

(1999) 04 BOM CK 0003

In the Bombay High Court

Case No : Criminal Appeal No. 408 of 1993

Nemichand Patle and others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

Citation : (1999) 04 BOM CK 0003

Hon'ble Judges : S.D. Gundewar, J;G D. Patil, J

Bench : Division Bench

Advocate : M. R. Daga, for the Appellant; A. S. Sonare, Additional Public Prosecutor for State, for the Respondent

Judgement

S. D. Gundewar, J.—This appeal has been preferred by the appellants/accused being aggrieved by the judgment and order dated 29-10-1993 passed by the learned Additional Sessions Judge, Gondia in Sessions Trial No. 47/89, whereby the appellants/accused have been convicted u/s 302 read with section 34 of the Indian Penal Code and each of them is sentenced to suffer imprisonment for life.

2. The brief facts of the case are recapitulated as under :-

The deceased Tulshiram Patle and the appellants/accused are the residents of village Panjara, Tq. Tirora, District Bhandara. On 14-10-1988 at about 12.15 P.M. while P.W.I Narendra was returning from village Mundikota to village Panjara along the road, he heard the voice of the deceased Tulshiram as "Melo". On hearing the said voice, P.W.I Narendra looked at a mango tree from where he heard the said voice and found the accused No. 1 Nemichand assaulting the deceased with a knife on his neck. Accused No. 2 Kailash and accused No. 3 Premlal had caught hold of the deceased while accused No. 4 Bakaram and accused No. 5 Krishna were keeping watch over the persons proceeding along the said road. P.W.I Narendra then narrated the said incident to Shankar Kumbhare, Baburao Maraskole and others. However, he did not inform the police

about the same. Thereafter on the same day at about 4 P.M., one Pandurang Dhekal, the cousin of Tulshiram had been to his field. On way, he found the deceased Tulshiram lying under Sisam and Ali trees in an injured condition. The deceased Tulshiram had sustained injuries on his neck and his clothes were stained with blood. He, therefore, went to the house of Police Patil and informed him about the same. He also lodged his oral report (Exh.73) in the matter on the basis of which P.S.O., Tirora had registered an offence as Crime No. 162/98 and started investigation. Meanwhile, the Police Patil Govind Patle also lodged his report (Exh. 67) in the matter. During the investigation, the complicity of the accused persons regarding the offence in question was transpired and hence, all of them came to be arrested and after completion of investigation, a charge-sheet came to be filed against them in the Court of Judicial Magistrate, First Class, Tirora under sections 302 read with section 34 of the Indian Penal Code and on commitment, the trial Court framed the charge (Exh. 16) against the appellants/accused Nos. 1 to 5 under sections 147, 148, 302 read with sections 149 and 302 read with section 34 of the Indian Penal Code to which all of them pleaded not guilty and claimed to be tried. Their defence was one of total denial and false implication.

3. The learned trial Judge after hearing both the sides convicted and sentenced the appellants/accused as stated above.

4. Shri M. R. Daga, the learned counsel for the appellants/accused, urged before us that the entire prosecution case depends upon the evidence of P.W.1 Narendra. According to Shri Daga, the evidence of this witness does not inspire confidence as he did not inform the police about the same for sufficiently long time and, therefore, though he has stated that he had witnessed the incident, his conduct renders his presence on the spot doubtful and if his evidence is discarded, then there is nothing on record on the basis of which the appellants/accused can be convicted.

5. Shri A. S. Sonare, the learned Additional Public Prosecutor, however, supported the judgment passed by the learned Additional Sessions Judge and submitted that the learned Additional Sessions Judge was justified in relying upon the evidence of P.W.1 Narendra which finds support from the recovery of blood stained knife at the instance of the appellant/accused No. 3 Premlal.

6. To appreciate the rival contentions raised at the Bar, we have carefully perused the judgment and scrutinised the evidence in detail. The trial Court has based its findings on the consideration of evidence of P.W.I Narendra and recovery of blood stained clothes at the instance of appellant No. 2 Kailash and knife at the instance of appellant No. 3 Premlal.

7. We would first consider the evidence of P.W.I Narendra. It is no doubt true that this witness has stated that on the day of incident at about 12.15 P.M. while he was returning to village Panjara from village Mundikota along the road, he witnessed the accused No. 1 Nemichand assaulting the deceased Tulshiram with

a knife on his neck. It is also deposed by him that accused No. 2 Kailash and accused No. 3 Premlal had caught hold of the deceased while accused No. 4 Bakaram and accused No. 5 Krishna were keeping watch on the persons going along the road. He then deposed that he informed about the said incident to Shankar Kumbhare, Baburao Maraskole and others but the prosecution has not examined any of them for the reasons best known to it. The evidence of these witnesses was necessary particularly when P.W.1 Narendra had not informed the police about the same till 4-11-1988 on which date his statement came to be recorded by the police u/s 161 of Criminal Procedure Code. It is no doubt true that his statement also came to be recorded under sections 164 of Criminal Procedure Code but on 27-12-1988, i.e. after about 2 months and 13 days of the incident. The prosecution has not put forth any satisfactory explanation about this inordinate delay. Not only that but the Investigating Officer has not made it clear as to what efforts he had made in recording the statement of P.W.1 Narendra soon after the incident particularly when this witnesses was present in the village since the time of incident.

8. It is admitted by P.W.I Narendra during his cross-examination that since his childhood his eye-sight is weak and he can identify a person from a distance of 20 ft. Admittedly, he had witnessed the incident in question from a distance of more than 100 ft. As such it was necessary for him to explain as to how he could identify the appellants from such a long distance particularly when his eye-sight is weak since his childhood and he can identify a person from 20 ft. only. He has not put forth any explanation for the same. This, in our view renders his presence on the spot doubtful. Further, his conduct in not taking any trouble of going to the police station and informing the police about what had happened appears to be unnatural and unreasonable. Further, it is admitted by him that after the dead body of Tulshiram was taken to his field he had been there to see his dead body. According to him at that time, all the villagers had assembled there but he did not disclose them about the incident. This conduct of this witness also appears to be unnatural because in the normal course a person who had witnessed the incident like murder would not keep quite. Even this conduct of this witness renders his presence at the spot doubtful.

9. The facts almost identical to the present case were found in the case in Din Dayal Vs. Raj Kumar @ Raju and Others, . In that case, after seeing the incident, witnesses quietly went back to home. They had not accompanied the deceased to the hospital nor had taken any trouble of going and informing the police about what had happened and, therefore, the Apex Court finding their version improbable held that there evidence cannot be relied upon. In the case in hand also, P.W.1 Narendra though had witnessed the incident had neither informed the villagers who had assembled at the spot on that day at 4 P.M. nor took trouble of going and informing the police or Police Patil of the village about the same. So, in our view, the aforesaid decision of the Apex Court has full application to the fact of the present case. In this view of the matter, we find that no reliance can be placed upon the evidence of P.W.I Narendra.

10. Here, it is argued by Shri Sonare, the learned Additional Public Prosecutor, that though this witness had not narrated the incident to the Police till 4-11-1988, his evidence being consistent with his statement recorded u/s 164, Criminal Procedure Code may be relied upon. Admittedly, the statement of this witness u/s 164 of Criminal Procedure Code came to be recorded on 27-12-1988, i.e. after about 2 months and 13 days of the incident. The prosecution has not explained the said delay and in the absence of any explanation on this point, we find it difficult to concede to the aforesaid proposition made by the learned Additional Public Prosecutor. Thus, having gone through the entire evidence of this witness, we find that the learned trial Judge was not justified in placing reliance upon his evidence.

11. Besides the evidence of P.W.I Narendra, the learned trial Judge relied upon the evidence regarding the recovery of blood stained clothes at the instance of appellant No. 2 Kailash under seizure-memo (Exh. 56) and blood stained knife (razor) at the instance of accused No. 3 Premlal under seizure-memo (Exh. 59). It has been succinctly held by the Apex Court in Narsinbhai Haribhai Prajapati etc. vs. Chhatrasinh and others reported in AIR 1977 SC 1753 that when the evidence of eye-witness is found totally unacceptable then the recovery of blood-stained clothes and weapons though at the instance of the accused is wholly insufficient for sustaining a charge of murder. We, therefore, find that the learned trial Judge erred in relying upon the recovery of blood stained clothes and knife at the instance of accused No. 3 Premlal in order to base the conviction of the appellant/accused for the offence of murder.

12. In this view of the matter, we find that the evidence which was led by the prosecution to prove its case against the appellants was not such on the basis of which the appellants could have been convicted. We, therefore, allow the appeal, set aside the judgment and order passed by the learned Additional Sessions Judge and acquit the appellants of the offence of murder punishable u/s 302 of Indian Penal Code. The appellants be set at liberty forthwith if not required in any other case.