
(1999) 05 BOM CK 0017
In the Bombay High Court
Case No : Criminal Appeal No. 719 of 1995

Krishna Babu Shelar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-05-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235, 294
Evidence Act, 1872 — Section 45, 59
Penal Code, 1860 (IPC) — Section 394, 398, 75

Citation : (2000) 5 BomCR 516

Hon'ble Judges : Vishnu Sahai, J; Smt. Ranjana Desai, J

Bench : Division Bench

Advocate : Ms. Cardozo, for the Appellant; I.S. Thakur, for the Respondent

Judgement

Vishnu Sahai, J.—Through this appeal the appellant challenges the judgment and order dated 13th November, 1995, passed by the V, Additional Sessions Judge, Thane, in Sessions Case No. 202 of 1995, convicting and sentencing him to undergo 10 years" R.I. and to pay a fine of Rs. 5,000/-, in default to undergo R.I. for three months for the offence punishable u/s 394 I.P.C. read with sections 398 and 75 I.P.C.

2. In short the prosecution case runs as under :---

On 9th January, 1995, at about 9 p.m. while Anita Madas (P.W. 4), the daughter-in-law of the complainant Buchaiyya Madas (P.W. 3) was cooking food inside house No. 320, Bhandari Compound, Narpoli, Taluka Bhiwandi, District Thane, the appellant came and enquired from her whether a person named Venkatesh was residing there. He also took out a knife; asked her to handover her Mangalsutra; and told her that if she did not do so he would kill her. On that she cried loudly. Hearing her cries, her father-in-law, the informant Buchaiyya (P.W. 3) and her mother-in-law Laxmi came. While trying to run away, the appellant inflicted knife injuries on their person. Many persons gathered there and caught hold of the appellant.

3. Anita thereafter informed her husband Ashok to proceed for informing the police. Near Compound of Bhandari Seth he met police constable Dudhuram Jadhav (P.W. 5), who alongwith constable Ahire was returning towards the police station Narpoli after doing patrolling. Dudhuram Jadhav and Ahire went alongwith Ashok to the place of the incident where they found that the appellant had been apprehended by the informant. They took the appellant alongwith knife to police station Narpoli where the former was arrested and the latter seized. At that time the complainant Buchaiyya also accompanied them.

4. The evidence of complainant Buchaiyya Madas shows that the police of Police Station, Narpoli directed him to Indira Gandhi Memorial Hospital, Bhiwandi. At the said hospital he and his wife Laxmi were medically examined by Dr. Babasaheb Sorte P.W. 2. Dr. Sorte found two incised wounds on the person of Buchaiyya and one contused lacerated found on the person of Laxmi.

The evidence of complainant Buchaiyya shows that at the said hospital police came, P.S.I. Survanshi recorded Buchaiyya's F.I.R. (Exhibit 15) which was proved during trial by P.I. Abhimanyu Mane, who was familiar with his handwriting.

5. The investigation was handed over the same night at 11.50 p.m. to P.I. Abhimanyu Mane (P.W. 6), who after completing the same submitted the chargesheet against the appellant on 20-2-1995.

6. After being charged, the appellant was made to stand his trial. During trial in all the prosecution examined six witnesses. Two of them namely Buchaiyya Madas (P.W. 3) and Anita Madas (P.W. 4) were examined as eyewitnesses.

The defence of the appellant was that he was having an affair with Anita Madas and she had called him inside the house. On finding him there her father-in-law Buchaiyya Madas tried to assault him with a knife and in the scuffle which ensued Buchaiyya Madas sustained injuries. The appellant pleaded that he was apprehended on the spot in the said circumstance and falsely implicated by Buchaiyya Madas. However, in his defence he examined no witness.

7. The learned trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated above. Hence this appeal.

8. After hearing learned Counsel for the parties and perusing the entire material on record, we are of the view that this appeal deserves to be partly allowed.

9. So far as the involvement of the appellant in the incident is concerned, the same, in our view, is established beyond any shadow of doubt through the credible ocular account rendered by Buchaiyya Madas (P.W. 3) and Anita Madas (P.W. 4). In paragraph 2 we have set out the prosecution case on the basis of the recitals contained in their examination-in-chief. In short their evidence shows that on the date and time of the incident the appellant entered inside the house, asked Anita Madas whether a person called Venkatesh lived there; on the point

of a knife asked Anita Madas to handover her Mangalsutra; in the meantime Buchaiyya Madas and Laxmi alias Laxmibai came; the appellant assaulted them with a knife; and while trying to run away was apprehended on the spot.

The evidence of Anita Madas further is that she informed her husband Jadhav (P.W. 5) and Ahire and they alongwith Buchaiyya Madas, the appellant and the knife proceeded to police station, Narpoli. At the said Police Station the appellant was apprehended and knife seized.

10. The manner of incident as given out by Buchaiyya Madas and Anita Madas is corroborated by the injuries found on the person of the former and his wife Laxmi alias Laxmibai.

The evidence of Anita Madas that her husband Ashok brought constable Dudhuraam Jadhav (P.W. 5), who took the appellant and the knife to Police Station, Narpoli is corroborated by that of Ahire Jadhav and the circumstance that the appellant was arrested and knife seized at Police Station, Narpoli within one hour of the incident.

11. It should be borne in mind that Buchaiyya Madas, Anita Madas and Dudhuraam Jadhav are wholly independent witnesses who had no animus against the appellant and in our view their evidence squarely establishes the involvement of the appellant in the crime.

12. We hasten to add that the defence of the appellant, to which we have referred to in paragraph 6, is a bundle of lies. We say this for the following reasons :

(a) It was taken for the first time when Anita Madas was being cross-examined in the trial Court;

(b) Since Anita Madas did not understand Marathi she could not have written the letters which the appellant alleges she wrote;

(c) Anita Madas denied having written the said letter, as also having an affair with the appellant and having invited him at the time of incident; and

(d) It does not explain the injuries sustained by Laxmi alias Laxmibai.

13. We, however, feel that the trial Court was not justified in convicting the appellant with aid of section 75 I.P.C. Because the said section stipulates that the sentence in respect of previous conviction must be 3 years or upwards and the list of previous convictions (Exhibit 34) which has been admitted u/s 294 Cr.P.C. shows that although the appellant was convicted earlier in 13 cases but in none of them he was sentenced to 3 years or more.

But in our view, even if the appellant's conviction with the aid of section 75 I.P.C. is set aside, his sentence does not warrant any reduction as he is an old hand in the world of crime. His types deserve a deterrent sentence.

14. In the result, this appeal is partly allowed. Instead of the offence punishable

u/s 394 r/w 398 and 75 I.P.C. we find the appellant guilty for the offence u/s 394 r/w 398 I.P.C. only, but we maintain the sentence awarded to the appellant by the trial Court. The appellant is in jail and shall remain there till he serves out his sentence.

15. Appeal partly allowed.