
(2000) 03 BOM CK 0065
In the Bombay High Court
Case No : Criminal Appeal No. 168 of 1996

Lalchand Cheddilal Yadav	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 165
Evidence Act, 1872 — Section 114, 3, 45, 61, 8
Penal Code, 1860 (IPC) — Section 302

Citation : (2000) 5 BomCR 585 : (2000) BomCR(Cri) 585 : (2000) 3 BOMLR 650 : (2000) 3 MhLj 438

Hon'ble Judges : Vishnu Sahai, J;P.V. Kakade, J

Bench : Division Bench

Advocate : J.A. Barday, for the Appellant; Ms. Usha Kejriwal, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—The appellant aggrieved by the judgment and order dated 31-1-1996 passed by the Additional Sessions Judge, Greater Bombay, in Sessions Case No. 1242 of 1992 convicting and sentencing him to undergo imprisonment for life for the offence u/s 302 I.P.C. has come up in appeal before us.

2. Shortly stated the prosecution case runs as under :-

On 26-8-1992 at about 7 p.m., Rajendra Sahani P.W. 8 along with one Murli was standing on a platform near Shivshakti sugar-cane Vakhar, Carter Road-9, Borivali (East) Bombay. He heard the appellant who was working in the sugarcane vakhar of one Babulal situated adjacent to Khandwani building asking Shamlal who was a co-worker in the said vakhar to bring a diary. Thereafter, Rajendra Sahani, Murli, Shamlal and the appellant stood on the said platform. After sometime, Murli went towards Sukharwadi to answer the call of nature and Rajendra Sahani P.W. 8 for urinating. Just before he had left for urinating, he heard an exchange of hot words between the appellant and one Ramkumar Over

a monetary dispute. After he had returned front urinating, he saw the appellant inflicting knife blows on Ramkumar, as a consequence of which, the latter fell down. Thereafter, the appellant ran away. Thereafter, Rajendra Sahani P.W. 8 went to his employers (Khandwani Company) where the police questioned him.

2-A. The evidence of Babulal Yadav P.W. 1 shows that on 26-8-1992 after he had returned to his house, after making enquiries about his son Omprakash, who had gone to deliver goods by a tempo at Vashi, and had not returned, he found that a crowd had collected near his house. He found that Ramkumar was lying in a pool of blood. Consequently, on a jeep he took Ramkumar to a private clinic but, the doctor was not available there, and thereafter took him to Bhagwati Hospital, where the doctor on examining him declared him to be dead.

3. The evidence of Inspector Uday Sharma P.W. 12 who at the time of the incident was attached to Kasturba Police Station, Borivali shows that on receiving information from Bhagwati Hospital that one Ramkumar had been brought by Babulal Yadav P.W. 1 to the said hospital, with stab injuries on his person, he proceeded to Bhagwati Hospital. He recorded the F.I.R. of Babulal Yadav; prepared a panchanama of the corpse; and prepared the spot panchanama.

4. The evidence of S.I. Dilip Navkhurkar P.W. 10 shows that on 26-8-1992 sometimes after 7.15 p.m. the informant told him that the appellant may be at the house of his relative at Ulhasnagar. Consequently, he along with the informant proceeded to Ulhasnagar and found that the appellant was sleeping in the house of one Ramsajiwan Yadav P.W. 7. He asked him to put on his clothes; brought him to the police station; and at about 7 a.m. arrested him. Thereafter, in the presence of the public panchas, he prepared the panchanama of the clothes of the appellant, amongst which the full pant had blood stains. His evidence shows that during the course of interrogation, the appellant admitted that he could have the knife recovered. Consequently, the said information, in the presence of public panch Pramod Waigankar was recorded in a panchanama. Thereafter, the appellant led him, public panch Pramod Waigankar P.W. 4, another public panch and some police personnel to the place of the incident, which was a cement platform like a structure and after removing the tin roof, he produced the knife which was bloodstained. The said recovery was effected under a panchanama.

It is pertinent to mention that the clothes of the appellant, the knife, clothes of the deceased and some other articles were sent to the Chemical Analyst.

After the completion of the investigation, the appellant was charge-sheeted.

5. The autopsy on the corpse of the deceased was conducted by Dr. Baban Shinde P.W. 11 who found on it the following four ante mortem injuries:-

- " 1. Stab wound 7.5. cm x 3 cm x cavity deep loops of intestines protruding out:
2. Stab wound 10 cm x 4 cm x cavity deep (loops of intestines protruding out) over left side of back at level of L-3 vertebra oblique lower and 2 cm from

vertebral column double edged.

3. Stab wound 4.5 cm x 2 cm x cavity deep (loops of intestines protruding out over left side of back vertebral) 3 cm lateral and 2 cm above injury No. 2 double edged.

4. Stab wound 4 cm x 3 cm x cavity deep over right side of back at L-1 level horizontal double edged 2 cm away from vertebral column."

In the opinion of Dr. Shinde, the deceased died on account of shock and haemorrhage due to the ante-mortem injuries suffered by him and the said injuries were sufficient in the ordinary course of nature to cause death and could be caused by the knife shown to him.

6. The case was committed to the Court of Sessions in the usual manner where the appellant was charged for an offence punishable u/s 302 I.P.C. to which charge, he pleaded not guilty and claimed to be tried.

During trial, in all the prosecution examined 13 witnesses. We may straight away mention that the solitary eye witness of the incident Rajendra Sahani was examined as P.W. 8. In addition to his ocular account, the prosecution adduced the evidence in the form of recovery of blood stained knife on the pointing out of the appellant and recovery of his blood stained clothes, at his instance. The learned trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated in para 1, above.

7. We have heard learned Counsel for the parties and have perused the entire material on record. After giving our anxious consideration, we are of the judgment that the appellant deserves the benefit of doubt.

As mentioned earlier, the conviction of the appellant is founded on evidence of a two fold nature namely :-

(a) the ocular account furnished by Rajendra Sahani P.W. 8; and

(b) the recovery of blood stained knife on the pointing out of the appellant in the presence of the public panch Pramod Waigankar P.W. 4 and the recovery of his own blood stained clothes from the appellant.

In our considered view, it would not be prudent to accept the said evidence.

8. We begin with the ocular account furnished by Rajendra Sahani P.W.

8. We may mention that we have set out the prosecution story in para 2 on the basis of the recitals contained in his examination in chief and hence we propose setting out the substance in his statement. He stated that on the date, time and place of the incident, he saw a heated altercation taking place between the appellant and the deceased Ramkumar and went away to urinate. When he returned, he found the appellant inflicting knife blows on Ramkumar. He thereafter went away to his employer (Khandwani Company) where the police questioned him.

9. We make no bones in observing that we are extremely reluctant to place reliance on his evidence and we feel that he has been coerced by the police to become a witness. In his cross-examination, he stated that from 7.30 p.m. on the night of the incident till 10 a.m. the following day, he was detained at the police station. He stated that he was only set free from the police station after he had been interrogated by the police. He further stated that the appellant was brought at the police station at 2.30 a.m. and till then he had not been interrogated. In our view, had he seen the incident, he would have straight away informed the police about the same, when he was questioned at the place of his employer, (Khandwani and Company) or as soon as he came to the police station. We feel that the circumstance of his detention at the police station throughout the night shows that he has been pressurised to become a witness in the instant case.

Again, we find that in para 5 of his cross-examination, he stated that two Constables reached Gonda on 14-1-1996 and he came along with them on 19-1-1996 and was brought to the Police Chowky of Kasturba Police Station and was not allowed to go therefrom. He was told that he had to give evidence in this case and it was not necessary to tell him that the appellant had to be punished. In para 3 of his cross examination, he stated that the Police Officer had read over to him his statement while he was standing outside the Court room in the morning.

In such a factual matrix, in our view, it would be appropriate to infer that this witness was deposing as a consequence of coercion by the police. At any rate, we feel that it would not be safe to act on his testimony.

10. We also feel that it would not be safe to accept the evidence of recovery of the blood stained knife on the pointing out of the appellant and the recovery of his blood stained clothes at his instance. So far as the recovery of his blood stained clothes is concerned, we may straight away mention that although according to the prosecution, the same took place in the presence of the two public panchas namely Somnath Kotiyan and Mahesh Pande but, none of them have been examined by the prosecution and neither any reason been furnished by it for not examining them.

Section 114(g) of the Indian Evidence Act provides that if evidence which could be produced is not produced, the presumption is that it would have gone against the party which withholds it. We find that the instant is a fit case wherein such a presumption should be drawn by us.

In such a state of affairs, we feel that it could be hazardous to accept the said recovery on the solitary statement of P.S.I. Dilip Navkhurkar P.W. 10.

11. The position in respect of recovery of blood stained knife on the pointing out of the appellant is hardly better. In the first instance, we feel it pertinent to mention that in the recovery panchanama of the knife, there is no mention that the knife was sealed. The recovery panchanama was a contemporaneous

document and absence of mentioning of sealing in the same, in our view, hits the prosecution hard. Since in it, it has not been mentioned that the knife was sealed, we feel it unsafe to accept the evidence of PSI Navkhurkar and the public panch Pramod Waigankar that it was sealed.

Once the factum of sealing of the knife becomes doubtful, possibility of blood being smeared on it prior to its being sent to the Chemical Analyst cannot be ruled out.

In this connection, it would be pertinent to refer to para 8 of the Division Bench decision of the Rajasthan High Court reported in AIR 1955 Raj 42 The State v. Motia and others accused, wherein Wanchoo, C.J., (as he then was) observed thus :---

"..... It is, therefore necessary for the prosecution to produce evidence that steps were taken at once to seal the articles, and that from the time the articles came into possession of the police to the time they were sent for identification before a Magistrate or for examination to the Chemical Examiner the seals remained intact. This evidence is missing in this case. It is, of Course not difficult to sprinkle a few human blood stains on articles recovered if somebody wants to do so. We do not say that this was done in the present case; but as precautions were not taken the argument raised on behalf of the accused that this might have been done remains unrefined"

In the instant case, the prosecution has also not proved that right from the time, the knife came into possession of the police and till it was sent to the Chemical Analyst, the seals were intact. Again, it is pertinent to mention that the person who carried the knife to the Chemical Analyst has not been examined by the prosecution.

In addition, we find that the public panch of recovery, Pramod Waigankar P.W. 4, is a habitual panch. In his cross-examination, he admitted that he might have acted as a panch once or twice and deposed before the Court. The said evasive answer by him in our view, goes against his credibility. We feel that he should have been candid enough to mention that either he had acted as a panch on earlier occasions or not. In this connection, we find the evidence of P.S.I. Dilip Navkhurkar P.W. 10 to be equally bad. During his cross examination, when he was asked whether Pramod Waigankar was a habitual panch, he replied that it may be possible that once or twice he might have acted as a panch earlier. We expect a Police Officer to give a straight forwarded answer and when he does not give one and gives such evasive answers, it becomes very difficult for us to accept his evidence.

For the said reasons, we feel it extremely unsafe to place reliance on this recovery evidence.

12. For the said reasons, we feel that the prosecution has not been able to bring home beyond reasonable doubt, the guilt of the appellant for the offence

punishable u/s 302 I.P.C.

13. In the result, this appeal is allowed. The conviction and sentence of the appellant for the offence u/s 302 I.P.C. is set aside. He is in jail and shall be released forthwith unless wanted in some other case.

14. Appeal allowed.