

(2015) 08 BOM CK 0073

In the Bombay High Court

Case No : Criminal Appeal Nos. 576 and 691 of 2004

Ratiram Dhaniram Madavi and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 378(3)
Penal Code, 1860 (IPC) — Section 307, 324, 325, 34, 342

Citation : (2015) 08 BOM CK 0073

Hon'ble Judges : B.P. Dharmadhikari, J; P.N. Deshmukh, J

Bench : Division Bench

Advocate : Saurabh Chaudhari, for the Appellant; S.S. Doifode, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

P.N. Deshmukh, J—Criminal Appeal No. 576/2004 is preferred by original accused No. 1-Ratiram Dhaniram Madavi, who came to be convicted for the offence punishable under Section 324 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for three months and was further convicted for the offence punishable under Section 342 of the Indian Penal Code. However, no separate sentence was awarded for this offence. Accused No. 1-Ratiram has accordingly assailed his conviction, as aforesaid, in the present appeal.

Criminal Appeal No. 691/2004 is preferred by the State of Maharashtra under Section 378(3) of the Code of Criminal Procedure against acquittal of original accused No. 1-Ratiram Madavi, accused No. 2-Omprakash Madavi, accused No. 3-Prashant Madavi and accused No. 4-Pralhad Madavi of the offences punishable under Sections 448, 307, 342 read with Section 34 of the Indian Penal Code.

As both above referred appeals are arising out of judgment and order passed by the learned Sessions Judge, Wardha in Sessions Trial No. 52/2000, dated

09/08/2004, both these appeals are thus disposed of by this common judgment.

2. Case of the prosecution can be briefly stated as under:

"Original accused No. 1-Ratiram is father of accused No. 2-Omprakash and accused No. 3-Prashant, while accused No. 4-Pralhad is related to them. The incident took place on 21/12/1999. Two days prior to the incident, PW-3 Mahadeo Mahabudhe informed PW-2 Manohar Ghude that he was assaulted by accused No. 1-Ratiram and, therefore, both of them had visited police station to lodge complaint. While they were proceedings to police station, they were seen by the accused and thereafter when PW-2 Manohar returned back and was sleeping in front of his house in the courtyard, in the midnight at about 02:00 a.m., keeping grudge against PW-2 Manohar since he accompanied with PW-3 Mahadeo to the police station, PW-2 Manohar was lifted from his house to the house of accused No. 1-Ratiram, assaulted him by axe, iron bar, spear, sticks etc., dragged him inside the house and tied him by rope to the window. In the morning, PW-1 Pramod Ghude, the complainant, who happens to be the son of Manohar, on knowing about the incident, visited house of accused-Ratiram and had untied him, brought him to Sindhi Police Station and lodged report vide Exh. 36, which was received by Head Constable and on the basis of Exh. 36, Anil Kinge, P.S.I., registered offence vide Crime No. 106/1999 and investigated the same. During the course of investigation, the said official visited the spot, drew Spot-Panchnama [Exh. 44], which was in front of house of accused-Ratiram and seized articles like rope, gunny bag, earth mixed with blood under Seizure-Panchnama [Exh. 45]. On the same day, all the accused came to be arrested and their clothes having blood stains came to be seized under Seizure-Panchnama [Exh. 68 to Exh. 71].

On 22/12/1999, statement of PW-3 Manohar and others came to be recorded. On 24/12/1999, during the course of interrogation, memorandum statement of accused No. 1-Ratiram was recorded as per Exh. 49 and in consequent to said statement, accused discovered one axe, three sticks, two full pants, one pajama, shirt and electric wire from his house concealed below the heap of cotton, which came to be seized under Seizure-Panchnama [Exh. 50]. On 03/01/2000, blood samples of all the accused were collected and seized under Panchnama [Exh. 53]. On 07/01/2000, clothes of injured Manohar, as produced by Police Constable Shri Gautam came to be seized as Seizure-Panchnama [Exh. 52]. On the following day, blood sample of injured Manohar was seized under Seizure-Panchnama [Exh. 51] produced by Head Constable Shri Suresh. The statement of PW-3 Mahadeo, PW-10 Ashok Wani, Shankar Wani, and Atul Ghude were recorded under Section 164 of the Code of Criminal Procedure. The seized muddemal articles came to be sent for its analysis to Chemical Analyzer, Nagpur under Requisition [Exh. 72] and on receipt of Doctor's opinion with reference to finding over the injuries on the person of injured Manohar vide Exh. 73, charge-sheet came to be filed against the accused in the Court of Judicial Magistrate First Class, Wardha. In the course of time, the case was committed for trial

before the learned Sessions Judge. The charge was framed against the accused for the offences punishable under Sections 448, 307, 342 and 325 read with Section 34 of the Indian Penal Code at Exh. 24, to which they pleaded not guilty and claimed to be tried. The defence of accused was of total denial."

3. Prosecution in all examined 14 witnesses to prove the charge leveled against the accused and had commenced its evidence on examining PW-1 Pramod Ghude, the complainant at Exh. 35, PW-2 Manohar Ghude, the injured. Though prosecution examined PW-3 Mahadeo Mahabudhe, PW-5 Shankar Nistane, PW-7 Kushab Kute, PW-8 Shankar Wani and PW-10 Ashok Wani, on the incident of assault, however, neither of the witnesses supported the case of prosecution and were declared hostile, PW-4, Shantabai Nistane on the circumstance, PW-6 Raju Kokate, PW-7 Kushab Kute, the panchas on Spot-Panchnama [Exh. 44] and Seizure-Panchnama [Exh. 45], who did not support the case of prosecution, PW-9 Nanaji Awachat along with PW-11 Anil Ambatkar on memorandum statement of accused No. 1-Ratiram and consequent discovery and on seizure of four bottles of blood samples, however, neither of these witnesses supported the case of the prosecution and as such these documents were got proved by PW-13 Anil Kinge the Investigating Officer, PW-12 Dr. Meghnath Hulke, to whom PW-2 Manohar was immediately referred for medical treatment, who had referred said injured Manohar to Wardha vide Requisition Memo [Exh. 64] and issued opinion to the query made by the Investigating Officer at [Exh. 65] and concluded its evidence on examining PW-13 Anil Kinge, P.S.I., the Investigating Officer.

4. Heard Mr. Saurabh Chaudhari, the learned Counsel for the appellants/accused and Mr. S.S. Doifode, the learned A.P.P. for the State. To effectively evaluate the submissions advanced by the learned Counsels for both the sides, we have scrutinized the evidence and documents on record with their assistance.

5. We have found that except for PW-2 Manohar, the injured, other witnesses examined by the prosecution on the point of assault have not supported the case of prosecution and we thus scrutinized evidence of PW-2 Manohar to satisfy, if the case set up against the accused as per charge leveled against them has been established. PW-2 Manohar has stated that he knows all the accused, who are residing at a distance of seven houses away from his house and further stated that two days prior to the incident, accused had quarreled with PW-3 Mahadeo and the said fact was informed to him by Mahadeo that accused-Ratiram had beaten him and thus on his request, he had accompanied Mahadeo to police station to lodge report against Ratiram and returned back to his home at 07:00 p.m. He further stated that while he was sleeping at about 02:00 a.m., all the accused arrived near his bed and accused No. 1-Ratiram pressed his mouth with the cloth and all of them by lifting his head and legs took him to their house. He has further stated that one spear, one axe, one crowbar and one stick were kept at the fencing, out of which accused No. 1-Ratiram took spear and assaulted on his head, while accused No. 2-Omprakash dealt a blow over his head and thereafter the accused dragged him for a distance of 20 feet inside their house

and tied him to the window.

6. PW-2 Manohar further stated that he was assaulted for two hours and was raising shout in the name of Nistane, Ashok Wani and Pritam, and was released by his son PW-1 Pramod before he becomes unconscious. He further stated that he was admitted in a hospital for three days, where he regained his sense, and was further hospitalized in Mayo Hospital at Nagpur for three days.

7. Before advertng to his cross-examination, we find it material to state that no injury certificate of PW-2 Manohar is placed on record by the prosecution, which is found to be an important document with reference to charge leveled against all the accused and particularly when it is stated by PW-2 Manohar that he was dragged for a distance of 20 feet by accused and was assaulted by weapons like axe, spear, iron bar etc. for about two hours. So far as involvement of accused is concerned, evidence of PW-2 Manohar does not appear to be convincing against all the accused, as he appears to have materially improved his version. When he appears to have not stated in his statement that weapons like spear, sticks, crowbar were kept at the fencing, as according to him, he was not asked by police accordingly. Similarly, though he claims to have stated in his statement that accused No. 1-Ratiram assaulted him by spear, he is unable to state any reason as to why said fact is not mentioned in his statement. Similarly, he is unable to state any reason as to why there is no mentioned of accused No. 2-Omprakash giving blow of axe over his head. Though he has stated to have mentioned this fact in his statement before the police and has admitted to have not stated that he was dragged. He further claims to have stated to police about his assault for a period of two hours by iron rod and about his raising shout to call Nistane, PW-10 Ashok Wani and Pritam. However, he is unable to state any reason as to why same is not recorded in his statement. Apart from omission, as stated aforesaid, evidence of Manohar also appears to be contradictory and in fact creates doubt about the presence of PW-1 Pramod, when he is suggested and has denied that on the material night, his son had gone to field to irrigate the land. Said contradictions marked as portion "A" is duly got proved by the defence from PW-13 Anil Kinge, the Investigating Officer at Exh. 79.

As per said portion, PW-2 Manohar has stated that after having dinner, PW-1 Pramod had gone to field for drawing water. Similarly the Investigating Officer has specifically admitted that Manohar in his statement has not stated about assault upon him by accused No. 1-Ratiram by spear or by accused No. 2-Omprakash by axe on his head or that he was assaulted for two hours. Having considering above evidence of PW-2 Pramod and having finding material omissions and contradictions and also considering the evidence of PW-13 Anil Kinge, the Investigating Officer, as aforesaid, he appears to have materially improved his version and thus not convincing.

8. PW-1 Pramod, the complainant, who is son of Manohar, has stated that, in the night of incident, at around 02:00 a.m., while he was sleeping in the house and while his father was sleeping outside, in the early hours of morning, he heard

shout of PW-2 Manohar and on hearing the same, he went to the house of accused situated in the back side lane and saw Manohar was tied by rope to his legs at the house of accused in injured condition, of which he informed to PW-3 Mahadeo and one Kanchan, who along with other villagers gathered on the spot and untied the legs of Manohar. He further stated that he then went to Sindhi Police Station with his father, who was in unconscious condition, where he lodged his report [Exh. 36]. In his cross-examination, PW-1 Pramod has admitted that his cousin Atish in the morning had come to him and informed about his father. Admittedly, PW-1 Pramod, the complainant is not an eye witness to any incident nor prosecution has examined Atish. His evidence about accused persons not allowing him to untie his father, is an omission as regards accused Nos. 2, 3, and 4. In view of said evidence, presence of said accused on the spot appears to be doubtful. Even otherwise, according to the contents of report [Exh. 36], Pramod, as admitted by him, was informed about his father by one Atish, who is admittedly not examined. Similarly, in his evidence, it has come on record that PW-2 Manohar was shifted by auto-rickshaw of one Shambharkar, who is also not examined, though said Shambharkar would have been the best witnesses to state about the exact location where Manohar was lying or from where he was shifted in the auto-rickshaw.

9. PW-3 Mahadeo, who was examined by the prosecution to establish motive, has not supported the case of prosecution and as such no case for prosecution about assault by accused on Manohar since Manohar accompanied PW-3 Mahadeo two days prior to the incident to police station to lodge report against accused No. 1-Ratiram, who is alleged to have assaulted Manohar, is not established in any manner.

10. Though prosecution has examined PW-4 Shantabai to establish circumstance of her witnessing Manohar having been tied in the house of accused No. 1, and PW-1 Pramod attempting to untie his father, her evidence does not inspire confidence in view of her admitting that she had not seen anything and learnt from people, as such her evidence is hearsay evidence in the absence of any other corroborative piece of evidence.

11. On the same aspect, evidence of PW-5 Shankar Nistane when perused, it reveals that in the morning at about 06:30 am, he had been to the house of accused No. 1, when he saw that PW-2 Manohar was tied by rope in the house of Ratiram and his son was attempting to untie him, he did not support the case of prosecution. It appears from the suggestions given to him by learned A.P.P., after being declared hostile, that all accused had taken Manohar from his house, however, he denied the entire suggestions put to him by the learned A.P.P. Similarly, PW-8 Shankar Wani and PW-10 Ashok Wani did not support the case of prosecution on the point of incident.

12. Prosecution has accordingly got portions marked from the statements of PW-5 Shankar Nistane, PW-8 Shankar Wani and PW-10 Ashok Wani duly proved from PW-13 Anil Kinge, the Investigating Officer, however, said portions though

considered are too short to establish involvement of all accused in the present crime for want of sufficient corroboration, for which they are charged for.

13. Prosecution though had examined PW-9 Nanaji Awachat to establish seizure of weapons like axe, sticks and clothes at the instance of accused No. 1-Ratiram, he did not support the case of prosecution nor PW-11 Anil Ambatkar, who was co-panch on memorandum statement [Exh. 49] and on Seizure-Panchnama [Exh. 50] of accused No. 1-Ratiram. In that event, prosecution has got memorandum statement of accused No. 1 and consequent Seizure-Panchnama of weapons i.e. axe, sticks and clothes discovered at the instance of accused No. 1 proved from PW-13 Anil Kinge, P.S.I., the Investigating Officer, who has stated that at the instance of accused No. 1-Ratiram, above articles came to be seized. Though in the absence of evidence of panch-witnesses, since turned hostile, the evidence of Investigating Officer with reference to seizure of weapons and clothes at the instance of accused No. 1-Ratiram can be accepted. Before relying upon it, we find it necessary to consider that accused No. 1-Ratiram along with other three accused were all arrested on 21/12/1999, while the memorandum and discovery panchnama came to be effected on 24/12/1999. Before that, police had already effected search of house of accused-Ratiram but had not discovered any of these articles. Moreover, the place where from the articles are alleged to be seized at the instance of accused No. 1-Ratiram is easily accessible to other family members in the house of Ratiram. In that view of the matter, above evidence is of no consequence.

Evidence of PW-12 Dr. Meghnath Hulke when perused, it appears that it is limited to the point of his referring PW-2 Manohar under his requisition memo [Exh. 64] to hospital at Wardha. He has stated that in his examination he found patient was unconscious, and had sustained two injuries over scalp, one on abdomen and one on the chest. He has further stated about his replying query by the Investigating Officer thereby stating that the injuries sustained by Manohar could be caused by axe and sticks. His opinion is at [Exh. 65]. In the cross-examination, Dr. Meghnath has admitted that along with the query, Investigating Officer has not forwarded injury report of Manohar to him and has admitted that in his reference letter [Exh. 64], he has not stated the nature of injuries. The Medical Officer has admitted that the injuries found over chest and abdomen of Manohar are possible by fall on big stone and injuries sustained on head are possible by fall on a slate like sharp stone.

14. Having considering the medical evidence not establishing nature of injuries sustained by PW-2 Manohar and since admittedly injury certificate in respect of Manohar is not on record, we have no alternative than to discard the evidence of seizure of axe and sticks at the instance of accused No. 1, as in the absence of injury report and the nature of injuries, there is nothing to establish that the injuries sustained by Manohar were either incised wounds, contusion or laceration and as such recovery of weapons thus is of no consequence. So also for want of medical evidence, the evidence of Manohar of he being assaulted for

two hours and being dragged up to the distance of 20 feet also needs to be discarded.

In the Spot-Panchnama [Exh. 44], we find reference to blood. PW-6 Raju Kokate and PW-7 Kushab Kute, the panch witnesses, have not supported the prosecution. Spot-Panchnama is thus proved by the Investigating Officer. Having considering the contents of Spot-Panchnama establishing blood in the house of accused No. 1-Ratiram and evidence of witnesses, as discussed above, since established that PW-2 Manohar was in the house of accused No. 1-Ratiram and as from the evidence of PW-12 Dr. Meghnath Hulke, it is established that on 21/12/1999, Manohar was referred to him at 08:00 a.m. and was found having injuries on his person and as there is nothing on record brought on behalf of accused to establish as to under what circumstances blood was found at the house of Ratiram, fact of PW-2 Manohar being present in the house of Ratiram in injured condition is found to be established as there is nothing to establish that Manohar sustained injuries on his person due to fall nor anything is on record to establish as to under what other circumstances PW-2 Manohar happens to be in the house of accused No. 1-Ratiram, after he sustained bleeding injuries in any other manner.

15. The other material point, we find to note is that the incident is of dated 21/12/1999. From the evidence of PW-1 Pramod, Manohar was admitted in the hospital at Wardha initially for three days and subsequently in the hospital at Nagpur for three days and though according to the evidence, initially Manohar was unconscious, there is nothing on record to show as to why statement of Manohar was not recorded for about 1 1/2 months and thus possibility of Manohar implicating all the accused in the present incident cannot be ruled out. However, the evidence on record established the fact of Manohar having being injured and being present in the house of Ratiram and said accused-Ratiram has nowhere explained the circumstance as to how Manohar entered his house. Admittedly, accused No. 4 Pralhad is distantly related and is not resident of same village along with accused Nos. 1 to 3 and since there is no evidence that all accused lifted Manohar from his house to the house of Ratiram, available evidence on record do not establish involvement of accused Nos. 2 and 3 also.

16. Having considering the evidence on record and the case of prosecution, in the absence of injury certificate and non-examination of Doctors, who had treated Manohar, there is no evidence on record to know the nature of injuries sustained by Manohar or possibility of sustaining the same by which weapon. C.A. Report [Exh. 74] reveals that except on shirt of accused No. 1-Ratiram and on the sticks and axe, which were seized, no blood was found on clothes of other accused persons, which is a strong circumstance establishing presence of accused No. 1 with Manohar. One pajama was seized along with one pant under Seizure Panchnama [Exh. 50] having blood stains of blood group "AB" of PW-2 Manohar. One rope, gunny bag found on the spot and seized under Seizure-Panchnama [Exh. 45] on the same day were having blood. Blood group of

Manohar is "AB", which was found on the clothes and on the spot, which were seized on 21/12/1999 itself, i.e. just after the incident, which aspect goes to show that Manohar was found in injured condition in the house of accused No. 1-Ratiram. However, for the reasons stated, as aforesaid, and for want of medical evidence, there is nothing to establish that the injuries sustained by Manohar were sufficient to cause death and having considering above discussed evidence, we find no case against accused No. 2-Omprakash, accused No. 3- Prashant and accused No. 4-Pralhad, but involvement of accused No. 1-Ratiram alone can said to be established. However, in the absence of nature of injuries sustained by Manohar, the injuries can thus be considered as grievous. The injuries sustained by him and since Manohar was found confined in the house of Ratiram, prosecution can said to have established its case against accused No. 1 alone for the offence punishable under Sections 324 and 342 of the Indian Penal Code and has failed to establish other charges against accused No. 1 and all the accused for the offence punishable under Section 448, 342, 325, 307 read with Section 34 of the Indian Penal Code.

17. Having considering above discussed evidence, we hold accused No. 1-Ratiram guilty for the offence punishable under Sections 324, 342 of the Indian Penal Code and convict him for the period already under gone and accordingly pass the following order.

? Criminal Appeal No. 576/2004 is partly allowed.

? Criminal Appeal No. 691/2004 is dismissed.

? Muddemal property, being worthless, be destroyed after the period of appeal is over."