
(1997) 01 BOM CK 0057
In the Bombay High Court
Case No : Criminal Appeal No. 644 of 1984

State of Maharashtra

APPELLANT

Vs

Hari Lakhu Dhangar and Others

RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

Citation : (1997) 99 BOMLR 721

Hon'ble Judges : Vishnu Sahai, J; R.P. Desai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Being aggrieved by the Judgment and Order dated 21st April, 1984 acquitting the Respondents accused of the offence punishable u/s 302 r/w 34 IPC, passed by the Additional Sessions Judge, Kolhapur, in Sessions Case No. 63 of 1983, the State of Maharashtra has filed the present appeal.

2. Briefly stated, the prosecution story runs as under:

Complainant Keshav Dhanagar resides at Patane alongwith his wife and son. He is a primary teacher. There was Land dispute between him and the accused. The complainant had filed a Civil Suit bearing No. 42 of 1983 in the Court of Civil Judge Junior Division, Malkapur for a permanent injunction against Accused Nos. 1 to 4. He had filed an application for temporary injunction in the said Suit and interim injunction was granted in his favour. The Suit was pending.

According to the prosecution, the complainant had vacation in the month of May 1983. On 27.5.1983 he had gone to Bapu Dnyanu Patil (P.W. 6) and requested him to give him his buffalo. Thereafter, he had gone to Bapu Ishwara Patil (P.W. 8) and requesting him to give him his bullock and plough. He had requested both Bapu Dnyanu Patil and Bapu Ishwara Patil to come to help him in sowing the crop after finishing their work. The complainant then went to his land alongwith the plough.

At about 7.45 a.m. P.W. 8 - Babu Ishwara Patil came to his land. At about 7 or 8 a.m. P.W. 6 - Babu Dayanu Patil also came. One Balkrishna Vasudeo came there after 10 minutes. The complainant started borrowing the land with the help of plough and these three persons were collecting the stumps of wheat. Ramu Bhanu i.e. the deceased was working in his land in his No. 1 of gat No. 50. Accused Nos. 1 to 4 were sitting in the land of Accused No. 4 bearing gat No. 705/5. They were chitchatting.

The Work of ploughing the Land was going on for about half an hour. Accused No. 1 came in the land of the complainant and threatened Balkrishna Vasudeo, P.W. 8-Babu Ishwara Patil and PW 6 - Babu Dayanu Patil not to work in the land of complainant and asked them to leave. All the accused were armed with sticks. Balkrishna Vasudeo, Babu Ishwara Patil and Babu Dayanu stopped the work. They went near the bund of Hari and sat there. Accused Nos. 1 to 4 entered into the land of complainant asked him to stop the work and threatened that otherwise they would finish him. On account of this threat, the complainant started returning with the plough. When he was on the cartroad, accused No. 1 asked him to stop and he rushed towards him. Accused Nos. 2 and 4 also rushed towards the complainant. The complainant then left the plough there and ran away at a distance of about 70 feet. At that time, deceased Rama Bhau told accused Nos. 1 to 4 as to why they were obstructing complainant Keshav as he had sown the crop in his land. Thereupon accused No. 1 left the complainant and rushed towards the deceased. Accused No. 1 gave stick blow on the left side of the deceased. Accused No. 1 gave another stick blow at the same place. The deceased fell down. Accused Nos. 1 to 4 started beating him with the help of sticks on various parts of his body. Thereafter they ran away. Complainant felt that Rama Bhau was dead. Therefore, he came to his house, collected the certified copies of the interim order of injunction obtained by him against the accused and went to Shahuwadi Police Station, which is at a distance of about 10 miles from Patane. He reached Shahuwadi Police Station at about 8 p.m. and lodged his complaint in which, apart from the accused he implicated four other persons though they were not present at the time of the incident.

3. P.S.I. Shinde recorded the First Information Report as per the say of complainant at about 8.30 p.m. An offence was registered as C. Rule No. 30/83 for the offences under Sections 147, 148, 149, 302 of the I.P.C. Investigation started on the basis of the said F.I.R. After drawing the necessary inquest panchanama dead-body of the deceased was sent to the Medical Officer Malkapur for autopsy. Statements of Babu Ishwara Patil, Babu Dayanu Patil, Balkrishna Vasudeo and others came to be recorded.

4. Accused Nos. 1 to 3 were arrested on 6.6.1983. Accused No. 4 was arrested on 14.6.1983. On 8.6.1983 in pursuance of statement made by accused No. 1, the stick concealed in the cluster of bamboo was recovered under panchanama Ex. 13. On the same day in pursuance of statement made by accused No. 2 under panchanama Ex. 23 another stick was recovered. Similarly, accused No. 3

led the police to the land of Dhondi Patil and took out a stick from the dried leaves of sugar cane. It was attached under panchanama Exh. 25. Stick was also recovered at the instance of accused No. 4 vide panchanama Exh. 48.

5. Post-mortem of the dead-body of the deceased was conducted P.W. 5 Dr Suresh Deshpande, Medical Officer, Taluka Dispensary at Malkapur. Dr. Deshpande found following external injuries on the dead-body of the deceased.

1. Multiple abrasion of about 1/2" X 1/2" in size over right side of the forehead.
2. A contusion of about 2" in length over left mandible.
3. Another contusion of about 1" in length on left side of the neck near left stemomastoid.
4. A.C.L.W. 1" X 1/2" skin deep over back of the neck just internal to the left sternomastoid. Edge irregular.
5. Small abrasion 1/2" X 1/2" near the internal end of the left eye-brow.
6. A trines verse bruise 2" in length pin of the right ear.
7. Two parallel oblique bruise 4" in length over left low back. Separated by 1/2" intervening space.
8. Another two parallel bruises trans verse 4" length over left back just above the in. No. 7 Separated by 1/2" intervening space.
9. Another two oblique parallel bruises 4" in length and separated by 1/2" intervening space over left back just below the left scapule.
10. Multiple elongated bruises of about 2% in length over left scapular region.
11. A.C.L.W. 1 1/2" X 1/2" x bone deep over left skin.
12. Trans verse bruises of about 2" in length over right arm. They are multiple in numbers.
13. Multiple bruises of about 2" in length, over left arm. The ages of the injuries within 24 hours.

Following internal injuries were found by Dr. Deshpande.

1. Ribs fracture of the 4th, 5th 6th and 10th rib on right side. They are fractured at their angles, and also fracture of 4th and 5th ribs on left side. Posterior lobe of the right and left lung lacerated.
2. Liver lacerated 1" in length over rt. lobe of liver anteriorly.
3. 1. Fracture of the left humorous at two places, one at upper 1/3rd part and other at lower 1/3rd part.
4. Fracture of the right humorous at upper 1/3rd part.

5. Dislocation of the right hip and also fracture right femur, in upper part.

According to Dr. Deshpande, the probable cause of the death of the deceased was shock and internal haemorrhage due to the fracture of right and left arms and fracture dislocation of right hips and fracture dislocation of ribs by internal causing injury to the vital organ like lungs, liver. According to him, the said injuries were sufficient to cause death. He opined that the injuries could be caused on account of hard and blunt objects like sticks. When the muddamal Articles 15, 16, 17 and 20 (sticks - recovered at the instance of the accused) were shown to him, he stated that the said injuries could be caused by the same.

6. After completion of the investigation, the accused came to be charged as aforesaid.

7. In support of its case, the prosecution inter-alia examined 3 eye-witnesses viz. P.W. 6 - Bapu Dayanu Patil, P.W. 7 - Complainant Keshav Bala Dhangar, P.W. 8 - Bapu Ishwara Patil. Dr. Deshpande, the Medical Officer, Malkapur produced the postmortem notes. The details of investigation were given by Investigating Officer, P.W. 12 - S.I. Dilip Shinde. The prosecution also examined panchas-P.W. 2, Shyam Ghougule and P.W. 3, Vasant Patil to prove the recovery of sticks at the instance of the accused. The defence of the accused was one of denial.

8. Upon perusal of the evidence adduced by the prosecution, the learned Sessions Judge came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt. He disbelieved the eye-witness account of the 3 eye-witnesses examined by the prosecution and acquitted the accused as aforesaid. It is the said Judgment and Order which is impugned in the present appeal.

9. With the help of the learned Counsel appearing on behalf of the State as well as on behalf of the accused, we have gone through the entire evidence. We have also heard them at length and we are of the opinion that, the impugned Judgment and Order of acquittal cannot be characterised as perverse. It is well settled that in an appeal against acquittal, this Court will interfere only if the impugned judgment and order is found to be perverse or that it suffers from a patent illegality. Keeping this principle in mind, we have carefully scrutinised the evidence and we endorse the view taken by the learned Sessions Judge for the following reasons.

10. At the outset it will have to be noted that the prosecution has not examined any independent witnesses to depose about the incident in question. Apart from the complainant two other eye-witnesses were examined viz. P.W. 6 - Bapu Dnyanu Patil and P.W. 8 Bapu Ishwara Patil. It has come in the evidence of P.W. 6 Bapu Dnyanu Patil that, he had gone to the land of the complainant because the complainant had requested him to help in sowing the crop. He has admitted that he used to know the complainant. Similarly, P.W. 8 - Bapu Ishwara Patil has, in his evidence, stated that he used to go to the land of the complainant to help him in the agricultural operations as and when called for. He has also stated in

the cross-examination that, he was cultivating the land of Ganpati for about a year when it was in the possession of the complainant. Therefore, P.W. 8 - Bapu Ishwara Patil also knew the complainant. It is well settled that as a rule of prudence, the evidence of interested witness has to be scrutinized with caution. We have exercised the said caution and we find the evidence of these witnesses unreliable.

11. Coming first to the evidence of P.W. 7 - Keshav Dhangar, it must be said that this witness has no regard for truth. In the F.I.R. he has gone to the extent of implicating apart from the accused, 4 other persons, who were not at all concerned with the murder of the deceased Ramu. In fact, in his examination-in-chief, this witness has admitted that all these four persons were not in the land of the complainant and even though they were not present he has mentioned their names in the F.I.R. on account of apprehension. Now, a witness, who has gone to the extent of implicating four innocent persons in a serious crime of murder, cannot be relied upon. It is quite possible that this witness is also not telling the whole truth about alleged participation of accused Nos. 1 to 4. His entire testimony becomes tainted on account of his admitted attempt to involve innocent persons in murder of the deceased. This is supported by the tenor of the evidence of this witness which also indicates that this witness has no regard for truth. In his evidence in the court, he has stated that he went to his land alongwith the plough and thereafter, Bapu Ishwara Patil came to his land. He was followed by Bapu Dnyanu Patil. Balkrishna Vasudeo also came thereafter. In his police Statement however, he has stated that he along with Balkrishna Vasudeo, Bapu Ishwara Patil and Bapu Dnyanu Patil went to his land for ploughing it. The fact that he had gone to Bapu Dnyanu Patil to take his buffalo is also not stated in his complaint. In his deposition in the court, he has stated that he had stated in the F.I.R. that accused No. 1 gave threats to the persons present that, they should not work in the land of the complainant. However, the said fact is not stated in the complaint. In examination in-chief, he has stated that accused Nos. 1 to 4 entered his land and asked him to stop the work and threatened that otherwise they would finish him. However, in the F.I.R. he has not stated that accused Nos. 1 and 2 asked him as to, where he was going and threatened him that they will finish him. The assertion made by him that, accused No. 1 rushed towards Ramu and gave him two sticks-blows, is also not found in the complaint. These omissions coupled with the fact that he had tried to implicate innocent persons make this person a highly unreliable witness. Besides, this witness has stated that there was a police out-post at Bambawade. The incident in question had taken place at 8.30 a.m. The complainant however, has lodged his F.I.R. at 4 p. m. at Shahuwadi Police Station. There is no reason why the complainant did not go to Bambawade Police out-post which, according to the complainant himself was at a distance of about 2 1/2 miles from Patane. When the complainant was questioned about this, his reply was merely that he did not feel that he should report to Police Patil about incident. He has given a totally unacceptable explanation that he did not go to Bambawade Police out-post

because he was feeling that there was danger to his life at the hands of the accused. Against the admitted back-ground that, relations between the accused and the complainant were not good and that the complainant had obtained an injunction order against the accused, the chance of the complainant falsely implicating the accused cannot be ruled out. We have therefore, no hesitation in discarding the so called eye-witness account of the complainant P.W. 7 Keshav Dhangar.

The second eye-witness is P.W. 6 - Bapu Dnyanu Patil. Now the conduct of this witness as well as P.W. 8 - Bapu Ishwara Patil of sitting on the bund after the accused gave threats is unnatural. Their first reaction might to have been to take to their heels. It is also surprising that having decided to sit on the bund when they saw the deceased being belaboured, they did not intervene and try to pacify the accused or try to save the deceased. This witness also does not appear to be a truthful witness, because he states in his evidence that, he did not inform about this incident to anybody after coming to the house. However, at the same breath he tries to cover up this unnatural conduct of him by saying that he had disclosed about this incident to his wife. An omission has been brought on record which indicates that in his police statement, he has not stated that accused No. 1 was saying that they would see the complainant and they would not spare him. He has also not stated before the police that accused No. 1 gave stick blow on the left side of the ear of the deceased. He has also omitted to say that the deceased fell on the ground as soon as the accused No. 1 gave stick-blow on the left side of his ear. He has also not stated that as soon as deceased fell down, accused Nos. 1 to 4 assaulted him with the help of sticks. These omissions coupled with the fact that this witness used to know the complainant and was on the field of the complainant at his request make his testimony highly unreliable.

Coming to the last eye-witness i.e. P.W. 8 - Bapu Ishwara Patil, as indicated above, this witness was very close to the complainant, he having been cultivating the complainant's land. There are also important omissions in the testimony of this witness. Though according to him, he had stated before the police that accused No. 1 gave stick-blow near the left side of the ear of Ramu and he fell down and thereafter the remaining accused also assaulted Ramu by sticks, the same is absent in the police statement. This witness has also stated that when he went to his house in the village, he did not feel like disclosing the incident to anybody till he disclosed the same to the police. He also did not try to find out how the deceased was after the accused had fled away. This conduct of P.W. 8 Bapu Ishwara Patil is highly unnatural. It is, therefore, unsafe to rely on the evidence of this witness.

12 As regards the motive which the prosecution has tried to bring on record, it must be stated that the prosecution story at the highest suggests that there was bad blood between the accused and the complainant on account of the dispute about the land. But there was no enmity between the deceased and the accused. Therefore, we are inclined to hold that there was any motive for the commission

of murder. Since the eye-witness account of the three witnesses does not inspire any confidence, the other evidence pales into insignificance. Assuming for a moment that some blood stains were found on the clothes of the accused, that does not take the prosecution story any further. The finding of sticks at the instance of the accused also does not help the prosecution case. Moreover, the Chemical Analyser's report suggests that no blood was found on the sticks. In this view of the matter we have no hesitation in coming to the conclusion that the learned Sessions Judge has rightly acquitted the accused of the charges levelled against them. We do not find any reason attached to the said judgment calling for our interference.

13. In the result, the appeal is dismissed. The order of the learned Sessions Judge acquitting the accused of the charges levelled against them is confirmed. The Respondent-accused are on bail. They need not surrender. Their bail-bonds stand cancelled and sureties discharged.

Before parting with the judgment, we would like to record our appreciation for the extremely fair assistance rendered to us by the learned Counsel appearing for the Appellant as well as the Respondents.

If an application for certified copy of this judgment is made, the same shall be issued on an expedited basis.