
(2012) 09 BOM CK 0073
In the Bombay High Court
Case No : Criminal Appeal No. 124 of 2009

Kailash

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2013) 1 ABR 327 : (2013) ALLMR(Cri) 992

Hon'ble Judges : P.V. Hardas, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : G.G. Mishra, for the Appellant; A.S. Sonare, Assistant Public Prosecutor, for the Respondent

Judgement

A.P. Bhangale, J.—This appeal has been preferred against the impugned Judgment and Order dated 16/01/2009 passed by the Ad-hoc Additional Sessions Judge, Khamgaon in Sessions Trial No. 25 of 2007 convicting the appellant for the offence punishable u/s 302 of the Indian Penal Code sentencing him to suffer imprisonment for life and imposing fine in the sum of Rs. 2000/-, in default to undergo rigorous imprisonment for six months. We have considered the rival submissions made by the learned Counsel for the respective parties and perused the records.

2. The facts and circumstances giving rise to this appeal are as under:

It is case of the prosecution that the accused was a member of an unlawful assembly which was formed at the time of commission of offence and in prosecution of the common object of the assembly, caused death of Subhash Gade. The First Information Report was lodged by Sunita Subhash Gade (wife of the deceased) at Police Station, Jalamb about the incident which occurred on 3/01/2007, at about 7 p.m. stating that - while the first informant and her husband were returning to their house from cattle shed of Sahdeo Gade, where they had gone to see the she-goats, the accused namely Kailas Gade, Vilas Gade, Nitin Gade and Jagdeo Gade abused Subhash. Kailas came armed with

crow bar, Vilas was armed with stick and Nitin and Jagdeo were possessing iron bars. They assaulted Subhash. Villagers gathered on the spot and the incident was witnessed by Bhimrao Gade, Kadu Gade, Sukhdeo Gade, Aanada Gade and Rajaram Gade. The Complainant Sunita lodged the F.I.R. at Police Station, Jalamb, Tahsil Khamgaon, District Buldana (Crime No. 02 of 2007). Investigation followed. The investigating Officer visited the spot and drew the spot panchanama. Inquest was held over the dead body of Subhash. The clothes of the deceased were seized under the Panchanama (Ex.41) and the dead body of Subhash was referred for post mortem examination at Civil Hospital, Khamgaon. The accused were arrested. It is case of the prosecution that the clothes of the accused were seized. In the course of investigation, the weapons of offence were discovered under the panchanamas (Exh. Nos. 48 and 50) at their instance. The articles seized were referred to the Chemical Analyser for examination and the report of the C.A. was received. The accused were charge sheeted before the Court of Judicial Magistrate, First Class, Shegaon, who committed the case for trial to the Sessions Court.

3. Thus, the accused were facing trial upon the accusation that, on 3/01/2007, they had formed an unlawful Assembly at about 7.00 p.m. and were armed with dangerous weapons like Crowbar, stick, iron rod, iron angle and in prosecution of the common object of the unlawful assembly, caused death of Subhash, who died on the spot. The accused were charged u/s 302 read with Sections 147, 148 and 149 of the Indian Penal Code.

4. The first question is whether Subhash Gade met with homicidal death. Dr. Prakash Sambhaji Ujagare (PW-7) has deposed that he had performed post mortem examination (Exh. 57) on the dead body of the deceased. He found that there were external injuries on the dead body described as follows :

1. CLW over parietal region left side 10 x 3 x 2 cm with sharp and irregular edges.
2. CLS of size 3 x 2 x 1 cm over chin.
3. Contusion over left maxillary area 3 x 2 x 1 cm.
4. Abrasion over the sternal tipithysis.
5. Abrasion over right lower leg.
6. Nose bone fracture.

He also observed following internal injuries :

1. Fracture of parietal bone obliquely bleeding is present.
2. Haematoma in the brain matter. Bleeding in the brain matter.
3. Internal bleeding in the brain is seen.
5. He opined that the cause of death is due to hemorrhage shock due to internal bleeding as a result of fracture of parietal bone due to rupture of brain matter.

Haematoma due to extensive trauma to scalp was also observed. Doctor gave opinion that the injuries were possible due to forceful blow of iron crow bar. Thus, it appears that serious injury rupturing the brain matter was caused as a result of forceful blow by iron crow bar, which indicated homicidal death. The evidence of Sunita indicates that her husband was carried in a dead condition to the hospital. Thus, the prosecution has produced sufficient evidence to indicate homicidal death of Subhash beyond all reasonable doubts.

6. The next question is responsibility of the appellant for the crime of murder, as alleged. The prosecution has examined eight witnesses to prove the case. Prosecution has placed reliance upon the evidence of Sunita (PW-3), who is widow of deceased Subhash and was an eye witness to the incident. She deposed that when she, along with her husband, went to the cattle shed of Sahadeo Gade on 3.1.2007, at about 7.00 p.m., accused Kailas (present appellant) along with other accused were sitting near the cattle shed and at the door of appellant Kailas. The accused gave abuses to her husband on the pretext that he is going with his neck in downward position. The accused questioned him as to why he is afraid of. Her husband replied that if he talks with them, they will convert truth into falsehood and falsehood into truth. It is in the background of this exchange of words that accused Kailas came with a crow bar and gave a blow with it on the head of her husband, while other accused Vilas Gade, Nitin Gade, Jagdeo Gade and Ananda Gade also assaulted her husband. At that time, she cried. The accused gave threat to her and asked her as to who will take her husband to the hospital. Witness Sunita approached the Sarpanch of village Dadgaon and narrated the incident to him. The Sarpanch made a phone call to Police Station and then police had arrived by a jeep. They prepared the panchanama and took her husband to the hospital at Khamgaon. She accompanied with them. Her husband was carried to the hospital in dead condition. Thus, report was lodged by Sunita at Police Station, Jalamb (Exh.38). Printed proforma thereof was at Exh.39. Despite lengthy cross-examination of Sunita on behalf of the accused, nothing could be elicited from her so as to discredit her. Her cross-examination reveals that mother of appellant/accused Kailas had quarreled with her husband prior to the incident. In her cross-examination, she denied that, at the time of incident, electricity of the village was off. Her evidence is natural and inspires confidence as it is without any contradiction or omission so as to discredit her. We have found her evidence reliable and acceptable.

7. Prosecution has examined another eye witness to the incident namely Sahadeo Bhauji Gadhe (PW-6). He deposed that, at the time of incident, accused Kailas came with a crow bar and gave a blow with the same on the head of Subhash, while Jagdeo Gade gave a blow by stick and Vilas Gade gave a blow by stick. Then the accused (appellant) ran away from the spot. His evidence has been vehemently criticised by the learned Advocate for the appellant on the ground that his statement was recorded by police after six to seven days" gap after the incident and he may be a got up witness. He admitted in the course of

his cross-examination that his previous statement recorded before Magistrate of Shegaon does not mention that Kailas Gade gave a blow of crow bar on the head of Subhash. Therefore, his evidence is criticised on the ground that Sahadeo (PW-6) must be making a false statement before the Court to the effect that he had seen the incident of assault as the witness has courage to disown that portion marked "B" in his statement before the Judicial Magistrate, First Class, Shegaon as not recorded correctly. Evidence of Sahadeo is also criticised on the ground that it is unnatural that he will not report the incident to police had he really seen the incident of assault. According to learned Advocate, the learned trial Judge ought not to have recorded conviction based upon such evidence containing falsity.

8. The learned Advocate for the appellant pointing out the principle "falsus in uno, falsus in omnibus" submitted that conviction of the appellant could not have been recorded based upon false evidence of Sahadeo. He argued that entire prosecution case must be false and therefore, the accused is entitled for an order of acquittal by giving him benefit of doubt.

9. Coming to applicability of the principle of "falsus in uno falsus in omnibus" (false in one thing false in everything) even if major portion of evidence is found to be deficient, if residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However where multiple number of persons are accused, the Court has to carefully screen and scrutinise the evidence. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that rest of the evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particulars given by a material witness or lack of material particular would not ruin it wholly from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar because of some grain of untruth in a testimony.

10. The maxim has been explained by the Apex Court in *Jakki @ Selvaraj and Another Vs. State rep. by the IP, Coimbatore*, , observing :-

The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence.

11. This position of law has been reiterated by the Apex Court in *Prem Singh and Others Vs. State of Haryana*, , wherein the Court clearly held as under:

It is now a well-settled principle of law that the doctrine "falsus in uno, falsus in omnibus" has no application in India.

12. The doctrine is a dangerous one especially in India for if applied and a whole body of the testimony is to be rejected, because witness was evidently speaking some untruth in some aspect, it is apprehended that administration of criminal justice would come to a stand-still. The witnesses in our social set up do have tendency giving embroidery to a story, although by and large deposition is true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care and caution.

13. The above-mentioned dictum is, therefore, not a sound rule for the reason that one may hardly come across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment as held in *Sohrab and Another Vs. The State of Madhya Pradesh*, . As observed by the Apex Court in *State of Rajasthan Vs. Smt. Kalki and Another*, , normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so under the Indian Evidence Act; trustworthy evidence given by even a single witness would be enough to convict an accused person, whereas evidence given by multiple numbers of witnesses which is not trustworthy would not be enough to sustain the conviction.

14. In *Balaka Singh and Others Vs. The State of Punjab*, , the Apex Court observed as under:-

It is true that, as laid down by this Court in *Zwinglee Ariel Vs. State of Madhya Pradesh*, , and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.

15. On safer side, even if we disbelieve the evidence of Sahadeo (PW-6) on the ground that his evidence may be false, considering the delay or gap of six to seven days since the incident in recording of his police statement and also his unnatural conduct that he did not inform police about such a serious incident

witnessed by him; Thus, notwithstanding that we brush aside the evidence of Sahadeo as wholly unreliable, we do find that the evidence of witness Sunita is reliable and is amply corroborated by the evidence led in the case.

16. Vasant Baburao Patil (PW-8), Investigating Officer, gave evidence about the spot panchanama, seizure of clothes of appellant and other accused under panchanama as also inquest (Exh.33) held over the dead body and seizure of weapon of offence i.e. iron bar and stick under panchanamas (Exh.49 and 50) at the instance of police. The evidence led as to investigation lends additional corroboration to the main evidence of eye witness Sunita discussed above. In our opinion, as against the appellant, the prosecution has succeeded to prove the offence of murder beyond all reasonable doubts. Bearing in mind the facts proved in the light of the above principle of law we cannot ignore or disregard the main evidence in the case, which is sufficient beyond reasonable doubt to prove the prosecution case of murder. Therefore, we do not find any reasonable ground to interfere with the impugned Judgment and order recording conviction against the appellant-accused. The appeal is meritless, hence stands dismissed.