
(1998) 07 BOM CK 0004
In the Bombay High Court
Case No : Criminal Appeal No. 586 of 1985

State of Maharashtra

APPELLANT

Vs

Datta Maruti Salagar and Others

RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 325, 34

Citation : (1998) CriLJ 3756 : (1999) 1 MhLj 662

Hon'ble Judges : Vishnu Sahai, J; T.K.C. Das, J

Bench : Division Bench

Advocate : R.S. Deshpande, app, for the Appellant; A.P. Mundergji, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—By means of this appeal the appellant has impugned the judgment and order dated 17th May, 1985 passed by the Judicial Magistrate, First Class, Kurundwad in Criminal Case No. 23 of 1983, acquitting the respondents for an offence punishable u/s 325, IPC. read with 34, IPC.

2. In short the prosecution case runs as under:

Respondent No. 3, Maruti Bhiva Salagar is the father of respondents Nos. 1 and 2, Datta Maruti Salagar and Subhash Maruti Salagar. About 7 to 8 years prior to the incident, the respondents had mortgaged their land to the informant Ganapati Dhondiba Kale for Rs. 6000/- and ever since then the land was in possession of the informant. At the time of the incident there was Kulathi and Jawar crop on it. 4 days before the incident the respondents had cut the said crop. When the informant reprimanded them they rushed towards him.

On 6-6-1983 at about 6 a.m. when the informant was answering the call of nature in the land of one Kumbhar behind the school at the outskirts of village Abdul Latin District Kolhapur, he received an axe blow on his head and fell down

as a result thereof. He noticed respondent No. 1, armed with an axe, respondent No. 2 with a cycle chain and respondent No. 3 with a stick standing there. Respondents Nos. 2 and 3 started assaulting him with their weapons. He raised cries hearing which Babu Patil alias Babgonda Shivgonda Patil P.W. 2 and Vasant Satappa Thagare P.W. 3 came. As a consequence of the assault the informant became unconscious. After assaulting him the respondents ran away.

The evidence of Babgonda Shivgonda Patil P.W. 2, is that after the respondents had run away he informed the informant's brother Janardhan about the informant being assaulted. Janardhan called an ambulance car and on the same the informant was taken to Ichalkaranji. Babgonda Shivgonda Patil P.W. 2 accompanied him.

3. The injuries of the informant Ganapati Kale were medically examined at about 7.15 a.m. on the same day, i.e. 6-6-1983, at K.E.M. Hospital, Ichalkaranji by Dr. Madhukar Shankar Jadhav P.W. 4, who found on his person the following injuries :

1. CLW near the right eye 1/2" above lateral to rt. eye slight bleeding. Size about 1/2" x 1/2" skin deep.
2. CLW over front to parietal (middle) region vertical in direction size about 2 1/2" x 1/2" skin deep, slight bleeding.
3. Swelling Rt. upper eye lid 3/4"
4. Multiple contusion marks over the back, shoulder, both waist, both the upper limbs, rt. thigh, Lt. hip reddish in colour, irregular in shape.
5. Multiple minor abrasions over Rt. hand, Rt. ear, Rt. thigh back, no bleeding.

Dr. Jadhav advised X-ray of skull, right hand and chest. He found that the X-ray report showed fracture of the fifth metacarpal bone of right hand. In his opinion the injuries were caused within 6 hours and they might have been caused by hard and blunt substance.

4. The F.I.R. of the incident which was recorded at KEM Hospital was lodged by the victim Ganapati Kale the next day. It is at Exhibit 20.

After usual investigation the respondents were chargesheeted for an offence punishable u/s 325 read with 34, IPC.

In the trial Court they were also charged on the said count. They pleaded not guilty and claimed to be tried. Their defence was one of denial.

5. During trial prosecution examined six witnesses; three of them, viz. the informant Ganapati Dhondiba Kale P.W. 1, Babu Patil alias Babgonda Shivgonda Patil P.W. 2 and Vasant Satappa Thagare P.W. 3, were examined as eyewitnesses. The trial Court did not believe their evidence and acquitted the respondents.

Hence this appeal.

6. We have heard Mr. R.S. Deshpande, APP for appellant and Mr. A.P. Mundergi for the respondents. We have also perused the deposition of the prosecution witnesses; the material exhibits tendered and proved by the prosecution; the statement of the respondents recorded u/s 313, Cr.P.C. and the impugned judgment. In our view since the impugned judgment is perverse this appeal has to be allowed.

7. As mentioned above three eye-witnesses, Ganapati Kale, Babu Patil alias Babgonda Shivgonda Patil and Vasant Satappa Thagare P.Ws. 1,2 and 3, respectively were examined by the prosecution.

The learned Magistrate primarily rejected the evidence of Babu Patil alias Babgonda Shivgonda Patil on the ground that since he had not only seen the assault on the victim Ganapati but had also accompanied him to the hospital, the omission of his name in the FIR by the victim shows that he is a got up witness. He mainly rejected the evidence of Vasant Satappa Thagare, P.W. 3 on the ground that there was a contradiction between his statement and that of Babu Patil alias Babgonda Shivgonda Patil, in as much as he stated that he saw the respondents Nos. 2 and 3 assaulting the victim while Babu Patil alias Babgonda Shivgonda Patil stated that when he came to the spot the respondents were leaving the place of the incident. He rejected the evidence of victim Ganapati mainly on the ground that Dr. Madhukar Shankar Jadhav stated that the injuries of victim could be caused by fall.

8. We have reflected on the reasons given by the learned trial Magistrate for rejecting the testimony of the eye-witnesses. In our view, the learned trial Magistrate may have been right in rejecting the evidence of Balgonda Patil but we feel that his approach in rejecting the testimony of the other two eye-witnesses was wholly perverse.

We feel that the learned trial Magistrate has committed a grievous error in rejecting the testimony of the victim Ganapati on the ground that the doctor in cross-examination admitted of the possibility of his injuries being caused by a fall. In our view, merely on this possibility, the learned trial Magistrate was not justified in rejecting his testimony. He should have borne in; mind that the injuries of the victim were attributable to the blunt side of the axe, cycle chain and stick which are weapons with which the respondents are said to have assaulted him. He should have also kept in mind that there was a strong motive for the respondents to have assaulted him. As seen in para 2, the respondents were inimical to the victim because he had reprimanded them about 4 days prior to the incident for cutting the crop which was standing in the land mortgaged by them to him. He should have also considered that since the incident took place on 6th of June at 6 a.m., when there was sufficient light and the respondents were known to the victim from before he would have had no difficulty in recognizing them. In our view, the sole reason assigned by him for rejecting the testimony of the victim, was absolutely flimsy.

9. We feel that the learned trial Magistrate was unjustified in rejecting the testimony of Vasant Thagare P.W.3 merely on the ground that whereas he stated that he saw the respondents 2 and 3 assaulting the victim, Balgonda Patil P.W.2 stated that by the time he came the respondents were leaving the place of the incident. In our view this sole contradiction was not an adequate ground for rejecting the testimony of this witness.

10. It should be borne in mind that not only was Vasant Jhagare a perfectly natural witness of the incident in as much as he was answering the call of nature at a distance of about 30 feet from where the victim Ganapati was answering the call of nature and therefore on hearing the cries of the latter could have reached in time to see the incident but also an independent witness who had no axe to grind against the respondents. In our view he had seen the respondents Nos. 2 and 3 assaulting the victim Ganapati with cycle chain and stick respectively. The manner of assault as deposed to by him is corroborated by the presence of injuries attributable to cycle chain and stick on the person of the victim.

11. For the said reasons we feel that the offence u/s 325 read with 34, IPC. is squarely brought home against the respondents. When the respondents made a concerted assault on the victim with weapons like axe, cycle chain and stick it can be reasonably presumed that they shared common intention to inflict grievous hurt on him in terms of Section 325, IPC.

12. Coming to the question of sentence we find that the incident took place over 15 years ago and there is nothing to indicate that the respondents are previous convicts. We also find that the doctor has stated that except the fracture of the fifth metacarpal bone of right hand the other injuries were superficial. The evidence on record does not show which of the respondents caused this fracture. In our view, bearing in mind the said circumstances the ends of justice would be amply satisfied if each of the respondents is directed to pay a fine of Rs. 800/- and in default to undergo R.I. for 6 months. We feel that in case the fine is realised the whole of it should be paid as compensation to the victim Ganapati Dhondiba Kale, P.W. 1 and in case he is not alive to his legal heirs.

13. In the result this appeal is allowed. Each of the three respondents, namely (1) Datta Maruti Salagar, (2) Subhash Maruti Salagar and (3) Maruti Bhiva Salagar are found guilty of an offence punishable u/s 325 read with 34, IPC. and each of them is sentenced to pay a fine of Rs. 800/-, with a period of 4 months from today, in the trial Court, failing which the defaulting respondents/respondent, as the case may be, would undergo 6 months R.I. The fine, if realised, shall be paid as compensation to the victim Ganapati Dhondiba Kale, P.W. 1 and in case he is not alive to his legal heirs. The trial Court shall ensure that the compensation is paid to the person entitled to receive it at the earliest.

The trial Court shall also accept the fine on production of a certified copy of our judgment which in case an application is made by the counsel for the respondents shall be issued within 4 weeks from today.