

(2019) 11 BOM CK 0075
In the Bombay High Court
Case No : Criminal Appeal No. 284 Of 1997

Sadashiv Babu Patil And Ors

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 28-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 452
Code Of Criminal Procedure, 1973 — Section 161, 437A

Citation : (2019) 11 BOM CK 0075

Hon'ble Judges : S.S. Shinde, J;N.B. Suryawanshi, J

Bench : Division Bench

Advocate : Niranjana S. Mundargi, Keral Mehta, S.V. Sonawane

Final Decision : Allowed

Judgement

N.B. Suryawanshi, J

1. The conviction of the appellants-original accused by the learned trial court in Sessions Case No.169 of 1993, dated 29th March, 1997, for the offence punishable under section 302 of the Indian Penal Code (for short 'IPC'), is impugned in the present criminal appeal.

2. The prosecution case can be summarised as follows:-

The informant PW-2 Avubai Mahadeo Patil is a resident of village Vadange Padali in Karveer Taluka. Her husband Mahadeo Patil has two brothers, viz., Dinkar and Sadashiv. Accused No.1 Sadashiv also resides in the same village alongwith his sons Sambhaji (accused No.2) and Shivaji (accused No.3). Accused No.1 had dispute with Mahadeo on account of agricultural land known as 'Dongarakadche Shet'. Because of the dispute, Mahadeo and Sadashiv were not on talking terms since last more than one year, before the date of incident. PW-3 Sampatti, daughter of Avubai and Mahadeo, is married in the same village to Shahaji Varambale and she was helping her mother in her agricultural and household work by going to her maternal home every day.

On 30th March, 1993, at about 10.00 p.m., PW-2 Avubai and PW-3 Sampatti had served the meals to deceased Mahadeo, who was sitting in the Sopa (front portion/Vharanda) and they were having dinner inside the house. At that time, all the three accused persons entered the informant's house and started giving abuses to Mahadeo in filthy language and they lifted Mahadeo, took him out of the house and after some time they brought him back. At that time, Mahadeo had bleeding from his nose. His clothes were bloodstained and his condition was serious. All the accused left him on the cot and ran away. PW-2 Avubai and PW-3 Sampatti sprinkled water on Mahadeo's face and they gave him two tea-spoonful of water and Coffee. Thereafter, they took him to hospital, however Mahadeo had expired.

PW-2 Avubai, wife of deceased Mahadeo, gave information to Karveer Police Station, which was registered at C.R. No.84 of 1993, under section 302 of the IPC.

After completion of investigation, charge-sheet was filed and the case was committed to the Sessions Court.

The learned trial court framed charge against accused persons under sections 302, 452 r/w. 34 of the IPC. The accused pleaded not guilty.

3. The prosecution in support of its case, examined 9 witnesses. PW-1 Balechand Miraso Momin is the panch witness of seizure of clothes of the accused (Exhibit 20). PW-2 Avubai, the wife of deceased, who is the informant and PW-3 Sampatti, the daughter of the deceased are the eyewitnesses. PW-4 Bajirao Gaikwad and PW-5 Ramesh Patil are the panch witnesses of house search of the accused, have turned hostile. PW-6 Rajekhan Mullani and PW-7 Govind Sankpal are the eyewitnesses, but they have not supported the prosecution case and were declared hostile. PW-8 P.S.I. Ananda Gurav is an Investigating Officer and PW-9 P.C. Satish Bhosale is the carrier of articles to the Chemical Analyser.

4. The learned trial court found all the accused guilty and convicted them for murder and imposed sentence of life imprisonment and fine.

5. We have heard the learned counsel for the appellants-original accused and the learned APP for the State. Perused the original record and the notes of evidence and the relevant documents, with the assistance of the learned counsel for the appellants and the learned APP.

6. The prosecution has failed to examine the medical officer, who conducted the post-mortem. Post-mortem report was brought on record in the evidence of investigating officer. The death of Mahadeo as per post-mortem report appears to have been due to traumatic fracture and dislocation of C-1 and C-2. Apart from this injury, there were abrasions over great toe, middle and second finger of left leg of deceased Mahadeo. Contusion and haematoma over right upper and lower eye-lid and over the cheek was also found. Taking into consideration the cause of death, the dislocation of C-1 and C-2 is also possible by fall. The prosecution

needs to prove that the said dislocation was homicidal and the accused persons are responsible for the said dislocation.

7. If we consider the evidence of the eyewitnesses, PW-2 Avubai, who is the wife of deceased, has stated in her evidence that there was dispute between deceased and the accused persons on account of agricultural land, known as 'Dongarkadchi Jamin' and they were not on talking terms. She herself, her husband and daughter Sampatti were looking after the agricultural land and daily Sampatti was coming to her for work in the agricultural field and in the evening she used to go to her house. The incident took place about 3 years before, it was about 9.30 p.m. After the meal was served to Mahadeo on the cot, in Sopa, Sampatti and Avubai were taking meals in the middle room. At that time, all the three accused persons came to Mahadeo and started abusing. Avubai and Sampatti went there and asked the accused, reason for the abuses. Accused Shivaji threatened Sampatti that she should not give abuses otherwise he will make her teeth fall. Then, all the accused lifted Mahadeo and took him out. Avubai was standing on the threshold of the house. Half an hour later, all the accused brought Mahadeo back and left him on the cot in the Sopa. Mahadeo's nose was bleeding and his shirt was bloodstained. On asking by Sampatti, Mahadeo said, 'Bal Ghat Jhala', 'Tighani Mala Marale'. Avubai poured one tea-spoonful of water in the mouth of Mahadeo and Sampatti went to bring the doctor. The doctor came and declared Mahadeo dead. Thereafter, Avubai went and lodged the First Information Report.

PW-2 Avubai admitted in her Examination-in-Chief itself that she did not mention her husband saying, 'Bal Ghat Jhala', 'Tighani Mala Marale' in her statement under section 161 of Cr.P.C., as she claims to be frightened and in disturbed state of mind.

In the cross-examination, this witness admitted that all the brothers of husband are cultivating their land separately and still the land is in the name of her father-in-law. She claimed ignorance as to whether some days after the incident, a declaration was made in the village by Police Patil, by beat of drums informing that if anybody was knowing about the incident of her husband's murder, the same be informed to the police. She denied having acquaintance with Sambhaji Ishwara Patil of Vadange, but admitted to know him by name. In the next breath, she stated that for last 10 years, he is looking after their agricultural land as a partner in cultivation. She further admits that two days after the incident, police had shown her an application given by deceased Mahadeo. She has further admitted that Sampatti's husband Shahaji had performed a second marriage. She has stated that at the time when accused persons entered the house, her husband was taking meals and half Bhakri was yet to be eaten. She or Sampatti did not abuse the accused persons. Her husband was lifted by the accused in the sitting position itself. Some of the food in the plate, had fallen down. Her husband tried to hold the cot restraining the accused from taking him out. However, her husband did not raise any shouts. She did not try to restrain the

accused from taking her husband out. The accused were in their house for about 5-10 minutes and the accused were abusing her husband in loud voice. Nobody in the locality had gathered. She did not feel that there was danger to the life of her husband and that she should raise shouts and collect the villagers. Even after her husband was taken out, she was not shouting. Her daughter Sampatti did not try to restrain the accused and they were watching the incident helplessly. She or Sampatti did not feel it necessary even after the deceased was brought back, to tell the neighbours, though they saw bloodstains on the shirt of the deceased. She did not raise any hue and cry, even after seeing Mahadeo in bleeding condition.

8. Material omissions are brought on record in the evidence of PW-2 Avubai. She did not state before the police that accused Shivaji threatened her daughter saying that he would fell her teeth.

She did not mention in her statement under section 161 of Cr.P.C. that half an hour after the incident, her husband was brought back, her husband said that there was treachery. He was telling the names of all the accused in vernacular. She also did not state the utterances by deceased Mahadeo, viz., 'Bal Ghat Jhala', 'Tighani Mala Marale'. She also did not disclose in her statement that her daughter went to the doctor, the doctor came there and said that her husband had expired. She could not assign any reason as to why the said statements are absent in her statement before the police.

9. PW-3 Sampatti, daughter of the deceased echoed the same version as like PW-2 Avubai. She has improved her version stating that after her father was brought back by the accused, he told that 'Ya Tighani Ghat Kela', the accused had taken him to the temple of Bhairoba, beat him by kicks and blows and they gave blows on his nose and twisted his head and that he was also beaten by sticks.

In the cross-examination, this witness was shown the application given by deceased Mahadeo. She admitted that inquiry was made by the police about the application with her. She denied that her father had given a complaint application saying that he had danger to his life from her. However, she admitted that there was an application by her father to the police stating that his life was in danger at the instance of his daughter. She also denied to know Sambhaji Ishwara Patil. She went to the extent of saying that she had not seen him. She denied that her husband is not staying with her. She further stated that since her father's death, her husband, in-laws and her brother-in-law alongwith his family, are staying at her maternal home. She denied that her husband had married second wife. She admits that accused persons were not on talking terms with them since last more than one year.

She did not ask the accused persons as to why they were giving abuses. Her son was also taking meals with her father. After seeing the accused abusing grandfather, her children stopped taking meals and stood up. However, they did

not raise any shouts or cries, so also, this witness and her mother did not raise any shouts. The meal plate had overturned. Her father did not resist when the accused lifted him. He only said 'leave him'. None of her children tried to embrace their grandfather. Though, Sampatti tried to restrain the accused, accused Shivaji gave her a jerk with his elbow, due to which she fell down. That time, she screamed, however none of her children came ahead and they were standing still. She did not sustain any scratches or abrasions due to fall.

10. Vital omissions are brought on record in the evidence of this witness. This witness did not state in her police statement that accused Shivaji gave a jerk by his elbow joint. She did not state that she was standing on the threshold. She also did not state that 10 to 15 minutes thereafter her father was brought back and when her father was brought back he had become motionless, that her mother filled coffee into mouth of her father, that her father told her that 'Tighani Ghat Kela' 'Lathani Marahan Keli' 'Man Pirangali', 'Kathine Manewar Marahan Keli'. She had no explanation to offer for these material improvements in her evidence.

11. After careful analysis of the evidence of these two eyewitnesses, it is clear that they have made improvements in their version and they are not telling truth before the court. There are material omissions in their evidence, which go to the root of the matter. Their conduct appears to be unnatural. These witnesses so also children allegedly present on the spot also did not raise any hue and cry, nor did they try to embrace their grandfather, who was being lifted and carried away. These eyewitnesses have gone to the extent of denying the application made by deceased Mahadeo expressing danger to his life from Avubai, Sampatti and Sambhaji Patil. All the omissions and contradictions from the evidence of these eyewitnesses are duly proved from PW-8 Ananda Gurav, Investigating Officer.

12. PW-8 Ananda Gurav, Investigating Officer has admitted in his cross-examination that on 31st March, 1993 the Police Patil of Village Padali by beat of drums made an appeal to the villagers that if any person had seen the incident or the persons carrying Mahadeo, they should give information to the police. Admittedly, nobody has turned up to give information to the police. Though, PW-8 Investigation Officer feigned ignorance about the application dated 29th March, 1993 given by deceased Mahadeo in the Police Station, however, after he was confronted with the photo copy of the complaint register maintained by their Police Station, he stated that it is regarding complaint application given by Mahadeo Patil of Padali. He gave the complaint against Sambhaji Ishwara Patil and three other residents of Padali. Though, he denied the suggestion that the prosecution has deliberately suppressed the said complaint application as the same was not supported to the prosecution case, fact remains that just two days prior to the incident deceased Mahadeo gave an application expressing threat to his life from his wife, daughter and Sambhaji Ishwara Patil. This renders the entire prosecution case doubtful and it appears from the evidence laid by the prosecution that the prosecution has suppressed the genesis of the crime.

13. The denial of acquaintance with Sambhaji Ishwara Patil and thereafter acceptance of the same also raise serious doubt about the version given by the eyewitnesses in the court. PW-2 Avubai and PW-3 Sampatti also contradict each other on certain aspects like second marriage of husband of PW-3, the oral dying declaration of deceased Mahadeo, which does not find place in the FIR. PW-3 Sampatti stated that her father disclosed that he was taken by the accused persons to Bhairoba temple, beaten there with kicks and blows and he received blows on his nose, his head was twisted and that he was also beaten by sticks. This fact is absent in the FIR as well as in the evidence of PW-2 Avubai. PW-3 Sampatti also deposed that she fell on the person of her father after the doctor declared him dead and her saree was stained with the blood of her father. However, she did not show the saree to the police.

14. In the house/spot panchanama, nothing was found which would corroborate the version of PW-2 Avubai and PW-3 Sampatti, that the incident had taken place in the house of the deceased, no food was found lying on the cot or in the Sopa on the spot of incident, so also in the panchanama near Bhairoba temple, nothing was found. There is no evidence of dispute between the accused and the deceased. The CA reports are inconclusive and no bloodstains are found on the clothes of the accused persons, so also on the sticks. There are no injuries of assault by stick on the neck of deceased Mahadeo. Hence, medical evidence also does not support the version of PW-2 Avubai and PW-3 Sampatti.

15. PW-4 Bajirao and PW-5 Ramesh, who are the panch witnesses of the house search of the accused, have turned hostile and their evidence is of no help to the prosecution.

16. PW-7 Govind, who was eyewitness, has also turned hostile and was cross-examined at length by the prosecution. However, nothing material could be elicited from this witness. In his cross-examination by defence, this witness has admitted that deceased was addicted to liquor and there used to be frequent quarrels between the deceased and his wife and daughter. He has further stated that some times the wife and daughter used to beat deceased Mahadeo. He also accepted the fact that some days before the incident, Mahadeo had given a complaint to the police that he had danger to his life from his wife and daughter. His evidence casts a shadow of doubt on the prosecution case.

17. Admittedly, the accused and deceased Mahadeo's family were not on talking terms, since last more than one year. No incident has taken place prior to this incident, which prompted accused persons to come and assault deceased Mahadeo. There is no material on record to show that the accused had any motive and/ or reason to assault Mahadeo. On the contrary, the evidence on record suggests that PW-2 Avubai and PW-3 Sampatti probably had the reason to eliminate Mahadeo.

18. The learned counsel for the appellants was right in placing reliance in Sampath Kumar Vs. Inspector of Police, Krishnagiri [(2012) 4 SCC 124] to

support the argument that it is wholly unsafe to rely upon a version of the eyewitnesses with material improvement, unless it is corroborated by some other independent witness that may probabilise their testimony. The Hon'ble Apex Court has held in this judgment that if there are material improvements in the version of witnesses, it is wholly unsafe to rely upon their testimony unless it is corroborated by some other independent evidence that may probabilise his version. The Hon'ble Apex Court in paragraph 26 held as follows :-

"This Court in Vadivelu Thevar Vs. State of Madras classified witnesses into three categories, namely, (i) those that are wholly reliable, (ii) those that are wholly unreliable, and (iii) who are neither wholly reliable nor wholly unreliable. In the case of the first category the courts have no difficulty in coming to the conclusion either way. It can convict or acquit the accused on the deposition of a single witness if it is found to be fully reliable. In the second category also there is no difficulty in arriving at an appropriate conclusion for there is no question of placing any reliance upon the deposition of a wholly unreliable witness. It is only in the case of witnesses who are neither wholly reliable nor wholly unreliable that the courts have to be circumspect and have to look for corroboration in material particulars by reliable testimony direct or circumstantial."

19. If the ratio of the above authority is applied to the facts of the present case, the testimony of PW-2 Avubai and PW-3 Sampatti can be said to be wholly unreliable. Though, their presence at the spot of incident cannot be doubted, their conduct during and after the incident is absolutely unnatural. There is no explanation from these two witnesses as to why they were silent when Mahadeo was taken away by the accused persons and even when he was brought back in injured condition. One fails to understand as to what prevented these witnesses from raising hue and cry on both the occasions. Similarly, the children who were present also did not cry or try to embrace their grandfather. The conduct of these two witnesses during the incident is totally contrary to the natural human conduct, which in our opinion, renders their evidence doubtful. They are not telling truth before the court and these witnesses are unworthy of credit.

20. In the light of above discussion, we are unable to place reliance on the version of PW-2 Avubai and PW-3 Sampatti. There is no corroboration to their evidence. According to us, the prosecution has utterly failed to prove its case beyond reasonable doubt and the conviction recorded by the learned trial court is unsustainable.

21. In the result, the criminal appeal deserves to be allowed. Hence, the following order :-

ORDER

(i) Criminal Appeal No.284 of 1997 is allowed.

(ii) The impugned judgment and order of conviction passed by the learned IInd Additional Sessions Judge, Kolhapur in Sessions Case No.169 of 1993, dated

29th March, 1997, thereby convicting the appellants-original accused for offence punishable under section 302 of the IPC, is quashed and set aside.

(iii) The appellants-original accused are acquitted of all the charges.

(iv) The appellants-original accused shall furnish bail of Rs.15,000/- each, with one surety in the like amount, in terms of section 437-A of Cr.P.C.