirmala (PW 7), who are the sister-in-law and a neighbour of the injured Gangaram, respectively.

16. The Hon'ble Supreme Court, in Hari Obula Reddy & Ors. Vs. State of A.P. (1981)3 SCC 675. , while discussing the credibility of the evidence of interested witnesses, held thus :

"It is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sole testimony. Nor it can be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary, is that the evidence of interested witnesses would be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

17. In Salim Saheb Vs. State of M.P. 4(2007) 1 SCC (Cri) 425, the Hon'ble Supreme Court held that the credibility of a witness is not affected by the relationship to the parties involved. It is unlikely that a relative would falsely implicate an innocent person while protecting the actual culprit. If a claim of false implication is made, evidence must be presented. In such a situation, the Court must carefully examine the evidence to determine its reliability and consistency.

18. Ms Dhruti Kapadia, learned Counsel for the appellant, has also questioned the delay in filing the FIR. The incident occurred on 8-11-1992 at about 8.00 p.m. at Velamb Pangari village, but the report was only lodged at 1.45 a.m. of 9-11-1992 at Guhagar Police Station. Under such circumstances, I do not think this delay can give much advantage to the defence.

19. In respect of circumstantial evidence, Mr A.R.Kapadnis, the learned Additional Public Prosecutor, urged that there is strong circumstantial evidence which lends support and corroboration to the ocular account of Gangaram (PW 2). Firstly, the clothes which the accused and the deceased were wearing at the time of the incident had human blood on them. Secondly, the accused made a discovery leading to the recovery of the weapon that was used for the assault.

20. On the first count, Jagannath Bagkar (PW 6) stated that the accused's khaki colour pant (Art.7) and sando banian (Art.8) had blood stains and they were seized under Panchnama (Exh.42). The Chemical Analyzers report (Exh.50), showed that the blood stains on the clothes and the knife (Art.6) were of human origin and belonged to 'B' group. The same report (Exh.51) also confirmed that the injured Gangaram had a 'B' blood group.

21. In Madhav Balaji Dangare & Anr. Vs. State of Maharashtra 2014 ALL M.R.(Cri) 3500, it was held that the finding of blood stains having blood group of deceased on the clothes of accused without plausible explanation is incriminating circumstance.

22. Shankar (PW 4) testified that he was summoned to Gangaram's house and saw blood marks in the shed. He said that samples were taken from there. He also said that he was then brought to the backyard of Dattaram's house, where there were also blood marks, and samples were collected. The report from the Chemical Analyzer shows that these samples contain human blood.

23. So far as discovery is concerned, Prabhakar Jadhav (PW 5) deposed about the disclosure statement made by the accused that he would show the place where the knife was concealed, i.e. in the hip of the grass in front of his house. The memorandum of the disclosure statement (Exh.39) came to be proved in the evidence of Prabhakar (PW 5). According to Prabhakar (PW 5), the accused led the police party to the said place and produced the knife (Art.6), which was seized under a Panchanama (Exh.40). Moreover, the Chemical Analyzer's report showed that the knife (Art.6) had the blood of group 'B' on it.

24. In the light of the aforesaid nature of the discovery, the learned counsel for the appellant argued that the recovery was not reliable because it was made from a place that was open and accessible to everyone. It is a well-settled principle in law that a discovery under Section 27 of the Evidence Act is admitted on the basis of the Doctrine of Confirmation by a subsequent event. It is based on the principle that if a fact is discovered pursuant to the statement made by the accused, then it provides a guarantee of the truthfulness of that statement.

25. In State of H.P. vs. Jeetsingh 1999 Cr.L.J. 2025 , the following legal proposition was explained.

"There is nothing in section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried on the main road side or if it is concealed, beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered".

26. In view of this, the evidence of discovery cannot be rejected outright if an object is found in an open place and accessible to the public. The testimony of Prabhakar (PW 5) was also corroborated by PI Mr Mhatre (PW 10), the investigating officer who claimed to have made the alleged recovery.

27. The identification of the weapon, i.e. knife, was challenged by arguing that such a knife is easily available in the market. However, this does not affect the credibility of the prosecution witnesses. The value of identifying the knife seized from the accused is not reduced by the fact that such knives are common in the market.

28. Ms Kapadia, learned Counsel for the appellant, pointed out that the weapon (Art.6) seized by the police vide Panchnama (Exh.40) had the words "superior quality made in Germany" on it. But Prabhakar (PW 5) said in his cross-examination that the knife had no such words on it. In this respect, the evidence of Prabhakar (PW 5) is required to be appreciated in the light of the fact that his evidence was recorded four years after the seizure of the knife (Art.6). In the instant case, core of the prosecution story was that the accused attacked the injured Gangaram with a knife. That did not change. Prabhakar (PW 5) might have remembered some details differently because of the time gap. So his minor mistake about words on the knife should not be used to reject his whole testimony. Moreover, it is a settled position in law that even if much of the evidence is deemed insufficient, in the case where the residue is sufficient to prove the guilt of an accused, his conviction may be upheld.

29. In the case at hand, the defence did not offer any plausible explanation for why the injured witness Gangaram (PW 2), would falsely implicate the accused or have any motive to involve him in the crime. Therefore, the possibility of false implication is weak. Moreover, the testimony of the injured witness (PW2) was consistent and reliable, without any major contradictions or discrepancies. Minor variations on insignificant matters do not affect the credibility of the evidence. The police report was filed within a reasonable time. No evidence was shown to

prove that the injury was accidental. Therefore, the injured witness's account of the assault by the accused is trustworthy. Considering all this, this Court disagrees with the defence argument that the accused had an accidental injury. The trial Court has examined the entire evidence thoroughly and, in my opinion, has reached the correct conclusion that the prosecution has proved the case against the accused beyond a reasonable doubt.

30. Resultantly, this appeal fails and is hereby dismissed. The order of conviction and sentence passed by the learned Additional Sessions Judge, Ratnagiri, in Sessions Case No.33 of 1994, is hereby confirmed.