

(1997) 02 BOM CK 0032

In the Bombay High Court

Case No : Criminal Appeal No's. 326 and 156 of 1984

State of Maharashtra and etc.

APPELLANT

Vs

Manohar Yeshwant Patil and others

RESPONDENT

Date of Decision : 12-02-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(1), 482
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1997) BomCR(Cri) 630 : (1997) CriLJ 3114

Hon'ble Judges : Vishnu Sahai, J;Ranjana Desai, J

Bench : Division Bench

Advocate : V.T. Tulpule, Public Prosecutor and Vineet B. Naik, for the Appellant;
A.Y. Sakhare, for the Respondent

Judgement

Sahai, J.—Since both these matters arise out of the same set of facts and a common impugned judgment, we propose disposing them of by one judgment.

2. The appellant aggrieved by the judgment and order dated 16-1-1984, passed by the Additional Sessions Judge, Kolhapur, in Sessions Case No. 69 of 1983, acquitting the respondents for the offence punishable u/s 302 r.w. S. 34 I.P.C. and alternatively for the offence under S. 302 I.P.C. has come up in appeal before us under S. 378(1) of Cr.P.C. The same appeal is numbered as Criminal Appeal No. 326 of 1984. It may be mentioned that appeal against respondent No. 4 stands abated vide orders of this Court dated 31-3-1987.

By the said judgment, the trial Judge issued notice of perjury to the three eye witnesses namely Maruti Shripati Patil, P.W. 1, Prakash Shivram Patil, P.W. 2 and Santu Hari Kambale, P.W. 3. His finding in paragraph 23 of his judgment is that the said witnesses have perjured joined hands in order to seek their political vengeance against the accused persons (Respondents). Criminal Revision Application No. 156 of 1984, has been preferred by Maruti Shripati Patil P.W. 1 with a prayer that the said notices of perjury issued to him and the other two eye witnesses be quashed.

3. Briefly stated the prosecution case runs this; Deceased Shivram Ravji Patil, P.W. 1 Maruti Shripati Patil, P.W. 2 Prakash Shivram Patil, P.W. 3, Santu Hari Kamble and the respondents are the residents of village Mahalunge situated in Tal. Karvir in District Kolhapur. The deceased and the said eye witnesses belonged to one political group (led by the deceased) and the respondents belonged to another political group (led by respondent Sadashiv Laxman Patil). There was enmity between the two groups.

The incident in question is alleged to have taken place on 10-4-1983 at about 10.00 a.m. in village Mahalunge. On the said date at about 8.00 a.m. the deceased Shivram Ravji Patil had gone to his field lying towards southern side of his house. At about 10.00 a.m. when he was returning from his field, and was about 100 ft from his house, the respondent all of sudden emerged from Kondiba Dhondiram's house. They stood in front of him. Respondent Manohar questioned him as to how the members of his society were selling milk to his dairy. He replied that it was better if he asked this from the members of his society who were selling milk. On this respondent Manohar said that he would teach him a lesson; caught hold of his shirt; and felled him on the ground. He then sat on his chest; started throttling him and assaulting him by inflicting blows on his face. The other 3 respondents started inflicting blows with fists and kicks on his stomach and thighs. This incident is alleged to have been seen by Maruti Shripati Patil, Prakash Shivram Patil and Santu Hari Kambale. On seeing the witnesses the respondents are said to have run away. Thereafter, the three eye witnesses shifted Shivram, who was unconscious, to his house and gave him some water. P.W. 8 Atmaram Patil went and called Dr. Kanbarkar who on examining Shivram found him dead.

4. Thereafter Maruti Patil, P.W. 1 came to Karvir Taluka Police Station where he lodged his F.I.R. the same day at 2.30 p.m. The F.I.R. is at Exh. 11.

5. The post-mortem examination of the corpse of Shivram Patil was conducted on 10-4-1983, between 9.30 p.m. to 10.20 p.m. by Dr. Vithal Bhosale P.W. 9, Dr. Bhosale found the following ante-mortem injuries on the person of the deceased;

1. Abrasion over the back in the mid line at the level of T - (12,2" x 1").
2. Abrasion over left knee (1.1/2" x 1" 4").
3. Contusion over the right shoulder (1" x 1") bluish in colour.

(There was bleeding in subcutaneous tissues under injury No. 3 on dissection.)

No found that the right ventricle and the right side of the heart was empty and stomach and its contents, NAD, and empty.

Dr. Bhosale felt that the cause of death could only be determined after viscera report was available. After receipt of the viscera report from the Chemical Analyst he opined that the probable cause of death was cardiac arrest due to vasovagal shock.

6. The investigation was conducted in the usual manner and thereafter the respondents were charge-sheeted.

7. The case was committed to the Court of Sessions in due course. In the trial Court the respondents were charged in the manner stated in paragraph No. 1 of this judgment. To the said charges they pleaded not guilty and claimed to be tried. Their defence was that of denial.

8. During trial in all the prosecution examined 11 witnesses. Three of them namely Maruti Shripati Patil, Prakash Shivram Patil and Santu Hari Kambale P.Ws. 1, 2 and 3 respectively, were examined as eye witnesses.

In defence no witness was examined.

9. After recording; the evidence adduced by the prosecution; the statements of respondents u/s 313 of Cr.P.C.; and hearing learned counsel for the parties, the learned trial Judge acquitted the respondents on both the counts on which they had been charged. He also issued notices of perjury to the three eye witnesses.

10. As observed earlier Criminal Appeal No. 326 of 1984, has been preferred by the appellant-State of Maharashtra, against acquittal of the respondents for the offences u/s 302 r/w. S. 34 I.P.C., in the alternative u/s 302 I.P.C. Criminal Revision Application No. 156 of 1984, has been preferred by Maruti Patil, P.W. 1 with the prayer that the notices of perjury issued by the trial Court against him and the other two eye witnesses namely Prakash Patil, P.W. 2 and Santu Kambale, P.W. 3 be quashed.

11. At the very outset, we would like to point out that technically speaking it would not be possible to entertain the prayer for quashing of notices of perjury issued against eye witnesses Prakash Patil and Santu Kambale because they have not separately challenged by them. However, there is no legal embargo, once this Court is satisfied that the notices of perjury issued against the said witnesses are unwarranted on the material on record and in the interests of justice. Then it can quash them by invoking it's inherent powers u/s 482 of Cr.P.C. But such an exercise has to be sparingly made by this Court because the time honoured rule is that a party which wants an order to be quashed must challenge that order.

12. At the very outset we have cautioned ourselves that we are seized of the matter in an appeal against acquittal, wherein in our judgment, the law is that no interference is resorted to by the appellate Court unless the view of acquittal is either based on a grossly reasonable appreciation of evidence or is vitiated by a manifest illegality.

13. Whether the impugned judgment falls in the said parameters is the question which we have to decide. Coupled with it is the question whether the notices of perjury issued to the three eye witnesses are warranted on the material on record and are conducive to the interest of justice.

14. We have examined the impugned judgment and the evidence on record and we are implicitly satisfied that the view of acquittal could have been reasonably arrived at. A perusal of the evidence of the three eye witnesses namely Maruti Patil, Prakash Patil and Santu Kambale P.Ws. 1, 2 and 3 respectively, shows that all of them were interested witnesses. Whereas Maruti Patil was nephew of the deceased, Prakash Patil was his son and Santu Kambale was also interested inasmuch as during his cross examination, in paragraph 2. He admitted that when the son of the deceased Prakash Patil was working as Post Master at Mahalunge, his son was also working there. It is well settled that the evidence of interested witnesses has to be evaluated with caution.

15. A very safe method of measuring the veracity of an interested witness is to examine whether it is conformity with the medical evidence. If it is and there is no inherent improbability in it, it should be accepted. If not, not.

16. In the instant case, we find that the ocular account furnished by all the eye witnesses is at variance with the medical evidence. We first begin with Maruti. In his F.I.R. he has categorically stated that respondent Manohar sat on the chest of the deceased and started pressing his neck. However, when the autopsy report of the deceased did not reveal death by throttling and instead the medical evidence revealed that the deceased died due to cardiac arrest, in the trial Court Maruti Patil and the other two eye witnesses namely Prakash Patil and Santu Kambale P. Ws. 2 and 3 stated that Manohar sat on the chest of Shivram and caught hold of his neck. We are not prepared to accept this modulation in the prosecution case.

The trial Judge has also mentioned that the ocular account was at variance with the medical evidence in two other ways :-

(a) all the three eye witnesses stated that Manohar assaulted the deceased on his face but the post-mortem report belied this; and

(b) all the three eye witnesses also sated that respondents 2 to 4 assaulted the deceased on his thighs and stomach but the mortem report falsified this;

This observation of the trial Judge is correct as would become apparent from a perusal of the ante-mortem injuries of the deceased detailed in Paragraph 5 of our judgment. The said paragraph shows that no injuries on the face, stomach and thighs of the deceased were caused.

17. In view of the dichotomy between the ocular account and the medical evidence, in our view, the learned trial Judge was wholly justified in rejecting the evidence of the three eye witnesses. The learned trial Judge has also assigned some other reasons for rejecting their testimony and we also find them to be plausible. Since the size of this judgment would unnecessarily increase, we are not adverting to them.

18. In our view the learned trial Judge was wholly justified in acquitting the respondents for offences u/s 302 r.w. S. 34 I.P.C., in the alternative u/s 302 I.P.C.

19. We now come to Criminal Revision Application No. 156 of 1984. It is well-settled that a notice of perjury should only be issued if it is warranted in the interests of justice and the person against whom it is issued is palpably, shown to be liar. Bearing this in mind, we are examining the feasibility of issuing of the said notices on the part of the trial Judge.

20. We feel that considering the overall circumstances, the evidence on record does not indicate with certainty that the three eye witnesses namely Maruti Patil, Prakash Patil and Santu Kambale were liars.

21. While issuing notices of perjury the Court has to exercise a delicate balance between two extremes; One being that people giving perjured evidence should not be allowed to go scott-free for that would be giving a licence to persons to give perjured evidence. On the other hand the Court has to equally bear in mind that being very sensitive on this issue and approaching evidence scathingly and easily jumping to the conclusion that witnesses are liars would result in people shying from giving evidence in Courts; a tendency which is on the increase in our country.

22. In our view balancing the overall considerations, it was not appropriate for the trial Judge to issue notices of perjury against the three eye witnesses.

It is true that only Maruti Patil has challenged the said notice in the form of Cri. Revn. Application No. 156 of 1984; both on his behalf and on that of the other two witnesses. This cannot be done in law. But as observed earlier that if this Court is satisfied that issuing of such a notice is unwarranted in the interests of justice, it can invoke its inherent powers u/s 482 Cr.P.C. and quash the same vis-a-vis, others in spite of the fact that they might not have challenged the said notice. But as mentioned earlier such use of inherent powers has to be sparingly made.

We do however, feel that the instant is one of these cases wherein we should exercise our inherent powers.

23. In the result :-

(A) Criminal Appeal No. 326/84 is dismissed against respondents 1 to 3. The acquittal of the respondents is confirmed. They are on bail. They need not to surrender. Their bail bonds stand cancelled and sureties discharged. As mentioned in paragraph 1 appeal against respondent No. 4 stands abated.

(B) Criminal Revision Application No. 156/84 is allowed. The perjury notice issued by the trial Judge against P.W. 1 Maruti Shripati Patil is quashed.

(C) We also exercise our inherent powers u/s 482 of Cr.P.C. and quash the perjury notices issued by the trial Judge against P.W. 2 Prakash Shivram Patil and P.W. 3 Santu Hari Kambale.

In case a certified copy of this judgment is applied for, the same shall be issued on an expedited basis.

24. Order accordingly.