
(2010) 03 BOM CK 0067
In the Bombay High Court
Case No : Criminal Appeal No. 319 of 1991

Hanmant Nagnath Gavali (Bhosale)	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313, 374
Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 03 BOM CK 0067

Hon'ble Judges : Mridula Bhatkar, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.V. Marwadi, for the Appellant; J.P. Yagnik, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—This appeal filed u/s 374 of the Code of Criminal Procedure is directed against the order of conviction and sentence passed on 30th March 1991 by the learned IInd Additional Sessions Judge, at Solapur in Sessions case No. 193 of 1987. The appellant-accused No. 3 came to be convicted for the offence punishable u/s 302 of the Indian Penal Code and sentenced to suffer life imprisonment with fine of Rs. 200/- and in default to suffer rigorous imprisonment for one more month. While this appeal was admitted on 3rd June 1991, the appellant was released on bail and as of now he continues to be on bail. The accused No. 1 is the father of accused Nos. 2 and 3 and accused Nos. 1 and 2 have been acquitted.

2. As per the prosecution, the deceased Bhagwan son of Pandu Narale and accused are residents of village Bhadali and were holding agricultural lands adjacent to each other. One Bhagwan Shewale was holding agricultural land admeasuring about 2 1/2 acres which was located between the land of the complainant party and the accused and initially the said land was purchased by accused No. 1 but the agreement failed and therefore the said land was

purchased by the complainant party and on that count there was a dispute between both the families.

3. On 15th January 1987 there was a scuffle between Abhiman Narale and accused No. 3 near the agricultural land and accused No. 3 was armed with an iron bar at that time. In the scuffle both of them had received some bruise injuries and the incident had taken place around 7.30 a.m. At about 8 a.m. the accused Nos. 2 and 3 went to the house of the complainant PW 3 Chhaya Narale wife of Abhiman (PW 7) was present. They asked her about her husband and father-in-law and she informed them that the husband had left for Mumbai and father-in-law had gone out towards the carpenter's shop (PW 4). They started abusing and accused No. 2 was having two stones in his hand. Suspecting some foul play, she immediately ran towards the carpenter's house. She located her father-in-law near the carpenter's house and informed him that accused Nos. 2 and 3 had come to attack him. Therefore, he was returning towards his house and at that time he was attacked by the accused. Accused No. 2 Laxman Gavali pelted stones and hit on the left rib of Bhagwan. When she tried to protect her father-in-law, she was pushed by the accused No. 2 and suffered some injury on her elbow and her bangles had broken. Accused Nos. 1 and 2 caught hold of her father-in-law and accused No. 3 Hanmant Gavali assaulted him with a gupti on his chest as a result of which her father-in-law sustained bleeding injuries and fell down. Sukdeo Gaikwad PW 4 and Gopinath Jethithor PW 5 rushed to the spot along with Ramchandra. At this stage accused Nos. 2 and 3 ran away. Bhagwan was declared dead and therefore Police Patil Ashok Kamble who had also seen the incident filed F.I.R at Exhibit 33 which was recorded by PW 18 Namdeo Tupe Police Head constable attached to Nannak police outpost of Vairag police station at the relevant time. The accused came to be arrested on the same day.

4. On completion of the investigation, charge sheet was filed on 15th May, 1987 and as the case was triable exclusively by the Sessions Court an order of committal was passed. The charge was framed on 5th January, 1989.

5. The prosecution examined in all 18 witnesses and the accused denied the charges as per the statement recorded u/s 313 of the Code of Criminal Procedure. PW 8, and PW 9, the panch witnesses, turned hostile. PW 15 Dr. S.S. Sardar had conducted the post mortem on the dead body of Bhagwan and signed the post mortem report at Exhibit 12. He stated before the court that on 15th January 1987 he had conducted the autopsy between 7 to 7.40 p.m. and noted a stab wound (penetration incised wound) about 1/2 inch in 4th inter costal space on medical side vacity deep, elliptical in margin, clean cut regular, gaping present. The injuries were ante-mortem, corresponding internal damage was perforating injury to the left abrium. As per the doctor, the cause of death was due to stab injury to heart and the injury was to the vital part of the body as at vertical part of the body and was sufficient in the ordinary course of nature to cause death. Thus, Bhagwan Narale died a homicidal death on 15th January, 1987 which is not seriously disputed by the defence.

6. During the course of arguments Mr. Marwadi the learned Counsel for the appellant reiterated that the appellant on the very evening i.e. on 15th January, 1987 had filed a complaint (Exhibit 46) with the police station and he stated in the said complaint that he had sustained injuries and was subjected to the medical examination. As per Mr. Marwadi, the prosecution failed to explain the circumstances under which the appellant (accused No. 3) had sustained injuries. He also submitted that though the prosecution had relied upon the ocular evidence of PW 3 Chhaya Narale, PW 4 Gopinath Jethithor and PW 6 Ashok Kamble, none of these witnesses have in fact seen the accused No. 3 assaulting the deceased Bhagwan by a gupti or a knife on 15th January, 1987 at about 8 a.m. and therefore, the prosecution case is doubtful and has not been proved beyond reasonable doubt that it was the appellant/accused No. 3 alone who assaulted Bhagwan. In short, it is the case of Mr. Marwadi, learned Counsel that accused No. 3 is not the author of the homicidal death of Bhagwan.

7. We are therefore, required to examine whether the prosecution proved its case beyond reasonable doubt to hold that the appellant was present at the spot and had assaulted the deceased Bhagwan by a gupti or a knife and as a result thereof Bhagwan died a homicidal death on 15th May, 1987.

8. There are number of admitted documents including the post mortem report at Exhibit 12, the C.A. reports which are brought on record at Exhibits 52,53 and 54 indicate that the blood group of the deceased could not be detected whereas the blood group of all the accused was detected to be of "O" group. Article No. 13, the gupti, was found to be stained with human blood but, its blood group could not be detected.

9. PW 3 Chhaya Narale stated that her husband Abhiman Narale had gone to the agricultural land on 15th January 1987 at about 7.00 a.m. Her father-in-law took bath and left the house before her husband returned home. On his return, her husband told her that he would go to Bombay to bring his brothers Subhash and Shankar as a quarrel had taken place between him and accused Nos. 2 and 3 near the agricultural land. Her husband left home to go to Bombay and within a short time thereafter, the accused Nos. 2 and 3 came to her house, asked the whereabouts of her husband and her father-in-law. She informed them that both of them had gone out and her father-in-law had gone towards the carpenter's house. Accused Nos. 2 and 3 went on abusing her father-in-law and the accused No. 2 was holding two stones in his hand. Anticipating some trouble she rushed towards the carpenter's house shouting for her father-in-law to hide in the house of the carpenter as accused Nos. 2 and 3 would assault him. Her father-in-law started coming towards the house and at that time accused Nos. 1 to 3 rushed towards him. Accused No. 2 Laxman Gavali pelted stones on the left side rib of her father-in-law and when she tried to intervene she was pushed aside as a result thereof, she sustained injuries on her right elbow. Accused Nos. 1 and 2 caught hold of her father-in-law and accused No. 3 assaulted him with a gupti on his chest. Her father-in-law sustained bleeding injuries and he fell down.

Somebody went to get water to drink and PW 4 Sukhdeo and PW5 Gopinath were also present on the spot along with Ramchandra. Accused Nos. 2 and 3 ran away. In her cross-examination her deposition on the occurrence of the incident remained intact except some contradictions regarding accused No. 2 Laxman Gavali catching hold of her father-in-law and she stated that the same was not found in her statement recorded by the police though she had stated so. However, on the role attributed to accused No. 3 of stabbing the deceased with a gupti, her evidence went unchallenged.

10. The next eye witness is PW 4 Sukhdeo Gaikwad who was running a carpentry shop. The map at Exhibit 15 shows that the very spot of the incident near the carpenter's house is towards the western side and the house of PW 4 Sukhdeo Gaikwad is on the northwestern side which is about 20 metres from the place where the deceased had fallen down. The presence of this witness near the spot of the incident therefore, cannot be doubted. He stated before the court that his workshop is at a distance of about 100 feet away from the residence of the deceased and on the day of the incident between 8 to 9 a.m., he was present in his workshop and doing carpentary work along with Ramchandra Narale and his son Anna and he saw the deceased Bhagwan and Gopinath proceeding towards the western side and were standing in front of his workshop. At that time PW3 Chhaya Narale the daughter-in-law of the deceased came saying that some persons had come to assault Bhagwan and therefore, Bhagwan proceeded towards his house and at that time accused Nos. 1 to 3 came running from the opposite direction i.e. from the house of the deceased. As per the said witness, accused No. 1 Nagnath Gavali had caught hold of the hand of Bhagwan and accused No. 2 Laxman Gavali had pelted stones on him whereas accused No. 3 Hanmant Gavali came running from behind and assaulted Bhagwan on his chest with a gupti in his hand and all of them fled. Bhagwan fell down and died on the spot. In his cross-examination he admitted that he did not ask Chhaya why she was shouting prior to the incident as he was busy in his work and his attention was diverted because PW 3 Chhaya started shouting and at that time Bhagwan was found lying on the ground. By referring to this last sentence that PW 4 Sukhdeo Gaikwad had seen Bhagwan lying on the ground it was submitted by the learned Counsel that this witness could not be said to be an eye witness to the occurrence and obviously he had not seen any of the accused assaulting the deceased. We are not impressed by these submissions of Mr. Marwadi. He explained that when he heard cries "died died" he had seen Bhagwan lying on the ground at that time and the said observations are supported from the original transcript of the depositions in Marathi.

11. PW 5 Gopinath Jethithor is the third eye witness. In his depositions, he stated that on the date of the incident at about 8 a.m. when he was coming from his house he had seen Bhagwan sitting near the gate of his house and then he proceeded ahead. Immediately Bhagwan followed him and both of them went to the workshop of PW 4 Sukhdeo. They remained standing there while chewing pan and at that time PW 3 Chhaya Narale came running and shouting "Mama

Mama" that some persons had come to assault you. Bhagwan then proceeded towards his house and at that time accused came running behind PW 3 and accused No. 2 pelted stones on the left side rib of Bhagwan. Accused No. 1 caught hold of Bhagwan from behind and accused No. 3 Hanmant came running and took out a gupti and assaulted Bhagwan with the same in his chest and ran away. Bhagwan fell down. This witness was subjected to cross-examination and some contradictions were tried to be brought out when confronted with his statement recorded by the police. The same is not material and does not affect his testimony on the actual occurrence i.e. the assault on Bhagwan by accused No. 3 with a gupti. He admitted in his cross-examination that the deceased was not lending amount in his business and that he was not on enmical terms with accused persons. He also admitted that he did not chase accused persons.

12. The fourth eye-witness is PW 6 Ashok Kamble, Police Patil who had lodged the FIR. He stated before the court that on the date of the incident between 8 to 8.30 a.m. he was present in his house. The workshop of PW 4 is at a distance of 30 to 40 feet from the handpump located about a distance of 200 feet from his residence. He therefore, went to the handpump and saw that the accused No. 1 Nagnath had caught hold of Bhagwan. Accused No. 2 Laxman had pelted stones on him and accused No. 3 Hanmant assaulted him with a gupti on the chest (left) of Bhagwan. PW 3 Chhaya Narale, PW 5 Gopinath and PW 4 Sukhdeo Gaikwad were present there and Bhagwan fell down due to the assault inflicted by accused No. 3. The accused fled away and when he reached the spot he noticed that Bhagwan was dead and he started to chase the accused persons up to their house and apprehended them in their house and brought them to the office of police panchayat and detained them. This testimony of detaining the accused by the police Patil is also supported by the evidence of PW 18 Namdeo Tupe and PW 16 Bhau Madhav Sinnarkar the Investigating Officer as well as PW 12 Tukaram Palkar. In his cross-examination he stated that he had not stated to the police that Nagnath had caught hold of the deceased and he also did not state about the presence of Sukdeo Gaikwad PW 4. He also stated in his complaint that he did not state that he had chased accused persons and apprehended at their house and brought them to the village panchayat office. This improvement was brought out in the cross-examination of this witness.

13. Thus, on the assessment of the evidence of the four eye-witnesses i.e. PW 3 Chhaya Narale PW 4 Sukhdeo Gaikwad, PW 5 Gopinath Jethithor and PW 6 Ashok Kamble, it is clear that on the date of the incident between 8 to 9 a.m. the deceased had left his house and proceeded towards the carpentry shop of PW 4 and while he was chewing pan along with PW 5 Gopinath Jethithor his daughter-in-law came shouting and alerted him that some people were wanting to attack him and at that juncture accused had followed her and accused No. 3 stabbed the deceased with a gupti on his chest. This testimony of assault on the chest by a gupti is also supported by the medical evidence and more particularly injuries sustained and recorded in the post mortem report at Exhibit 23.

14. For the circumstance of recovery of gupti, PW 8 Chandrakant Gavali was a panch witness and he turned hostile. However, the prosecution had taken extra care in recording his statement u/s 164 of the Code of Criminal Procedure before the Special Judicial Magistrate PW 10. We do not find any reason to disbelieve the recovery of the gupti at the instance of accused No. 3 and as per C.A. report it was found to have human blood stains though blood group could not be identified.

15. The Medical Officer PW 15 Dr. S.S. Sardar was categorical in his statement that the injuries noticed on the body of the deceased were caused by a sharp weapon which could be either a gupti or a knife.

16. At this stage, we must also refer to the submissions of the defence counsel that failure of the prosecution to explain the injuries caused by accused No. 3 has vitiated the prosecution case and in support of these submissions, he has placed reliance on the following judgments:

(i) Makwana Takhat Singh Ratan Singh Vs. State of Gujarat,

(ii) Periasami and Another Vs. State of T.N.,

This defence was also taken before the learned Additional Sessions Judge and he has elaborately dealt with it. The defence had placed reliance before the Sessions Court on the decision in the case of Jagdish Vs. State of Rajasthan, . The learned Additional Sessions Judge considered the complaint of accused No. 3 at Exhibit 46 and held that the accused No. 3 admitted his presence on the spot where there ought to have been some scuffle between the two parties. However, the learned Additional Sessions Judge further observed that the incident in which Bhagwan died was different from the incident in which accused No. 3 had sustained injuries as noted in his complaint Exhibit 46. In this regard, the learned A.P.P. rightly invited our attention to the evidence of PW 7 Abhiman Narale. He stated before the trial court in his examination-in-chief that on the earlier day of the incident he had gone to his agricultural land in the evening and he had asked accused No. 3 Hanmant about removing of the crop of Jowar on which he replied that the jowar crop was standing on his part of the land and stated that he would start ploughing the same on the next day. PW 7 then returned home and reported the matter to his father who advised him that they would be referring the matter to the panch members of the village. On the date of the incident in the morning PW 7 Abhiman Narale had gone to his farm at 6 a.m. and collected fruits and while returning back, he met accused No. 3 near the agricultural land of Ghadge. He saw accused No. 3 armed with an iron bar and stated that the accused assaulted him with the said bar on his shoulders. He therefore, caught hold of the iron bar and snatched from him and came back to his house. He informed his wife about the scuffle between the two and told her that he would have to go Bombay to bring his brothers as accused No. 3 had assault him. He therefore, left his house to go to Bombay and reached S.T. stand at Masale. While waiting for the bus, he was informed by Pandu Kamble that the

accused had murdered his father and therefore he returned to the village instead of proceeding to Bombay. In his cross-examination he denied the suggestion that the incident of assault on him during the quarrel with accused No. 3 while returning from the agricultural land was false. He also denied the suggestion that he did not receive message from Pandu Kamble about the assault on his father by accused while standing at the S.T. bus at Masale. This witness therefore clarified that the injuries sustained by accused No. 3 and mentioned in the complaint Exhibit 45 were caused during the scuffle between PW 7 and accused No. 3 prior to the incident in which Bhagwan died.

17. PW 13 Nazir Ahmed Mahmood khan who had taken over the investigation of C.R. No. 5 of 1987 from PSI Tukaram Palkar who was attached to Solapur taluka police station as P.S.I. on 15th January 1987 stated at the relevant time before the trial court that he arrested the accused persons on the date of the incident as per the arrest panchanama at Exhibit 25 and had noticed injuries on the person of accused No. 3 Hanmant. Accused No. 3 had lodged a complaint of assault on him (Exhibit 46) and the said complaint was sent to the Taluka police station for further investigation at Exhibit 46. In his further cross-examination he stated that the complaint was sent to the P.S.O for registering it as N.C. and the accused was intimated to file a private case in the court of the J.M.F.C. He had obtained the signature of accused No. 3 acknowledging the said intimation on the complaint itself and endorsement was verified and it was sent by accused No. 3 along with the counter signature of PW 4 Sukhdeo Gaikwad. It is thus clear that the prosecution was aware of the injuries which were noticed on the person of accused No. 3 when he was arrested but, at the same time he was advised to approach the court of J.M.F.C to file complaint as a private case as the injuries were not caused during the incident in which Bhagwan died.

We are therefore, satisfied that the injuries noticed on the person of accused No. 3 on the date of his arrest have not vitiated the prosecution case and the decisions relied upon by Mr. Marwadi are not applicable in the facts of this case.

18. In the premises, we are satisfied that the reasons set out by the learned Additional Sessions Judge in the impugned order of conviction are based on appreciation of the evidence of all the eye witnesses i.e. PW 3 to PW 6 and even independently on the assessment of the said evidence, we agree with the findings recorded by the trial court. Hence, no interference is called for in the said order of conviction and it requires to be confirmed. Once the charge of causing homicidal death i.e offence u/s 302 of the Indian Penal Code is proved against accused No. 3 Sentence of life imprisonment would be inevitable and it has been duly proved that Bhagwan died on account of the injuries sustained in the assault inflicted by the accused No. 3. The State has not filed an appeal against the acquittal of accused Nos. 1 and 2.

19. Hence, this appeal fails and the same is hereby dismissed. The order of conviction and sentence passed by the learned Additional Sessions Judge at Solapur on 30th March, 1991 in Sessions case No. 193 of 1987 against the

present appellant is hereby confirmed.

20. The bail granted to the appellant is hereby cancelled and he shall surrender to suffer the sentence to the nearest police station within one week from today.