

(2017) 08 BOM CK 0166
In the Bombay High Court
Case No : 37 of 2002

Jaipal S/o. Bhimrao Meshram, & Anr.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused

[Indian Penal Code, 1860](#), [Section 34](#), [Section 307](#) - Acts done by several

Citation : (2017) 08 BOM CK 0166

Hon'ble Judges : Rohit B. Deo

Bench : SINGLE BENCH

Advocate : A.R. Kaplay, A.M. Quazi, Mayuri Deshmukh

Final Decision : Allowed

Judgement

1. The appellants seek to assail judgment and order dated 7.1.2002 in Session Trial 94 of 1998 delivered by the 2nd Adhoc Additional Sessions Judge, Bhandara by and under which the appellants are convicted for offence punishable under section 307 of the Indian Penal Code and sentenced to rigorous imprisonment for three years and are additionally directed to pay fine of Rs. 3,000/.

2. The case of the prosecution as has unfolded during the course of trial is thus: Disha, the daughter of Namdeo Rangari (PW1) was studying in the 9th standard, in Prakash School, at village Adyal and was residing at Parvatabai hostel. Jaipal, accused 1 allegedly attempted to send a message to Disha through the daughter of one Akre to come and meet him. The prosecution case is blurred on the aspect of the genesis of the incident. However, what can be culled out is that the alleged misconduct of Jaipal was conveyed by Disha to her father Namdeo and brother Manoj Rangari. It is the case of the prosecution that on 22.3.2008 Manoj confronted Jaipal and asked him as to why he had contacted Disha. According to the prosecution, there was an exchange of words between Manoj and Jaipal and

one Nashik Humne intervened and pacified both Jaipal and Manoj, who then went to their respective homes.

3. The case of the prosecution further is that on the said day i.e. on 22.3.1998, at 7.00 pm, accused 2 Bhimrao started abusing the family of Disha in filthy language. Manoj Rangari confronted Bhimrao and asked him as to why he was abusing his family. A quarrel ensued between Bhimrao - accused 2 and Manoj Rangari. It is alleged that accused 1 Jaipal arrived at the spot and assaulted Manoj Rangari with the blade of scissor while Subhash / the accused 3 held his hair. Accused - 2 Bhimrao allegedly assaulted Manoj with a stick. Manoj Rangari sustained bleeding injury on the right and left side of the abdomen and collapsed on the spot. One Rajkapoor Humne and Vijay Gajbhiye arrived on the spot and took injured Manoj to the bus stop. PW 1 Namdeo Rangari went to Adyal Police Station and lodged oral report exh. 17 on the basis of which the printed first information report exh. 18 was drawn. Manoj Rangari was medically examined, his dying declaration was recorded, alongwith appellant Jaipal Bhimrao Meshram, the father of Manoj was also arrested. At the instance of Bhimrao, the scissor allegedly used as a weapon of assault was recovered from the house of Bhimrao and further investigations were undertaken. The completion of investigations culminated in the police presenting chargesheet in the Court of Judicial Magistrate First Class, Pauni who committed the case to the Sessions Court.

4. The learned Sessions Judge framed charge at exh. 10 under section 307 read with section 34 of the Indian Penal Code. The accused pleaded not guilty and claimed to be tried. The prosecution examined 11 witnesses. The defence of the accused, as is seen from the statement recorded under section 313 of Criminal Procedure Code is of total denial and false implication. The learned Sessions Court was pleased to convict accused 1 Jaipal and accused 3 Subhash for offence punishable under section 307 of the Indian Penal Code. Accused 2 Bhimrao is, however, acquitted.

5. Heard Shri. A.R. Kaplay, learned counsel for the appellant and Smt. Mayuri Deshmukh, learned Additional Public Prosecutor for the respondent. Shri. Kaplay, learned counsel for appellant would urge that judgment and order impugned suffers from glaring errors and fails to consider that the evidence on record was grossly inadequate to bring home charge under section 307 of the Indian Penal Code. Shri Kaplay invites my attention to the oral report lodged by PW 1 Namdeo Rangari and the printed first information report (exh. 17 & exh. 18 respectively) on 22.3.1998. The oral report and the first information report (exh. 17 & exh. 18) make an interesting reading. There is not even a whisper in the first information report that either accused 1 Jaipal or accused 3 Subhash stabbed Manoj. On the contrary, role of inflicting stab injury is attributed to accused no 2 Bhimrao who is acquitted by the learned Sessions Judge. He would further invite my attention to the cross examination of PW 1 Namdeo in which Namdeo admits that when the incident took place, he was tying bullocks and when he went to the spot, the injured Manoj was lying on the ground. The learned counsel would

urge, and in my opinion rightly, that either the first information report is a piece of deliberate and malicious falsehood or Namdeo Rangari is clearly not a witness to the incident. The learned counsel would contend that the evidence of PW1 Namdeo does not take the case of the prosecution any further. Shri. Kaplay, the learned counsel then contends that two independent witnesses touted as eyewitnesses PW 2 Vijay and PW 3 Rajk Kapoor Humane were declared hostile and crossexamined by the prosecution to no avail. The crossexamination of PW 2 and PW3 has failed to bring on record any material supporting the prosecution. PW 4 Usha, according to the learned counsel for the accused, is not, on her own admission, a witness to the incident of assault. PW 4 Usha admits that it was dark and that she did not venture out of the house when the alleged incident of assault on Manoj occurred. Manoj, who is the injured victim, is examined as PW5. His testimony is subjected to scathing criticism by the learned counsel for the accused. I would advert to the testimony of PW 5 Manoj at a later stage in the judgment since he is the only person who is in a position to depose as to what exactly happened on the date of incident. PW1 Namdeo Rangari who is the father of Manoj and PW 4 Usha who is the sister of Manoj are not eyewitnesses to the alleged assault on Manoj. Two independent witnesses who were examined as eyewitnesses PW 2 Vijay and PW3 Raj Kapoor have turned hostile and there is nothing in their crossexamination which may assist the case of the prosecution. Before I appreciate ocular evidence of PW 5 Manoj, it would be apposite to note a few striking features of the prosecution case.

6. The investigation officer is examined as PW 10. The investigation officer states that vide exh. 34 dated 23.3.1998, he requested the Magistrate to record the dying declaration of Manoj and vide exh. 35 dated 28.3.1998 renewed the request. PW 5 Manoj states in his examination in chief that his dying declaration was recorded by the Tahsildar. Interestingly, the dying declaration which is allegedly recorded is not placed before the Court. Neither the testimony of PW 5 nor that of the Investigation Officer throws any light on the circumstances in which and the reasons why the dying declaration, if any, was suppressed during the trial. The alleged weapon of assault is a scissor blade admeasuring 6 inches with handle of 3 inches. The recovery is allegedly from the house of accused 2 Bhimrao and pursuant to memorandum under section 27 of the Indian Evidence Act (exh. 28). Both the panchas to exh. 28 memorandum and exh. 29 seizure panchanama have not supported the prosecution and were declared hostile. Be that as it may, even if it is assumed that the said recovery is of any significance, the scissor seized was sent to the medical officer to opine as to whether the injury suffered by Manoj could have been caused by the scissor. The answer of the medical officer as is evident from exh. 37 is that the injury could not have been caused by the scissor seized. Exh. 46 Chemical Analysis Report dated 10.6.1998 would further reveal that no human blood was found on the seized weapon. It is axiomatic from the consideration of ocular and documentary evidence on record, that the case of prosecution is based on the sole testimony of PW5 Manoj. The prosecution story is not corroborated either by independent

witnesses nor by the medical evidence nor by the report of Chemical Analyzer nor by the first information report. It would be necessary for me now to consider the testimony of Manoj in order to satisfy the conscious of the Court that the guilt of the appellant/accused 1 and 3 is established beyond reasonable doubt.

7. This Court is alive to the settled position of law that the testimony of an injured witness stands on a higher pedestal as compared with other witnesses. The fact that the witness is injured in the incident, lends assurance to his presence on the spot. In normal circumstances, an injured person is not likely to falsely implicate a person and absolve the guilty. However, it is not an inflexible or immutable rule of evidence that the testimony of the injured witness must be relied upon notwithstanding that the testimony is absolutely uncorroborated and is not otherwise found to be trustworthy.

8. I am not inclined to accept the testimony of PW 5 as reliable and confidence inspiring. Firstly, the prosecution version is totally inconsistent with the first information report. The first information report alleges that Manoj Rangari was stabbed by accused 2 Bhimrao. Bhimrao is acquitted. During trial it is alleged that accused 3 Subhash held Manoj by hair and accused 1 Jaipal inflicted stab wound with Scissor blade. No human blood is noticed by the Chemical Analyzer on the Scissor blade seized from the house of the accused 2 Bhimrao and at his instance. The medical officer has opined that the injury suffered by Manoj could not have been inflicted by the scissor blade. There is absolutely nothing on record for this Court to find out as to when Manoj was admitted in the hospital, what was the treatment given and when was he discharged. PW 11 - Medical Officer who was examined to prove the injury certificate fairly admits that he has no idea when the injured witness was admitted, what was the treatment given to the injured and when Manoj the injured witness was discharged. The injury certificate exh. 59 is pathetically lacking in particulars. Certificate does not reveal whether the injury is simple or grievous, whether the injury is sufficient in ordinary course to cause death, the precise nature of the injury and whether the injury could have been caused by any particular type of weapon. The injury certificate exh. 59 needs consideration only for rejection. I am convinced that PW5 Manoj is not a truthful witness. I am further convinced that the investigation is not only incompetently conducted, the investigation, is absolutely unfair. The dying declaration, which PW 5 asserts is recorded, is suppressed. The investigation officer admits to have made a request not once but twice to the Tahsildar / Magistrate that the dying declaration be recorded. The fact that the dying declaration is not produced leaves this Court with only one option and that is to draw an adverse inference against the prosecution.

9. The evidence on record is grossly insufficient to deprive the appellants / accused 1 and 3 of their liberty. I am unable to agree with the contention of the learned APP that the sole testimony of the injured witness has been rightly considered and relied upon by the learned Sessions Judge and that the judgment impugned is unexceptional. Despite the painstaking efforts of the learned APP to

support the judgment impugned, I am not persuaded to hold that the prosecution has proved the charge under section 307 of the Indian Penal Code beyond reasonable doubt. The appeal is allowed.

The judgment and order impugned dated 7.1.2002 passed by the 2nd Adhoc Additional Sessions Judge, Bhandara, in Session Trial 94 of 1998 delivered is set aside.

The accused are acquitted of the offence punishable under Section 307 of the Indian Penal Code.

Bail bonds of the accused are stand discharged.

Fine paid, if any, paid by the accused be refunded to them.

Appeal is disposed of accordingly.