

(2015) 08 BOM CK 0079
In the Bombay High Court
Case No : Criminal Appeal No. 18 of 2000

Satyapal and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 323, 326, 34

Citation : (2015) 08 BOM CK 0079

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : Avinash Gupta, for the Appellant; Kalyani Deshpande, APP,
Advocates for the Respondent

Final Decision : Allowed

Judgement

M.L. Tahaliyani, J—Heard learned advocate for the appellants and learned Additional Public Prosecutor for the respondent/State.

2. The appellants have been convicted for the offences punishable under Sections 326 r/w. 34 and 323 r/w 34 of the Indian Penal Code. The appellants and accused No. 2 Harish Bhavnani were prosecuted for the offences punishable under Sections 307 r/w 34 and 323 r/w 34 of the Indian Penal Code. The learned trial Judge after concluding the trial came to the conclusion that the offence punishable under Section 307 r/w 34 of the Indian Penal Code could not be established. As far as accused No. 2 was concerned he was not found guilty for the alleged offences. The appellants were found guilty for the offences punishable under Sections 326 r/w 34 and 323 r/w 34 of the Indian Penal Code.

3. The case of the prosecution is that P.W. 3 Jai, P.W. 5 Vijay, P.W. 7 Rakesh, P.W. 8 Ritesh had visited the shop of appellant No. 1 Satyapal Satija who was selling audio cassettes on 21.10.1997. The witnesses did not get cassette of their choice and therefore, they were about to return from the shop. Appellant No. 1 Satyapal suspected that one of his cassettes was missing and therefore, he demanded

Rs.20/- for the missing cassette. It is also alleged that appellant No. 1 pointed a weapon like a knife and therefore, P.W. 3 Jai rushed to his brother Mukesh. P.W. 2 Mukesh reached the shop within a very short time. It is further alleged that P.W. 2 Mukesh was also assaulted by appellant No. 1. Therefore, Mukesh ran away from the spot and while running away he informed P.W. 1 Sujit that appellant No. 1 was the assailant. P.W. 1 Sujit came on the spot i.e. near the shop of the appellant No. 1. It is alleged that appellant No. 1 assaulted P.W.1 Sujit by means of knife. It may be noted here that in the earlier incident P.W. 5 Vijay and P.W. 8 Ritesh were assaulted by appellant No. 1 and they had sustained minor injuries.

4. While P.W.1 Sujit was being assaulted by appellant No. 1 Satyapal, P.W. 4 Bharat and one Shrawan reached the spot and they rescued him and they took him to the Police Station and thereafter to K.T.S. Hospital. P.W. 1 Sujit was examined by the Medical Officer and was admitted for treatment. He had sustained six injuries. Most of them in the front upper portion of his body. Though the injuries were not very serious, but they were on the vital parts of the body. After treatment for a few days he was discharged from the hospital.

5. The matter was reported to police on the same day. First Information Report was registered against the appellants and accused No. 2 and investigation was carried out. After preparing spot panchnama statements of the witnesses were recorded. Chargesheet was filed after completion of the investigation.

6. The prosecution has examined almost all the witnesses who had come to the shop of the appellant No. 1 either at the time of the incident or at a later stage. P.W. 5 Vijay and P.W. 8 Ritesh were assaulted in the earlier incident and they had sustained minor injuries. P.W. 5 Vijay has stated that since the cassette of their choice was not available in the shop they started returning from the shop. Appellant No. 1 suspected that one cassette was taken away by P.W. 5 Vijay and his friends and therefore, he demanded Rs.20/-. Appellant No. 1 thereafter started abusing them. P.W. 5 Vijay has also stated that P.W. 3 Jai informed P.W. 2 Mukesh about the incident. This witness has stated that he was assaulted by appellant No. 1 and he had sustained scissors blow on his back. This witness has also stated that P.W. 8 Ritesh had also sustained a blow. Ritesh has been examined as P.W. 8. This witness has stated that he had sustained injuries on lower portion of his chest.

7. P.W. 3 Jai has stated that he got frightened and therefore, he rushed to his brother who came on the spot. Evidence of this witness shows that P.W.2 Mukesh had reached the spot when P.W.3 Vijay and P.W. 8 Ritesh were present in the shop.

8. P.W. 2 Mukesh has stated that he was assaulted by appellant No. 1. He has stated that P.W. 8 Ritesh and Vicky ran away from the spot. P.W. 2 Mukesh also ran behind them. All of them ran towards Jaishree Talkies. P.W. 1 Sujit, P.W. 4 Bharat and Shrawan were present near the paan shop. P.W. 2 Mukesh informed

P.W. 1 Sujit that appellant No. 1 Satyapal had assaulted him. Thereafter, P.W. 2 accompanied by P.W. 1 went to the shop of appellant No. 1. It is stated by him that appellant No. 1 Satyapal and his brother appellant No. 2 Laxman (original accused No. 3) started assaulting him. P.W. 2 anyhow managed to run away from the spot.

9. P.W. 4 Bharat has stated in the evidence that when P.W. 2 Mukesh informed that he was assaulted by appellant No. 1, he reached the shop of the appellant No. 1 along with P.W. Nos. 1 and 2. It is stated by him that appellant No. 1 had inflicted knife blows on P.W. 1 Sujit and Sujit had therefore, raised alarm for getting relief from appellant No. 1. It is further stated by this witness that appellant Nos. 1 and 2 and accused No. 2 rushed towards this witness. He, therefore, went away from the spot and informed Shrawan that P.W. 1 Sujit was being assaulted by appellant No. 1 by means of knife. This witness went to the spot of the incident again and found that P.W. 1 was lying near the shop of appellant No. 1 and that appellant No. 2 Laxman was inflicting kick blows on P.W. 1. P.W. 1 was taken to Gondia city Police Station and thereafter to K.T.S. Hospital.

10. P.W. 1 Sujit stated that when he reached the spot he was assaulted by appellant Nos. 1, 2 and others. He felt giddiness and fell down and he regained consciousness after some time. He was beaten by three persons till that time also. It is stated by him that P.W. 4 Bharat and Shrawan reached the spot and took him to hospital.

11. If the evidence of these witnesses, without going to the cross-examination, is examined carefully, what can be seen is that shop of the appellant No. 1 was visited by P.W. Nos. 3, 5, 6 and 8 and there was some dispute over alleged theft of one of the audio cassettes. Appellant No. 1 had demanded Rs.20/-. The witnesses refused to pay. In the meantime, aforesaid incident, was reported to P.W. 2 Mukesh. P.W. 2-Mukesh reached the spot and there was alleged assault on P.W. 2. P.W. 1 came to know about the same and he reached the spot. It is at that time that P.W. 1 was assaulted by the appellants and the accused No. 2. In the meantime, Bharat and P.W. 4 Shrawan reached the spot and they had rescued P.W. 1 and took him to the hospital.

12. It can be gathered from careful examination of the evidence, particularly of Investigating Officer that appellant No. 1 himself had sustained injuries. These injuries are not explained by the prosecution. Appellant No. 1 in his statement under Section 313 of the Code of Criminal Procedure has stated that there was a quarrel between him and the boys who had come to purchase an audio cassette. It is stated by him that P.W. 1 and Shrawan had brought one scissors from the paan shop and had assaulted him by means of scissors. Appellant No. 1 had sustained injuries on chest, hand and leg. This fact is substantiated by medical certificate which was perused by the learned trial Judge and he has noted this fact in his judgment also.

13. In the circumstances, in my opinion, it was obligatory on the part of the

prosecution to explain the injuries sustained by appellant No. 1. One cannot ignore this fact by simply saying that non-explanation of the injury on the person of the appellant No. 1 did not in any manner shatter the evidence of the prosecution witnesses. What can be concluded is that the prosecution has intentionally suppressed the genesis of the case. The incident must not have occurred in the manner described by the prosecution witnesses. What can further be noted is that scissors is not an instrument which is normally used in the cassettes shop. A pair of scissors is normally available in paan shop. The statement of appellant No. 1 that scissors was brought by Shrawan and P.W. 1 Sujit cannot be rejected because it appears to be most probable. It is settled law that the accused is not supposed to prove his defence beyond all reasonable doubts. If the accused is able to probablise his defence he is entitled to get benefit of the same. In the present case, the appellant No. 1 has stated that scissors was brought by Shrawan. The prosecution schemingly avoided to bring Shrawan as prosecution witness. As such material facts have been suppressed and distorted version of the incident has been presented before the trial Court.

14. In my opinion, the trial Court should not have accepted the evidence of the prosecution witnesses when it was found to be distorted and tainted. The learned trial Court should have also rejected the evidence on the ground that the injuries found on the person of the appellant No. 1 were not explained. I am aware of the law that non-explanation of the injuries on the person of the accused is not always fatal to the prosecution. It depends on the facts of each case. In the present case, it is abundantly clear that non-explanation of the injuries on the person of appellant No. 1 and non-production of the prosecution witness Shrawan before the trial Court has proved to be fatal to the prosecution case.

15. Before I pass final order, it may be necessary to state that in such a situation, the learned trial Judge should have summoned Mr. Shrawan. This can be done by this Court also. However, I am not inclined to pass such an order after lapse of 16 years. Hence, I pass the following order.

- i. The appeal is allowed.
- ii. The judgment and order passed by learned Additional Sessions Judge, Gondiya in Sessions Trial No. 104 of 1997 is set aside.
- iii. The appellants stand acquitted of the offences punishable under Sections 326 r/w 34 and Sections 323 r/w 34 of the Indian Penal Code.
- iv. Their bail bonds shall stand cancelled.

The appeal, accordingly, stands disposed of.