

(2015) 06 BOM CK 0009
In the Bombay High Court
Case No : Criminal Appeal No. 328 of 1994

State of Maharashtra

APPELLANT

Vs

Satlinga Mahalinga Ketkale and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 324, 34

Citation : (2016) ALLMR(Cri) 714 : (2015) 4 BomCR(Cri) 496

Hon'ble Judges : V.K. Tahilramani, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : F.R. Shaikh, A.P.P., for the Appellant; Prajot Jaggi, instructed by R.A. Shaikh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar Joshi, J.—The State has preferred this Appeal challenging the acquittal of the Respondents for the offence punishable under Section 302 r/w. 34 of the IPC, by the 4th Additional Sessions Judge, Kolhapur in Sessions Case No. 52 of 1987, by his Judgment dated 10th December, 1993.

2. Brief facts of the Appeal may be stated thus :-

The lands of the deceased Baburao Gadage and the Respondents were adjacent to each other and since days before, there was dispute pertaining to the common cart-way between the two lands. The said dispute was also referred to the Panchas and while Panchas were negotiating to arrive at an amicable settlement, on 26th May, 1986, at about 4 pm, deceased Baburao, his brother PW-4 Ganapati Gadage and PW-6 Dhanpal Shahapure, attempted to close the said common cart-way.

3. Hence, the Respondents got annoyed and quarrel and dispute ensued between them. In the said dispute, Respondent No. 3 held the collar of deceased and pushed him. He further assaulted the deceased with shovel on his head. Respondent Nos. 1 and 2 also beat the deceased with kicks and fists. Deceased

fell down on the ground with bleeding injuries. In the said incident, Respondent No. 1 assaulted PW-4 Ganapati also on his head with the handle of hoe. Hearing the commotion, Panchas, who were sitting in the house of the deceased, rushed there and requested the Respondents to leave the place.

4. After the Respondents left the place, PW-2 Ajappa Chougule took the deceased on his motor-cycle to Kurundwad Police Station, whereas PW-4 Ganapati was taken on the motor-cycle to the Police Station by one Dadasaheb Patil.

5. PW-9 ASI Vilas Kamble, who was on duty at Kurundwad Police Station, immediately referred both of them to the Zilla Parishad Hospital at Kurundwad, along with requisition letter (Exhibit-55). There PW-3 Dr. Suryawanshi gave them preliminary medical treatment. As injuries sustained by Deceased were serious, PW-3 Dr. Suryawanshi referred him for further treatment to Civil Hospital at Sangli. There PW-10 Dr. Ashok Kulkarni examined him and admitted him for ten days. As the condition of deceased became serious, he was referred for further treatment to Jaslok Hospital, Mumbai.

6. Meanwhile, on the complaint (Exhibit-43) of PW-4 Ganapati, C.R. No. 41 of 1986 was registered by PW-9 ASI Kamble against the Respondents for the offence punishable under Section 307 r/w. 34 of the IPC.

7. On the next day of incident, PW-9 ASI Kamble visited the spot of incident and drew the Scene of Offence Panchanama (Exhibit-30) in the presence of PW-1 Panch Shankar Shahapure. On the same day, Respondent No. 2 produced the hoe, which came to be seized under Panchanama (Exhibit-31). PW-9 ASI Kamble arrested Respondent Nos. 1 and 2 and seized the blood stained clothes on their person under Panchanama, (Exhibits "26" and "27" respectively).

8. On 10th June, 1986, PW-8 PSI Prakash Saidane attached to Gavdevi Police Station, recorded the Dying Declaration of the deceased vide Exhibit-53 and sent it to Kurundwad Police Station. Further investigation of the case was taken over by PW-7 PSI Madilwalappa Kurle. On 24th June, 1986, Baburao succumbed to the injuries sustained in the incident. Hence, after Inquest Panchanama, his dead body was sent for postmortem. PW-11 Dr. Ashok Shinde conducted the autopsy and issued Postmortem Report (Exhibit-76), giving opinion that the cause of death was, "complications following head injury". In view thereof, the offence was converted to Section 302 of the IPC. Further to completion of investigation, PW-7 PSI Kurle filed Charge-Sheet in the Court against the Respondents on 22nd December, 1986.

9. On the committal of the case to the Sessions Court, Trial Court framed charge against the Respondents vide Exhibit-2. Respondents pleaded not guilty and claimed trial, raising a specific plea that the deceased and prosecution witnesses were the aggressors and they had injured Respondents and filed this false case.

10. In support of its case, Prosecution examined in all eleven witnesses, whereas

Defence examined one witness and on appreciation of their evidence on record, the Trial Court was pleased to acquit the Respondents, holding that Prosecution has failed to prove its case against them beyond reasonable doubt.

11. This Judgment of acquittal, recorded by the Trial Court, is challenged in this Appeal by learned A.P.P., whereas supported by learned Counsel for the Respondents.

12. During pendency of the Appeal, Respondent No. 1 has expired and hence Appeal came to be abated against him.

13. Facts of the present case are not in the realm of dispute at all. It is sufficiently brought on record from the evidence of the prosecution witnesses that there was dispute relating to common cart-way passing through the lands of the deceased and the Respondents. The dispute was to such an extent that Panchas were called to act as Mediators to settle the dispute. There is evidence of PW-2 Ajappa, who was called upon to act as Mediator, that he was trying to negotiate with both the parties. On the date of incident, along with some other Panchas, he went to the house of the deceased. Thereafter, they also visited the house of the Respondents and were trying to arrive at some amicable solution. However, it was of no use as deceased left, along with PW-4 Ganapati, PW-6 Dhanpal and some other persons, to dig the pit on the common cart-way, so as to close the said cart-way. As per evidence of PW-2 Ajappa, after some time, he and other Panchas heard the noise of quarrel. Hence, they rushed to the spot and found that both the parties were injured. Then the injured were taken to the hospital.

14. There is corresponding evidence of PW-4 Ganapati, who has also deposed that, at about 5:30 pm, as the negotiations held by Panchas failed, he left along with deceased, PW-5 Dharmanna and PW-6 Dhanpal towards the cart-way, as deceased threatened to close it. They were carrying the hoe and shovel and started digging the cart-way on the eastern side. Respondent No. 2 saw them doing so and then returned along with Respondent Nos. 1 and 3. The quarrel ensued between the two parties. Respondent No. 3 gave threat to the deceased that he should not dig and close the cart-way. However, the deceased insisted that as he is digging in his own land, Respondent No. 3 had no right to stop him. In the said quarrel, Respondent No. 3 held the collar of the deceased and pushed him. Then, he assaulted him with shovel on his head, whereas Respondent No. 1 assaulted him on his head with handle of the hoe. Then Respondent No. 2 beat the deceased with fist blows and kicks. Thereafter Panchas came there, intervened and separated the quarrel.

15. The evidence of PW-5 Dharmanna is also of an identical nature. According to him also, he went along with the deceased, Annasaheb Gadage and PW-6 Dhanpal to the spot. He started digging and deceased was removing the earth with shovel. Respondent No. 2 saw them doing this and then all the three Respondents came there. Respondent No. 3 held the deceased and started

quarreling with him. In the ensuing scuffle between the deceased and Respondent No. 3, Respondent No. 3 assaulted the deceased with shovel on his head. According to his evidence, as he was busy in attending to deceased, he does not know as to what has happened to PW-4 Ganapati and Annasaheb Gadage.

16. PW-6 Dhanpal has corroborated the evidence of these witnesses by deposing that when they went to the spot and started digging with shovel, Respondents came there and started quarreling with the deceased. Respondent No. 3 assaulted the deceased with shovel on his head. As a result, deceased sustained bleeding injury and became unconscious. He has also not stated anything about the assault on PW-4 Ganapati.

17. There is medical evidence on record proving the injuries sustained by the deceased. PW-3 Dr. Tukaram Suryavanshi, who, at the relevant time, was attached to Zilla Parishad Hospital at Kurundwad, has examined the deceased on the requisition of the Police and he found following injuries :-

(i) Depressed fracture of right side frontal bone 2 1/2" x 2 1/2" size. It was circular starting from right eye-brow upwards depression seen. There was minor abrasion 1 cm x 1 cm size on fracture side. Bleeding present.

(ii) Right side eye lid movements were difficult. There was difficulty of opening of eye.

18. According to him, both these injuries were caused by hard and blunt object. As there was fracture to the frontal bone of the head, he referred the deceased to the Civil Hospital at Sangli. The Medical Certificate of the deceased is produced on record at Exhibit-37.

19. At the same time, at about 6:20 pm, he has examined PW-4 Ganapati also and found following injuries on his person :-

(i) Contused lacerated wound on the right temporal area 1" x 1/2" by skull, deep bleeding present.

(ii) Minor abrasion on right zygomatic area in 1 cm x 1 cm size, bleeding present.

(iii) CLW on forehead 1" x 1/2" size by scalp deep bleeding present.

(iv) CLW on the left parietal area 3" x 1/2" by bone deep, bleeding present.

20. These injuries, according to him, were caused by hard and blunt object, like, the handle of the hoe. He has produced Medical Certificate of PW-4 Ganapati also at Exhibit-38.

21. Further, he has examined Annasaheb Gadage and found some minor abrasions on his right joint elbow.

22. Then there is evidence of PW-10 Dr. Ashok Kulkarni, who has examined the deceased at Civil Hospital, Sangli and confirmed the presence of the injuries, as

referred above. The deceased was admitted there from 26th May, 1986 to 8th June, 1986. Then, on the request of the deceased, he was given discharge and then deceased got himself admitted in Jaslok Hospital, Mumbai. According to PW-10 Dr. Kulkarni also, the injury sustained by the deceased is possible by the reverse side of the hoe. The x-ray plate and the certificate of the deceased, as issued by him, are produced on record.

23. Lastly, there is evidence of PW-11 Dr. Ashok Shinde, who has conducted the postmortem examination on the dead body of the deceased on 24th June, 1986. In his opinion also, the cause of the death was "complications occurred on account of the head injuries sustained by him". The Postmortem Report is at Exhibit- 76.

24. Thus, the ocular account and medical evidence in the case goes to prove the occurrence of the incident, which ultimately resulted into the death of deceased Baburao. As stated above, the Respondents are also not disputing the occurrence of the incident. The very defence taken by them is that in the same incident, they had also sustained injuries, which injuries are not at all explained by the Prosecution. They had also lodged a counter criminal complaint against the deceased and the prosecution witnesses, on which C.R. No. 40 of 1986 was registered. After investigation in the said C.R., Sessions Case No. 51 of 1987 was filed. The copy of the Medical Certificates of the Respondents produced in Sessions Case No. 51 of 1987 are produced in this case also at Exhibits "40" and "41" and the copy of the F.I.R. of that case is produced at Exhibit-43. The Defence has also examined DW-1 Advocate Kashim Bargir to prove that there was a civil dispute between the parties in respect of this common cart-way and the orders were passed in their favour in the said dispute.

25. The defence taken by the Respondents stands proved from the evidence of prosecution witnesses themselves. PW-2 Ajappa has, in his examination-in-chief itself, deposed that when after hearing the noise of quarrel, he rushed to the spot, he saw both the parties were injured. PW-4 Ganapati has deposed that deceased left the house, after the negotiations failed, with a hoe and shovel along with him, PW-5 Dharmanna and PW-6 Dhanpal. PW-5 Dharmanna has also stated that he started digging on the cart-way with hoe and deceased was removing earth with shovel. PW-6 Dhanpal has also deposed that they were digging with the weapons in their hands. However, Respondents were obstructing them from doing so.

26. Thus, as per the evidence of these four witnesses, the weapons like hoe and shovel, which are alleged to be used in the commission of the offence, were in the hands of the deceased and prosecution witnesses. They had gone to the spot with these weapons in their hands. There is no evidence to show that the Respondents had come there with such weapons.

27. The medical evidence reveals that in the same incident, Respondent Nos. 1 and 3 had also sustained the injuries. There is evidence of PW-3 Dr. Suryavanshi,

who has, on the date of incident itself, at 7:30 pm, examined Respondent No. 1 Satlinga and found following injuries on his person :-

- (i) Minor abrasion on occipital area 1" x 1" size superficial bleeding present.
- (ii) Minor abrasion on right mastoid area 1 cm x 1 cm size. Bleeding present.
- (iii) Minor abrasion on forehead 1" x 1" size bleeding present. No evidence of fracture present.
- (iv) Swelling of left side occipital area 2" x 2" size. No fracture seen.
- (v) Minor abrasion on left knee joint by 1" x 2" size.
- (vi) Minor abrasion on right elbow joint 1/2 cm. x 1/2 cm. size.

28. According to him, these injuries were caused by hard and blunt object and within six hours. He has issued the Injury Certificate (Exhibit-40) accordingly.

29. On the same day, he has also examined Respondent No. 3 Sangappa at 7:15 pm and found following injury on his person, which is also caused within six hours and by hard and blunt object :-

CLW on right parietal region 3" x 1/2" into scalp deep parallel to sactan area. Bleeding present. No evidence of fracture.

30. He has produced the Injury Certificate of Respondent No. 3 Sangappa vide Exhibit-41. It is brought out in his cross-examination that injuries caused to Respondent 1 Satlinga are possible by the handle of hoe. Further, he has admitted that the injury sustained by Respondent No. 3 Sangappa was on the vital part of the body and it can be also caused by the handle of hoe. He has even referred Respondent No. 3 Sangappa to the Civil Hospital, Sangli.

31. There is corroborating evidence to that effect of PW-10 Dr. Ashok Kulkarni, who has examined Respondent No. 3 Sangappa in Civil Hospital at Sangli on the same day at 9:00 pm, after he was referred there by PW-3 Dr. Suryavanshi from Zilla Parishad Hospital, Kurundwad. He has also deposed that he found "CLW on the right parietal scalp 3 1/2 cm into scalp deep bleeding present". He has taken the x-ray of the said injury and in cross-examination, he has admitted that the said injury can be possible due to assault by hoe and it was on the vital part of the body.

32. Thus, the fact that Respondent Nos. 1 and 3 had sustained injuries in the same incident, is more than sufficiently proved on record by PW-3 Dr. Suryavanshi and PW-10 Dr. Kulkarni. PW-9 ASI Kamble has also stated that as in the same incident, Respondent Nos. 1 and 3 had also sustained the injuries, he has referred them for medical examination. He has also recorded their complaint to that effect. In view thereof, the burden was on the prosecution witnesses to explain the injuries sustained by the Respondents. However, the Prosecution has not done so.

33. As a matter of fact, an attempt on the part of the prosecution witnesses had been to suppress these injuries. Except for PW-2 Ajappa Chougule, who was an independent witness, being the Panch to negotiate the dispute, and hence admitted that both the parties were injured, when he saw them, the remaining three eye witnesses have not accepted the fact that the Respondents had sustained the injuries in the said incident. When PW-4 Ganapati was specifically confronted about the same, he has denied that the Respondents had sustained the injuries. According to him, he did not see any injury on the person of any of the Respondents. He even did not see that the Respondents were brought in the Zilla Parishad Hospital at Kurundwad, though he was very much present there. According to him, none of them beat the Respondents at any time. However, he has admitted the fact that he and other prosecution witnesses are charge sheeted by Police for the offences punishable under Sections 307 and 324 r/w. 34 of the IPC for beating of the Respondents and that Charge-Sheet is pending, which proves that he is trying to suppress the injuries sustained by the Respondents in the same incident.

34. PW-5 Dharmanna has also, in his cross-examination, denied that there was injury on the head of Respondent No. 3 and on the body of other Respondents, despite admitting that the scuffle between deceased and Respondent No. 3 was going on for about 10 to 15 minutes. He has further denied that the clothes of Respondent Nos. 1 and 3 were soaked with blood due to injury sustained in the incident.

35. PW-6 Dhanpal has again, though admitted that there was quarrel between PW-4 Ganapati and the Respondents, denied that they beat the Respondents in the same incident; Respondents had also sustained the injuries and their clothes were blood soaked.

36. Thus, it is crystal clear that the prosecution witnesses have suppressed the injuries on the part of the Respondents, which are proved to have been caused in the same incident, when admittedly there was scuffle and free fight between the prosecution witnesses and the Respondents.

37. The law on the effect of failure of prosecution to explain the injuries sustained by the Accused in the same incident is fairly well settled. In the landmark decision of Supreme Court in Lakshmi Singh and Others Vs. State of Bihar, AIR 1976 SC 2263 : (1976) CriLJ 1736 : (1976) 4 SCC 394 : (1976) SCC(Cri) 671 , it is held that,

"In a murder case, the non explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :-

(i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(ii) that the witnesses who have denied the presence of the injuries on the

person of the accused are lying on the most material point and therefore, their evidence is unreliable .

(iii) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case."

38. It is also held as under in the same ruling that,

"The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

39. We can also make useful reference in this respect to the decision of Supreme Court in *State of Rajasthan Vs. Madho and another*, AIR 1991 SC 1065 : (1991) CriLJ 1343 : (1991) 5 JT 195 : (1991) 2 SCC 396 Supp , wherein it is held that,

"If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the accused, it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident. ..."

40. The ratio of both these rulings is perfectly applicable to the facts of the present case also. As a result of failure and suppression on the part of prosecution witnesses to explain the injuries sustained by the Respondents in the same incident, it has to be held that the Prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version of the incident. As they are lying on the most material point, hence, their evidence is unreliable. This ratio applies with far more effect when the prosecution evidence consists of interested witnesses, as in the present case.

41. In our considered opinion, therefore, the Trial Court has rightly extended the benefit of doubt to the Respondents. The view, therefore, taken by the Trial Court, being not only the probable view, in the facts of the present case and evidence on record, but the only view which can be arrived at, no interference at all is warranted in the impugned Judgment. Appeal, therefore, is devoid of merits and, hence, stands dismissed.