
(1999) 12 BOM CK 0012
In the Bombay High Court
Case No : Criminal Appeal No. 540 of 1995

State of Maharashtra	Vs	APPELLANT
Ashok Bhaskar Gharat		RESPONDENT

Date of Decision : 04-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(i)
Penal Code, 1860 (IPC) — Section 307, 390, 394, 397

Citation : (1999) 12 BOM CK 0012

Hon'ble Judges : Vishnu Sahai, J;D. G. Deshpande, J

Bench : Division Bench

Advocate : A. M. Shringarpure, app, for the Appellant; Vinod L. Desai, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this appeal preferred u/s 378(i) of the Criminal Procedure Code, the State of Maharashtra impugns the judgment and order dated 3rd May 1995 passed by Additional Sessions Judge, Raigad Alibag, in Sessions Case No. 18 of 1995, acquitting the respondent for offences punishable under sections 307 and 394 read with section 397 of the Indian Penal Code.

2. In short the prosecution case runs as under :--

The informant-victim Sudhir Keshav Raut (PW2), at the time of incident was working as a turner in Rajesh Industry in village Chaul. In spare time he was looking after and watering grove of Nandkumar Vartak (PW6) situated in the said village. In night time he used to keep a watch on the said grove and stay in a room of a house constructed therein, in the said grove, at the time of incident, there were trees of betel nut and coconut.

On the date of incident (8-12-1994) at about 9.45 p.m. he went to the grove and while he was inside the house, situated in the said grove, he heard some noise. Consequently he came out; flashed torch; and saw that the respondent Ashok

Gharat, was on betel nut tree, removing betel nut. The informant-victim reprimanded him, resulted in his getting down from the tree and inflicting seven knife blows on his hand, chest and abdomen.

As a consequence of assault launched by the respondent, blood started oozing out from the injuries of the informant-victim and his clothes became soaked with blood. He ran away to his house leaving behind his torch and slippers on the place of incident. On reaching his house, his parents asked him as to what had happened and he informed them that the respondent had assaulted him with a knife. They cried. In the mean time Shashikant Raut (PW5) and some others came there. The informant-victim also informed Shashikant Raut that the respondent had assaulted him.

The informant-victim was removed in the auto rickshaw of one Badekar to Civil Hospital. Alibag.

3. The injuries of the informant-victim were medically examined in Civil Hospital, Alibag, by Dr. Arun Gawali (PW3) at 11.45 p.m. on the same day. Dr. Gawali found on his person the following injuries :-

(1) Stab wound on right chest 3" medial to nipple 1" x 1/4 cm. x deep to pleural cavity, margins were clear cut.

(2) Stab wound left chest 1" below nipple 1 cm. x 1/4 cm. deep to pleural cavity. Margins were clear.

(3) Stab wound right hypochondrium at tip of 9th rib 1.5 cm x 1/4 cm. deep to peritoneal cavity.

(4) Stab wound right iliac region 1" medial to anterior superior iliac spine 1 cm x 1 cm x deep to peritoneum plus omentum seen.

(5) Stab wound left anterior superior iliac spine 1 cm x 1/2 cm x deep peritoneum cavity.

(6) 2 stab wounds on right upper arm 4" above elbow 1 cm x 1/2 cm. deep to muscle.

(7) Left arm stab wound 1 cm x 1/2 cm. deep muscle anterior aspect.

(8) Vertical linear abrasion right anterior chest 6" long vertical direction.

In the opinion of Dr. Gawali the said injuries were caused by sharp and pointed weapon and Injuries Nos. 1 to 5 were grievous in nature. In his deposition he stated that the said injuries were sufficient in ordinary course of nature to cause death and could be caused by the knife shown to him (Article No. A)

4. The evidence of PHC Balkrishna Mhatre (PW 4) shows that on 9-12-1994 at about 1.15 a.m. P.S.I. Alibag Police Station directed him to proceed to Civil Hospital, Alibag and record the F.I.R. His evidence shows that after ascertaining from Dr. Gawali, whether the informant-victim was in a position to make the

F.I.R. and on Dr. Gawali replying in the affirmative, he recorded his F.I.R. (Exhibit 15)

The evidence of Dr. Gawali shows that the police recorded the F.I.R. about one and a half hours after the informant-victim had been admitted in Civil Hospital, Alibag.

On the basis of the F.I.R. C.R. No. 67/94 u/s 394 of the Indian Penal Code was registered at Police Station, Alibag, at 3.05 a.m. on 9-12-1994.

5. The investigation was conducted in the usual manner by P.S.I. Ashok Sawant (PW 8). At about 6.00 a.m. on 9-12-1994 he went to the place of incident; prepared spot panchanama and seized from the place of incident a bunch of betel nuts; a pair of slippers and a torch. Thereafter he went to the house of the informant-victim where his sister handed over his blood stained clothes to him, which he seized under a panchanama. The same morning he arrested the respondent.

On 10-12-1994 in the presence of public panch Sharad Raut (PW 7) the respondent stated that he could get the weapon of assault namely the knife which he had concealed behind his house recovered. His said statement was recorded in a panchanama and thereafter the respondent was taken to his house and from behind the same, from below a stone, he took out a knife which was seized under a panchanama.

After completing the investigation P.S.I. Sawant submitted the charge sheet against the respondent.

6. The case was committed to the Court of Sessions in the usual manner where the respondent was charged for offences punishable under sections 307 and 394 read with section 397 of the Indian Penal Code. He pleaded not guilty and claimed to be tried. During trial, in all, the prosecution examined eight witnesses. The informant-victim Sudhir Raut, the only eye witness of the incident, was examined as P.W.2. The learned trial Judge rejected his evidence and acquitted the respondent by the impugned judgment. Hence this appeal.

7. We have heard learned counsel for the parties. We have also perused the deposition of the prosecution witnesses; the material exhibits tendered and proved by the prosecution; the statement of the respondent recorded u/s 313 of the Criminal Procedure Code; and the impugned judgment. After the utmost circumspection we find that the impugned judgment of acquittal is holly unsustainable and consequently are of the view that this appeal has to be allowed.

In reaching the said conclusion we have been mindful of the fact that interference against an order of acquittal should only be resorted to by this Court if either the appreciation of evidence is grossly unreasonable, being either perverse or bordering on perversity, or the impugned order of acquittal is vitiated by any manifest illegality resulting in failure of justice.

In our judgment, in the instant case, the learned trial Judge has given perverse reasons for rejecting the evidence of the informant-victim Sudhir Raut and that of the other prosecution witnesses.

8. The crucial evidence in the instant case is that of the informant-victim Sudhir Raut (PW 2). In para 2 we have set out the prosecution story on the basis of recitals contained in his evidence. In short he stated that in his spare time he used to water and look after the plants in the grove of Nandkumar Vartak (PW 6) situated in village Chaul. On the date of incident (8-12-1994) at about 9.45 p.m. he went to the grove and while he was inside a room in the house of Nandkumar Vartak, situated in the said grove, he heard some noise. Consequently he came out; flashed a torch; and saw the respondent on a betel nut tree removing betel nuts. When he reprimanded him, he came down and inflicted seven blows on his hands, chest and abdomen with a knife as consequence of which his clothes became soaked with blood. Thereafter leaving his slippers and torch on the place of incident, he went to his house where his parents asked him as to what had happened and he told them, as also one Shashikant Raut (PW 5), who had come there and made similar a query, that the respondent had assaulted him with a knife.

9. We have gone through the statement of the informant-victim Sudhir Raut and in our view it inspires implicit confidence.

The manner of assault as disclosed by him is corroborated by the medical evidence. We have set out in extenso the injuries suffered by him and have referred to the evidence of Dr. Arun Gawali (PW 3) who candidly stated that the injuries, out of which seven were stab wounds, could be caused by the knife shown to him. We find the evidence of Dr. Arun Gawali plausible because it is a common knowledge that stab wounds would be caused by piercing a knife.

Apart from the medical evidence, assurance to the ocular account furnished by the informant-victim is left by the prompt F.I.R. of the incident which was recorded by PHC Balkrishna Mhatre (PW 4) sometime after 1.15 a.m. We have seen that the incident took place the same night after 9.45 p.m. Hence the F.I.R. which was lodged within 3 to 4 hours is a prompt F.I.R. We have perused the F.I.R. and make no bones in observing that the broad features of the prosecution case have been stated therein. In the F.I.R. the informant-victim categorically mentioned that when he reprimanded the respondent plucking the betel nuts the respondent inflicted seven knife blows on his person.

Criminal Courts attach great importance to a prompt F.I.R. because the same substantially eliminates chances of embellishment and concoction in the prosecution case. In the instant case we are not prepared to believe that the Informant-victim would have excluded the real assailant and falsely implicated the respondent.

10. In our view the learned trial Judge while rejecting the evidence of the informant-victim was oblivious of the circumstances mentioned in the preceding

paragraph and did not give adequate weight to the fact that the informant-victim was an injured witness who knew the respondent before the incident and would not falsely implicate him, excluding the real assailant.

11. In paragraphs 17 and 18 the learned trial Judge has given the reasons for rejecting the evidence of the informant-victim which are as under :-

(a) merely because the informant-victim had seen the respondent plucking the betel nuts would not have prompted the respondent to inflict seven knife blows on the vital parts of the body of informant-victim;

(b) the respondent was stronger than the informant-victim and instead of assaulting him would have given him a slap and ran away;

(c) the informant-victim admitted that prior to the incident there was a quarrel between his uncle Pandharinath and the respondent resulting in respondent being arrested;

(d) blood was found fallen on the ground, at the house of the informant-victim but the investigating officer did not recover it under a panchanama;

(e) the informant-victim while giving the history of assault did not disclose the name of assailant; and

(f) there was possibility of injury No. 8 being caused by fall on steps and Dr. Gawali who medically examined the victim has stated that injuries 1 to 5 of the informant-victim could be caused by fall.

12. We have reflected over the said reasons given by the learned trial Judge and in our view neither individually nor cumulatively they are weighty enough for discarding the evidence of the informant-victim. So far as reasons (a) and (b) are concerned we find them to be per se perverse.

Reason (c) in our view should have only made the learned trial Judge approach the evidence of the informant with caution and not reject it.

So far as reason (f) is concerned we have no hesitation in observing that, the evidence of Dr. Gawali that injuries Nos. 1 to 5 of the informant-victim could be caused by a fall is patently absurd. The said injuries are stab wounds and their depth indicates that they were the result of knife being repeatedly forcibly pierced in the areas in which they were caused and could not be caused by fall.

It should be borne in mind that medical evidence should only be given more weightage than oral evidence if it completely rules the possibility of injuries being caused in the manner spelt out in oral evidence. In this connection it would be pertinent to refer to the observations contained in paragraph 12 of the judgment of the Supreme Court reported in *Solanki Chimanbhai Ukabhai Vs. State of Gujarat*, which read thus :-

"Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The

use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witness. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye witnesses, the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence."

(emphasis supplied)

If the above ratio is applied to our case the ocular account of the informant-victim cannot be rejected because Dr. Gawali (PW 3) himself in his examination-in-chief has stated that the injuries of the informant-victim could be caused by knife.

Reason (e) is also not adequate for rejecting the evidence of the informant-victim. It is true that Dr. Gawali stated in his examination-in-chief, in para 1, that the informant-victim and his relatives gave history of multiple stab injuries and the said statement shows that they did not mention the name of the respondent. However, merely on this circumstance it cannot be concluded that the informant-victim could not recognize his real assailant. It should be borne in mind that from the evidence of Dr. Gawali it is not clear whether he had asked the informant-victim and his relatives as to who inflicted the injuries on the person of the informant-victim. No question to this effect was put to him during cross examination.

13. Reason (d) as is apparent from a perusal of paragraph 14 is also a frivolous reason for rejecting the testimony of the informant-victim.

14. Reason (d) as also two other reasons assigned by the learned trial Judge for acquitting the respondent namely :-

(i) the knife recovered by the investigating officer on pointing of the respondent was not sent to the Chemical Analyzer; and (ii) blood stained clothes of the informant-victim were not sent by the investigating officer to the Chemical Analyzer, are wholly untenable for rejecting the informant's evidence and throwing out the prosecution case.

We make no bones in observing that there was no justification for the investigating officer P.S.I. (Sawant) not to take scrapings of blood from the house of the informant or sending the knife and clothes of the informant to the Chemical Analyzer but for his remissness the ocular account of the informant cannot be thrown out.

The supreme Court, times out of number, has held that if the ocular account inspires confidence the remissness in investigation would not be a hurdle in not accepting it and if an authority is needed in respect of the said proposition we would like to refer to one reported judgment in Chandrakant Luxman Vs. State of Maharashtra, , the Supreme Court has laid down the aforesaid ratio.

15. The learned trial Judge has also given another reason for acquittal of the respondent namely that the informant-victim had no light to recognize his real assailant. In para 22 of the impugned judgment the learned trial Judge has held that there was complete darkness. Perhaps he was prompted to record this finding in view of the admission of the informant-victim during the course of his cross-examination (in Para 6) that he saw the incident from a distance of 40 feet and the light of the torch could not reach up to a distance of 40 to 50 feet. We regret that we do not agree with the learned trial Judge. He was completely oblivious to the fact that the evidence of the informant-victim shows that the respondent was known to him from prior to the incident. It is common knowledge that known people can be recognised even in the absence of light on account of their gait, timbre of voice etc. and if an authority is needed for this proposition which is based on sound common sense then we would like to refer to the para 4 of the decision of the Supreme Court reported in Kirpal Singh Vs. State of Uttar Pradesh, . In the said para the Supreme Court has held that known people can be recognised by their gait, timbre of voice etc.

16. In our view the evidence of the informant-victim Sudhir Keshav Raut (PW2) inspires implicit confidence; has been wrongly rejected by the trial Court; and is a sufficient and safe basis for convicting the respondent.

17. The learned trial Judge in passing the impugned order of acquittal has also been oblivious of evidence of Shashikant Raut (PW 5) to whom immediately after the incident, on a query made by him the informant-victim informed that the respondent had assaulted him with a knife. It is true that he was cousin of the informant-victim but it is well settled that the relationship could only be a ground for scrutinising the evidence of a witness with caution but cannot be a basis for rejecting it.

18. This leaves us with the question of offence. In our view an offence u/s 394 read with section 397 of the Indian Penal Code and also one u/s 307 of the Indian Penal Code is made out against the respondent.

The offence u/s 394 of the Indian Penal Code stipulates of robbery with hurt and that u/s 397 of the Indian Penal Code stipulates that if a person at the time of committing robbery or dacoity is armed with a deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person he would be liable for the said offence. It is clear from section 390 of the Indian Penal Code that in all robbery there should be either theft or extortion. In the instant case, there is evidence of no extortion but there is evidence of theft and consequently the first part of section 390 of the Indian Penal Code would be attracted. The said part reads as under :-

"When theft is robbery, - Theft is "robbery" if, in order to the committing of the theft or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of

instant death or of instant hurt, or of instant wrongful restrain."

A perusal of the said part would show that if during commission of the theft a miscreant voluntarily causes or attempts to cause hurt or death of any person he would be guilty of offence of robbery.

We have seen that the respondent was committing theft of betel nuts and when the informant-victim reprimanded him for doing so the respondent inflicted seven knife blows on his person. In this view of the matter an offence u/s 394 is made out against the respondent and since at the time of committing robbery the respondent was armed with a deadly weapon namely knife and caused injuries with the same to the informant-victim, an offence u/s 397 of the Indian Penal Code would also be made out against the respondent.

An offence u/s 307 of the Indian Penal Code would also be made out against the respondent because he intentionally inflicted seven knife blows on the person of the informant-victim and the evidence of Dr. Arun Gawali (PW 3) is categorically to the effect that the injuries suffered by the informant/victim were sufficient in the ordinary course of nature to cause death.

19. Coming to the question of sentence we find that the minimum sentence for the offence u/s 397 of the Indian Penal Code is seven years. In our view considering the over all circumstances it would be appropriate to give the said minimum sentence to the respondent for the offence u/s 394 read with 397 of the Indian Penal Code as also for that u/s 307 of the Indian Penal Code.

20. In the result this appeal is allowed. The impugned judgment dated 3rd May 1995 passed by the Additional Sessions Judge, Raigad Alibag, in Sessions Case No. 18 of 1995, acquitting the respondent for offences punishable under sections 394 read with 397 of the Indian Penal Code and section 307 of the Indian Penal Code is set aside. We find the respondent guilty of the said offences and sentence him to undergo seven years rigorous imprisonment on both the counts namely sections 394 read with 397 of the

Indian Penal Code and 307 of the Indian Penal Code. We direct the sentences on both counts to run concurrently. In computing this period of seven years rigorous imprisonment the period served by the respondent in jail in connection with this case shall be set off. In case the respondent is on bail, he shall be taken into custody forthwith to serve out his sentence.