

(2015) 04 BOM CK 0011

In the Bombay High Court

Case No : Criminal Appeal Nos. 1206 and 1210 of 2006

Jagannath Amrita Ghorpade and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 145, 147, 148, 149

Citation : (2015) 04 BOM CK 0011

Hon'ble Judges : P.V. Hardas, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Yug Mohit Chaudhary, for the Appellant; V.R. Bhosale, APP,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. Shalini Phansalkar Joshi, J.—Both these Appeals are directed against the Judgment dated 9th November, 2006 in Sessions Case No. 112 of 1996 by Ad-Hoc Additional Sessions Judge, Satara, thereby convicting the Appellants in both the Appeals for the offences punishable under Sections 143, 147 and 148 of the IPC and sentencing them to suffer R.I. for one year for all counts and to pay fine of Rs. 2,000/- each, in default to suffer R.I. for 3 months, by the impugned Judgment, they are further convicted for the offence punishable under Section 302 r/w. 149 of the IPC and sentenced to suffer imprisonment for life and to pay fine of Rs. 10,000/- each, in default to suffer R.I. for 2 years. They are also convicted for the offence punishable under Section 324 r/w. 149 of the IPC and sentenced to suffer R.I. for six months and to pay fine of Rs. 500/- each, in default to suffer R.I. for two months.

2. As both these Appeals are arising out of one and same Judgment, they are being decided by this common Judgment.

3. Facts, as are necessary, for the decision of these Appeals may briefly be stated thus:- The families of PW-3 Subhadrabai Ghorpade and that of the Appellants

are the residents of the same Ghorpadewadi/Juni Wasti and having their lands nearby. The relations between them were, however, strained on account of the purchase of the agricultural land of one Bhiku Chavan by the family of PW-3 Subhadrabai Ghorpade about five to six years prior to the date of incident. Since then, there used to be frequent quarrels between these two families and they were not on talking terms.

4. The incident giving rise to this case took place on 6th May, 1996, when PW-4 Chandrakant Ghorpade, son of PW-3 Subhadrabai, had gone to his field to start the electric motor. There, on some minor count as to the entering of the she-buffaloes of the Appellants in the land of PW-4 Chandrakant, the quarrel and fight took place between the members of the two families. In the said fight, as per Prosecution case, Accused No. 8 - Mohan assaulted Sarjerao, husband of PW-3 Subhadrabai, with sword on his head. Whereas, the other Accused assaulted Kisan, brother of PW-4 Chandrakant and other family members with sugar-cane sticks and stones.

5. As a result of the assault, Sarjerao sustained injury to his head. Hence, he was initially taken to the Primary Health Center at Koregaon and from there to the Civil Hospital at Satara. The other injured were also examined and given treatment at Primary Health Center, Koregaon. PW-3 Subhadrabai then lodged complaint about the incident vide Exhibit-103 at Koregaon Police Station. On her complaint, C.R. No. 38 of 1996 came to be registered against the Appellants and co-accused for the offences punishable under Sections 145, 147, 148 and 307 r/w. 149 of the IPC. Investigation of the said C.R. was entrusted to PW-10 Vinit Agarwal, Assistant Superintendent of Police. He visited the spot of incident, as shown by PW-3 Subhadrabai, and made Panchanama of the Scene of Offence (Exhibit-92). From the spot, he seized five stones of small size with blood stain thereon, three sugar-cane and one shevari stick, stained with blood, under Panchanama (Exhibit-92) in the presence of the Panch PW-2 Motiram Pawar. He also collected from the spot, the blood stained mud and the ordinary mud.

6. On the same day, the Appellant Mohan herein also came to the Police Station and lodged cross complaint against PW-3 Subhadrabai, PW-4 Chandrakant and their other family members. On the complaint of the Appellant - Mohan, C.R. No. 39 of 1996, came to be registered for the offences punishable under Sections 143, 148, 323, 324 and 326 r/w. 149 of the IPC, against the Prosecution Witnesses.

7. During the course of investigation, PW-10 Vinit Agarwal, Assistant Superintendent of Police, arrested the Appellants in this C.R. on the very day itself. On the next day, he seized the blood stained clothes on the person of Appellant - Mohan under Panchanama (Exhibit-55).

8. On 9th May, 1996, Appellant No. 4 - Vilas gave a disclosure statement and expressed his willingness to produce the stick. His statement was reduced to Memorandum Panchanama (Exhibit-84) in the presence of the Panch PW-1

Jagannath Budhavale. Thereafter, Appellant No. 4 - Vilas guided the Police and Panch to his house and from the bathroom, he produced the stick, which came to be seized under Panchanama (Exhibit-85).

9. On the same day, Appellant No. 1 - Jagannath also expressed his willingness to produce the sword, which was concealed in the cattle-shed by the Appellant - Mohan. The Memorandum Panchanama of his statement was made vide Exhibit-86. Thereafter, Appellant No. 1 - Jagannath guided the Police and Panch to the cattle-shed and produced the blood stained sword (Article 10), which came to be seized under Panchanama (Exhibit-87) in the presence of the Panch PW-1 Jagannath Budhavale.

10. On 9th May, 1996, remaining three Accused were arrested and the clothes on their person were seized under Panchanama (Exhibit-56). On 10th May, 1996, injured Sarjerao was reported to be dead on account of head injury. Hence, with permission from the Magistrate, charge under Section 302 r/w 149 of the IPC was added in the crime.

11. On 14th May, 1996, PW-10 Vinit Agarwal, Assistant Superintendent of Police, recorded the statements of some remaining witnesses. Further investigation was handed over to PI Devanand Yadav, who completed the investigation after sending the seized muddemal articles to Chemical Analyzer and on the receipt of C.A. Reports (Exhibit-195), he submitted the Charge-Sheet in the Court against the Accused.

12. On the case being committed to the Sessions Court, the Trial Court framed charge against the Appellants and other co-accused vide Exhibit-40. The Appellants pleaded not guilty and claimed trial, raising the defence of false implication.

13. In support of its case, Prosecution examined in all 10 witnesses and on appreciation of their oral evidence and other documentary evidence, Trial Court held the guilt of the Appellants to be proved beyond reasonable doubt and convicted and sentenced them, as aforesaid.

14. This Judgment of the Trial Court is being challenged in the present Appeals by the learned Counsel for the Appellants Dr. Yug Mohit Chaudhary and Mr. Vaibhav Gaikwad, whereas, supported by Smt. V.R. Bhosale, the learned A.P.P. for the Respondent-State.

15. At this stage, it may be stated that on the basis of the counter complaint filed by the Appellants against the Prosecution Witnesses, Sessions Case No. 112 of 1996 was filed. In that case, after recording of evidence, the Accused in that case were acquitted of the charges levelled against them. Criminal Revision Application No. 132 of 2007 preferred against the said order of acquittal is withdrawn by the present Appellants and hence it is disposed of for non-prosecution.

16. In the back-drop of these facts, in order to effectively deal with the rival

submissions advanced before us, in our considered opinion, it would be useful to refer to the evidence on record.

17. To prove the homicidal death of deceased Sarjerao, Prosecution has examined PW-8 Dr. Pravin Mahajan, who has conducted the autopsy on his dead body at Sassoon General Hospital, Pune on 10th May, 1996. On his examination, he found following external injuries, which he has noted in Column No. 17 of the Postmortem Report (Exhibit-145).

(1) Stitched wound over left frontoparietal region, it was of the length of 3".

(2) Injection marks on both hands.

18. On internal examination, he found following injuries, which he has noted in Column No. 19 of the Postmortem Report (Exhibit-145).

(1) Haematoma left frontoparietal region.

(2) Crack fracture left frontoparietal bone of the length of about 3".

(3) The fracture was at the base of anterior cranial fossa.

(4) Subdural haematoma frontal lobes of the brain.

(5) Contusion frontoparietal lobes by-laterally.

(6) Subarachnoid haemorrhage all over the brain.

19. According to him, these injuries were antemortem in nature and sufficient in the ordinary course of nature to cause the death. In his opinion, the cause of the death was head injury. In evidence before the Court, he was shown Muddemal Article No. 10 - the sword and he has opined that the injuries found on the dead body can be possible with the blade of the said sword.

20. In his cross-examination, it is brought on record that the crack fracture, which he noticed on the frontoparietal bone of the deceased is possible by hard and blunt object, whereas, the cut fracture is caused if a blow is dealt with a sharp cutting object like the sword. In this case as the injury found was Crack Fracture, it necessarily leads to inference that it was caused by hard and blunt object like stick and not by sword.

21. To prove the occurrence, the Prosecution has placed reliance on the evidence of PW-3 Subhadrabai and her son PW-4 Chandrakant. Both of them are eye witnesses to the incident and also injured in the incident. Hence, their evidence is of significance. It is an admitted fact, both, to the Prosecution Witnesses and to the Appellants, that the relations between the parties were quite strained on account of the purchase of the land of Bhiku Chavan by PW-4 Chandrakant, though the Appellants were interested in the purchase of the said land, it being adjacent to their land. The relations between the two families were strained on this count since last 5 to 6 years to such an extent that there used to be frequent quarrels between them and both the families were not on talking terms.

22. As regards the incident, PW-4 Chandrakant has deposed that on 6th May, 1996, he had gone to the water tank near his house for switching on the electric motor. It was around 5:15 pm, one Suman, wife of Appellant No. 3 Arvind was grazing she-buffaloes nearby. One of her she-buffaloes entered into the agricultural land of PW-4 Chandrakant. Hence, he told Suman to drive out her she-buffalo from his land. By that time, Appellant - Mohan came there and confronted PW-4 Chandrakant to show how much sugar-cane crops in his field were damaged by the she-buffalo. The quarrel ensued between them on that count. Appellant - Mohan started abusing and giving pushes to PW-4 Chandrakant. Hence, PW-4 Chandrakant called out for his brother Kisan. Hearing his shouts, his father Sarjerao, since deceased, his brother Kisan, his mother PW-3 Subhadrabai and other female family members came there. By that time, the Appellant Nos. 1 to 4 Appellants also came there with their female family members. As per evidence of PW-4 Chandrakant, the Appellants were having sticks, stones and sugar-canes with them. As Sarjerao came near PW-4 Chandrakant, Appellant No. 1 - Jagannath dealt a stone blow on his head. As a result, Sarjerao fell down on the ground with bleeding injury on his head. At the same time, Appellant - Mohan hit Kisan with stone on his head. Then, Appellant - Mohan took out sword, which was concealed by him beneath the shirt on the back side, and dealt a sword blow on the head of Sarjerao. Appellant No. 2 - Anil and Appellant No. 4 - Vilas beat PW-4 Chandrakant with sugar-cane and sticks. When PW-4 Chandrakant turned towards his father Sarjerao for lifting him, Appellant - Mohan tried to give him a blow with the sword, which PW-4 Chandrakant defended by raising his left hand. His index finger, therefore, was injured. By that time, some persons residing nearby came there and intervened in the quarrel. Then, both the parties went to the Police Station and lodged the cross complaints.

23. The evidence of PW-3 Subhadrabai, the wife of deceased Sarjerao, is on the similar lines. She has also deposed as to the details of the incident and how in the said incident her husband sustained injury to his head, initially, due to the pelting of stone by Appellant No. 1 - Jagannath and, subsequently, due to the assault by sword by Appellant - Mohan. She has also deposed about Appellant No. 4 - Vilas giving stick blow to PW-4 Chandrakant and Appellant - Mohan pelting stone to Kisan, which hit Kisan on his forehead.

24. Though Prosecution has also examined PW-5 Sambhaji Jadhav as an eye witness to the incident and he has also deposed about the details of the incident in tune with the evidence of PW-3 Subhadrabai and PW-4 Chandrakant, however, according to him, the incident had taken place at 7 pm, when he heard the noise of commotion and went there, whereas, admittedly, the incident had taken place at 5:30 pm. Therefore, much reliance cannot be placed on his evidence as doubt is created about his presence at the time of incident.

25. Then Prosecution has relied on the evidence of PW-6 Dr. Varsha Kulkarni, who has examined the injured Sarjerao, Kisan and PW-4 Chandrakant in Civil

Hospital, Satara at about 6:30 pm, when they were referred there. All the three of them had given the history of assault at the hands of the Appellants. On examination of PW-4 Chandrakant, she found following injury and issued him Medical Certificate (Exhibit-133) :-Incised wound on the left middle finger. It was of the size of 2 cm. 0.25 cm at the junction of metatarso phalyngea joint, proximal crease.

26. On examination of Kisan, she found following injury and issued Medical Certificate (Exhibit-134):- (1) Sutured wound over the forehead, its length was 4 cm. It was obliquely placed.

(2) Contused lacerated wound over the forehead on the left side. Size of the injury was 1 cm x 1 cm.

27. Whereas, on examination of deceased Sarjerao, she found following injuries and issued Medical Certificate (Exhibit-135):- Vertical sutured wound on left fronto parietal region, length of the injury was 15 cm. It was profusely bleeding, palpable fracture of the fronto parietal region was felt.

28. According to her, the injuries sustained by these patients were caused within twelve hours and by hard and sharp object.

29. On the same day, she has examined Appellant - Mohan at about 9:40 pm and found following injury on his person:- Sutured wound on the left tempo parietal region. It is of the length of 10 cm. No fracture was noticed on clinical examination.

30. The age of the injury was within twelve hours. It was of a grievous nature and it showed the fracture. She has further deposed that Appellant - Mohan was semi-conscious and irritable. He was responding occasionally to the deep pain. The pupils were dilated. Hence, considering his serious condition, he was transferred to Military Hospital, Pune for treatment. The Medical Certificate of the Appellant - Mohan is produced at Exhibit-136.

31. At this stage, it may also be stated that PW-4 Chandrakant has also admitted in his evidence that Appellant - Mohan had received injury on his head in this incident. According to him, the said injury was caused due to some blow given by the co-accused.

32. Thus, the undisputed evidence on record goes to establish certain unerring facts, like, there was a free fight between the Prosecution Witnesses and the Appellants. In that free fight, the blows were exchanged between them. Hence, just as Sarjerao was seriously injured on his head, similarly Appellant - Mohan had also sustained grievous injury on his head. The evidence on record goes further to prove that he was admitted in Military Hospital, Pune for about three months and he was discharged therefrom on 10th August, 1996.

33. In the light of these facts, as per the settled position of law, when it is shown that the Accused has also sustained injuries in the course of the occurrence, the

Prosecution has the duty to offer an explanation to satisfy the Court about the circumstances under which the injuries were caused. As held in the case of Gade Lakshmi Mangraju @ Ramesh Vs. State of Andhra Pradesh, AIR 2001 SC 2677 : (2001) CriLJ 3317 : (2001) 3 Crimes 208 : (2001) 5 JT 340 : (2001) 4 SCALE 265 : (2001) 6 SCC 205 : (2001) 3 SCR 830 : (2001) AIRSCW 2509 : (2001) 5 Supreme 38 , if the Prosecution failed to do so, it may mean that, (1) the prosecution has suppressed the genesis and truth of the occurrence and has not presented the true version, or (2) the witnesses who denied the presence of such injuries are lying in regard to a material part of the occurrence and hence their evidence has to be approached with caution, or (3) The defence version which explains the injuries is rendered probable so as to throw doubt on the truth of the prosecution case. These inferences may not be drawn if (a) the injuries are not serious; or (b) if the evidence as a whole is so cogent, clear, consistent, credit-worthy that it outweighs the effect of omission on the part of prosecution witnesses to explain the injuries.

34. In the present case, admittedly, Appellant Mohan has sustained the injury. It was admittedly caused in the same incident. It was an incised wound, caused by sharp weapon. Though PW-4 Chandrakant has tried to give explanation as to the injury sustained by Appellant - Mohan on his head by deposing that Appellant - Mohan received the injury because of the blow by the co-accused, admittedly, only one weapon of assault is stated to be used in the instant case i.e. Muddemal Article No. 10 - the Sword. The evidence of PW-6 Dr. Varsha Kulkarni, who has examined Appellant - Mohan, goes to reveal that the injury sustained by Appellant - Mohan was sutured wound on the left tempo parietal region, having the length of 10 cm, and, as deposed, it was a grievous injury caused by sharp edged weapon. If as per evidence of prosecution witnesses, the sword was in the hand of the Appellant - Mohan, as he has brought it concealing it in his shirt and he has used it for assaulting the deceased, then the question arising for consideration is how he has sustained the injury by the same sword on his head? The burden was naturally on the Prosecution to explain how Appellant - Mohan had sustained the injury by sharp edged weapon like sword which was only one and which was again in his hand only. Prosecution has, however, not discharged the said burden, by offering plausible explanation for the same. The omission on the part of the Prosecution to explain this serious injury sustained by the present Appellant - Mohan in the same incident, in the instant case assumes greater importance, as the evidence in the case consists of the interested and inimical witnesses and especially, because the Defence gives a version, which competes in probability with that of the Prosecution.

35. At this stage, it would be interesting to note the findings of the C.A. Report. Admittedly, in this case, the sword with blood stains thereon was seized and referred to C.A. The C.A. Report Exh. 195 goes to reveal that on the sword, the blood stains of "B" Group were found. Similarly, on the wooden stick seized also, the blood stains of "B" Group were found. The blood group of deceased Sarjerao, PW-3 Subhadrabai, PW-4 Chandrakant and his brother Kisan, as per C.A. Report,

is "A", whereas, the blood group of Appellant - Mohan is "B". Thus, it can be gathered that the blood group found on the sword was that of Appellant - Mohan and not of deceased Sarjerao. It was also not of PW-4 Chandrakant. It necessarily implies and indicates that Appellant - Mohan was assaulted with sword in the said incident by Prosecution Witnesses and hence on the sword, blood stains of his blood group "B" are found and not that of the blood group of deceased Sarjerao. Thus, the C.A. Report, which is a document produced by Prosecution itself, corroborates more with the version given by the Appellants and not with the version given by the Prosecution Witnesses. Moreover, as noted above, the injury found on the head of deceased Sarjerao was crack fracture and not cut fracture thereby establishing that he was not assaulted by sword but by stick, thereby further establishing that sword was not in the hands of Accused but with prosecution witnesses.

36. At this stage, it may also be worthwhile to note that though PW-4 Chandrakant states that injury to his index finger was caused when he was trying to save himself from the blow of the sword at the hands of Appellant - Mohan, the said injury appears to be more probable while using the sword for giving the blow and not while defending oneself. Therefore, this fact also goes in favour of the version as given by the Defence.

37. Thus, these facts in the present case are sufficient to create doubt about the veracity of Prosecution case and also the credibility of the Prosecution Witnesses. The failure of the prosecution to explain the injuries sustained by the Appellants in the said incident also leads to inference that Prosecution has suppressed the genesis and truth of the occurrence and has not presented the true version. It also leads to establish that the Prosecution Witnesses are lying in regard to the material part of the occurrence and hence their evidence becomes bereft of credence.

38. In such situation, the entire Prosecution case becomes shrouded in serious doubt and suspicion. The only inference, therefore, which can be drawn from the facts and evidence, as brought on record, is that the Prosecution has not come before the Court with true facts and hence the benefit of reasonable doubt has to be extended to the Appellants.

39. Consequently, these Criminal Appeals are allowed and the conviction and sentence of the Appellants is hereby quashed and set aside and they are acquitted of the offences with which they were charged and convicted. Fine, if paid by the Appellants, be refunded to them. Since the Appellant/Original Accused No. 8 - Mohan Amrita Ghorpade is in Jail, he be released forthwith, if not required in any other case. Bail Bonds of Original Accused No. 1 - Jagannath Amrita Ghorpade, Original Accused No. 2 - Anil Nivrutti Ghorpade, Original Accused No. 3 - Arvind Amrita Ghorpade and Original Accused No. 4 - Vilas Amrita Ghorpade stand cancelled.