

(2006) 06 BOM CK 0106
In the Bombay High Court
Case No : Criminal Appeal No. 885 of 2001

Ramlal Devappa Rathod and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-06-2006

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2006) CriLJ 3689

Hon'ble Judges : Roshan Dalvi, J;J.N. Patel, J

Bench : Division Bench

Advocate : A.P. Mundargi and P.R. Arjunwadkar, for the Appellant; U.V. Kejariwal, Assistant Public Prosecutor, for the Respondent

Judgement

J.N. Patel, J.—This appeal is filed by the appellants, original accused Nos. 1, 2, 3, 7, 10, 12, 29 and 30 challenging their conviction and sentence in Sessions. Case No. 134 of 2000 vide judgment and order dated 6th October, 2001 passed by the Second Additional Sessions Judge, Solapur.

2. The appellants-accused came to be tried with other 26 accused persons on a charge of having committed offences punishable under Sections 147, 148, 302, 307, 326, 324, 395, 427, 436, 435, 452 read with Section 149 of the Indian Penal Code. In nutshell it was the prosecution's case that the accused and the victims are the residents of Sevalal Nagar, Tal. North Solapur. The deceased-Tanaji Pandurang Rathod and his relatives were the trustees of Durgamata Temple in the village and were also the members of one Sahakari Krushi Society which has received 44 acres of agricultural land from the Government. There were various litigations, civil and criminal, going on between Tanaji Pandurang Rathod, his family members and associates on one part and the villagers of the said Sevalal Nagar who belonged to "Laman" (nomadic tribe community).

3. According to the prosecution, on 30-4-2000 between 5.50 a.m. to 6.00 a.m. the accused persons who were armed with deadly weapons like choppers,

satturs, axes, swords, iron rods and stones along with other villagers and absconding accused-Laxman Rathod and Babu Rathod formed an unlawful assembly whose object was to commit murder of Tanaji Pandurang Rathod and his relatives and in furtherance of their common object, they committed murder of Tanaji Rathod and caused injuries to his relatives i.e. Prithwiraj Rathod (P.W. 6), Bharat Rathod, Arjun Rathod and Hari Hemla Rathod with such intention and knowledge and under such circumstances that as a result of the assault with deadly weapons they would have caused the death of the said Prithwiraj Rathod (P.W. 6), Bharat Rathod, Arjun Rathod and Hari Hemla Rathod and would have been guilty of murder. It is also the prosecution case that the accused persons and their associates were not only satisfied with committing murder of deceased-Tanaji, causing injuries to his relatives but they also destroyed their houses and the premises housing the office of Sevalal Co-operative Agricultural Society Limited by setting the same on fire and, caused damage to the record and in furtherance of their common object they committed trespass in the house of Maruti Hemla Rathod, Jaysing Rathod, Laxman Rathod, Shivaji Rathod, Hemla Rathod, Tanaji Pandurang Rathod and his brothers when the deceased-Tanaji tried to take shelter and assaulted him with deadly weapons.

4. The F.I.R. in the matter came to be lodged by Parmeshwar Pandurang Rathod, brother of deceased, on 30-4-2000 between 7.30 a.m. to 8.30 p.m. at Taluka Police Station, Solapur on the basis of which the police registered offence under Sections 147, 148, 149, 302, 323, 324, 325, 326, 307, 452, 395, 436, 427 against 34 accused persons. PI Pratap K. Pawar (P.W. 18) after registering Crime No. 37 of 2000 on the basis of the complaint lodged by Parmeshwar Pandurang Rathod (P.W. 1) made an entry in the Station Diary and the police party first proceeded to the hospital where deceased-Tanaji and other injured were brought. Having learnt that Tanaji has expired, PSI Gavane was directed to prepare the inquest panchanama and the body of Tanaji came to be forwarded for post-mortem examination. He also recorded the statements of the persons who were injured. After issuing these directions PW. I Pawar proceeded to the village where the scene of offence was shown to him by Vimal M. Pawar (P.W.8) on the basis of which he prepared the spot panchnama and collected Articles 1 to 14 from the scene of offence. In the course of investigation, statements of the relatives of the deceased-Tanaji and the injured persons and others came to be recorded. The police initially caused arrest of the accused Nos. 1 to 12 as per the arrest panchnama Exhibit 78. He further attached clothes of accused No. 1. Subsequently other accused persons came to be arrested. During the course of investigation, police were able to seize various weapons from the accused persons at their instance by way of discovery u/s 27 of the Evidence Act and also articles from the injured persons like blood stained stones and clothes. The police also obtained blood samples of the injured as well as the accused persons. All these articles seized were sent to the forensic laboratory. After receipt of the post-mortem report and the injury certificates of the persons who were injured in the incident and on completion of the investigation on 28-7-2000 charge-sheet

came to be submitted against the accused persons in the Court of JMFC Court No. 2, Solapur.

5. It is the case of the prosecution that further investigation was required to be made as names of other persons surfaced in the statements of the victims and supplementary charge-sheet was filed. The case against the accused persons was then committed to the Court of Sessions, Solapur and that is how the case of the accused was tried along with other co-accused on the aforesaid charges.

6. All the appellants-accused pleaded not guilty and in their defence it was stated that they were falsely implicated due to the dispute over the property of the Sahakari Krushi Society between them and deceased and his family members.

7. The learned trial Court on conclusion of the trial found that on the basis of evidence of the sole witness i.e. Sarojini wife of deceased-Tanaji Rathod prosecution has been able to prove charges against the appellants-accused and on the basis of her evidence found them guilty and sentenced them.

8. Mr. Mundargi, the learned Counsel appearing for the appellants-accused submitted that the trial Court has erred in arriving at the finding that the appellants-accused were guilty of offence with which they were charged in the backdrop that though the prosecution in support of their case has examined the complainant and 10 witnesses who were injured in the accident including the mother of the deceased, as eye-witnesses, have failed to support the prosecution case and having given a categorical admission that they do not know whether the accused before the Court were the persons who have caused the said injuries, it was most unsafe to base conviction on the sole testimony of P.W. 12 Sarojini Tanaji Rathod who claims to have been present at the scene of occurrence and even tried to save her husband along with her mother-in-law from the accused persons and by covering him while her deceased-husband was being assaulted.

9. Mr. Mundargi submitted that the presence of P.W. 12 Sarojini is not above suspicion for the very reason that she is a unwilling witness who was required to be procured by the prosecution by issuing a non-bailable warrant because she was required to be brought from Vijapur in Karnataka State. It is submitted that this witness is highly interested and in absence of any corroborative evidence about her presence at the scene of occurrence at the time of the incident, the trial Court was not justified in relying upon her evidence.

10. Mr. Mundargi submitted that admittedly there were strained relations between villagers and deceased-Tanaji and his relatives due to dispute over the 44 acres of land usurped by Tanaji and his family members and the high handed manner in which Tanaji was managing the co-operative society. It is submitted that it is doubtful whether she was present at the village during the incident as nobody has deposed to the effect about her presence and her evidence also suffers from contradictions and omissions which affects the credit-worthiness of this witness. Though Mr. Mundargi has tried to place reliance on various

authorities in support of his contention he has specially stressed on decision of the Supreme Court rendered in the case of Masalti Vs. State of U.P., wherein the Supreme Court has laid down a word of caution in such a case where crowd of assailants who are members of unlawful assembly proceeds to commit an offence of murder of pursuance of the common object of unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of them. Besides, the large crowd of persons armed with weapons assaults the intended persons, it may not be necessary that all the mob takes part in the actual assault and It is in this background that the appreciation of evidence in such a complex case no doubt a difficult task; but Criminal Courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not and if in such a case the prosecution relies on the testimony of sole witness by way of caution it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it cannot be treated as irrational or unreasonable. It is, no doubt, the quality of the evidence that matters and not the number of witnesses available. For some time, it is usual to adopt a mechanical test. Mr. Mundargi has therefore submitted that this is a fit case where the caution given by the Supreme Court in Masalti's case was required to be adopted by the learned trial Judge particularly when the close relatives of the victims who claim to have been injured by members of the unlawful assembly who were armed with deadly weapons including the mother of the deceased-Tanaji have not supported the prosecution case and, therefore, this is a fit case where the appellants-accused can be given benefit of doubt as the possibility of they having been falsely implicated by P.W. 12 Sarojini cannot be ruled out.

11. Mr. Mundargi submitted that the other evidence which is mostly of corroborative nature by itself does not lead the prosecution's case anywhere near to proving the guilt of the appellants-accused beyond doubt. Therefore, he submits that the appellants-accused deserve to be acquitted and the appeal be allowed.

12. Mrs. Kejariwal, the learned APP, submitted that the finding arrived at by the trial Court is based on the evidence on record and not only the trial Court has thoroughly examined the case of the prosecution but was also convinced that it has established the charges against the appellants-accused.

13. It is submitted by Mrs. Kejariwal, the learned APP, that enmity is a double edged weapon and merely because the villagers were on cross-terms with the deceased-Tanaji and his family members, that by itself is not enough to discard evidence of Sarojini (P.W. 12). She submitted that Sarojini {P.W. 12} wife of the deceased has deposed the manner in which the victim i.e. her husband-deceased-Tanaji was chased by these accused persons armed with deadly weapons and has narrated in detail how Tanaji was repeatedly assaulted by chasing him and

though he tried to take shelter in the house of various persons the accused persons chased him out and mercilessly killed him. This stands corroborated by the medical evidence and the post-mortem report that deceased-Tanaji was assaulted by more than one person and with different weapons and, therefore, just because the other relatives of the deceased-Tanaji who were also injured in the incident have turned hostile they should not enable the guilty to escape when their presence and participation is deposed by P.W. 12 Sarojini who is wife of the deceased and a natural witness whose presence at the time of the incident cannot be doubted as there is nothing brought on record to show in her cross-examination that at the relevant time she was not present in the village. Therefore, according to the learned APP, this evidence of P.W. 12 Sarojini will have to be considered trustworthy evidence sufficient to convict the appellants-accused.

14. Mrs. Kejariwal, the learned APP, further submitted that the discrepancies and exaggerations which are tried to be pointed out by the learned Counsel for the appellants are not such that it will discredit the witness totally and if this witness can be attributed motive to falsely implicate the appellants-accused when she could have mentioned names of few more accused persons as in her presence she has witnessed the assault on her husband-deceased-Tanaji by these persons and also the fact that they had put the house of one Shivaji H. Rathod (P.W. 5) on fire. She has restricted her evidence to that extent only and, therefore, merely because she is relative of the deceased being his wife could not alone disqualify her from being a trustworthy witness. It is submitted by learned APP that the learned trial Court was justified in arriving at the conclusion that the appellants-accused are guilty on the basis of this evidence and has taken note of the fact that all the other witnesses including the near relatives of the victim have been won over by the accused persons. This is very obvious from the fact that even the close relatives of the victim were injured in the incident which is duly established by the prosecution by placing on record medical evidence which supports the prosecution and, therefore, the appeal deserves to be dismissed.

15. With the able assistance of the learned Counsel for the appellants and the learned APP, we have scanned through the evidence on record. We find that the mob of more than 100 to 200 people of the village attacked Tanaji and his relatives stands established by the prosecution as a result of which Tanaji was done to death and other relatives of Tanaji got injured. The crucial point which arises for our consideration is whether it will be safe to base conviction on the sole testimony of P.W. 12 Sarojini.

16. We find that the complainant as well as all the other persons who was examined by the prosecution and speak about the participation of various persons in the incident but when it comes to identification of the appellants-accused they have stated before the Court that it was difficult for them to say whether these are the persons who were responsible for assaulting Tanaji and the injured witnesses examined by the prosecution. The only choice which was

left with the trial Court was to put the evidence of Sarojini (P.W. 12) to scrutiny and test whether she is trustworthy witness and it would be safe to convict the appellants-accused on the basis of her sole testimony.

17. In our view, the trial Court has opted for a safer course and relied upon the evidence of P.W. 12 Sarojini who is the sole witness examined by the prosecution. Considering the fact that there was enmity between the family of deceased-Tanaji and the villagers has influenced the trial Court in the process of decision-making and in absence of any other eye-witness coming forward to depose about the presence and participation of the appellants-accused so as to corroborate the evidence of P.W. 12 Sarojini, makes evidence of P.W. 12 Sarojini suspect for the reason and as rightly submitted by the learned Counsel for the appellants that if Sarojini was present at the time of incident and has tried to save her deceased-husband Tanaji by intervening to the extent of protecting her husband by covering him, the possibility of her suffering injuries cannot be ruled out which are found on the person of mother of deceased-Tanaji i.e. Thaplabai P. Rathod (P.W. 9). In her evidence before the Court she has stated that she is knowing of the incident which took place about one year and three months back but she does not know who has killed her son. She has further deposed that she did come out of the house after hearing the shouts but she has specifically denied the presence and participation of appellants/ accused even when the prosecution was permitted to put leading questions about the complicity of the appellants-accused and others who are put on trial. She has even denied knowledge about the person who has beaten her and according to the prosecution it was accused No. 29 (who is convicted) and one of the appellants before this Court at the time when she tried to save herself. Similarly, she has specifically denied that the accused No. 30 who is also one of the convicts and appellants before this Court assaulted her with sword on her back and for that reason the original accused No. 2, she does not speak about the presence of P.W. 12 Sarojini at the time of incident nor it has been brought on record from any other witness who are close relatives of the deceased.

18. If we examine the evidence of Shivaji H. Rathod (PW-5) he has also specifically denied the fact that his house was set on fire by original accused No. 7 Sitaram, accused No. 10 Kisan and accused No. 27 Ramchandra. Shivaji is the cousin of deceased-Tanaji. In view of the fact that these two crucial witnesses in addition to all others who have suffered injuries in the incident having failed to support the prosecution and corroborate the evidence of Sarojini (PW-12), we find that the trial Court was not justified in arriving at a conclusion that it is the appellants-accused who are guilty of having committed murder of Tanaji and assaulted the witnesses by taking into consideration evidence of PW-12 Sarojini and other evidence i.e. medical and forensic which is merely of corroborative in nature and, therefore, the caution sounded by the Supreme Court in the case of Masalti Vs. State of U.P., cited supra squarely applies to the factual matrix of the case.

19. Taking the overall view of the nature of evidence brought on record by the prosecution, we have no hesitation to arrive at the conclusion that the prosecution has failed to prove the case against the appellants-accused and, therefore, they deserve to be acquitted. The appellants-accused Nos. (1)Ramlal Devappa Rathod, (2)Ramchandra Lalu Wadaje, (3)Limbaji Manohar Rathod, (7)Sitaram Gopa Rathod, (10)Kisan Ganu Rathod, (12)Jaysing Devappa Rathod, (29)Shivajhi Ramaji Wadaje and (30)Pandit Gopa Rathod are acquitted of the charge for having committed offence punishable under Sections 302, 307, 326, 324, 427, 436, 435, 452, 147 and 148 r.w. 149 of Indian Penal Code.

20. All the appellants-accused be released forthwith if not required in any other case.