
(2015) 07 BOM CK 0281
In the Bombay High Court
Case No : Criminal Appeal No. 277 of 1995

State of Maharashtra

APPELLANT

Vs

Shankar Omkar Chavan and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 396

Citation : (2015) 07 BOM CK 0281

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

Bench : Division Bench

Advocate : A.S. Shitole, APP, for the Appellant; Ashish S. Sawant instructed by M.S. Mohite, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J—The appellant -State of Maharashtra has preferred this appeal against the judgment and order dated 30.1.1995 passed by the learned Sessions Judge, Thane in Sessions Case No. 398 of 1991. By the said judgment and order, the learned Session Judge acquitted the respondents -original accused Nos. 1 to 6 of the offence punishable under Section 396 of I.P.C.

It may be stated at this stage that respondent No. 5 i.e accused No. 5 Raju @ Rajendra Namdeo Chaudhary expired during pendency of this appeal, hence, the appeal has abated in respect of respondent No. 5 and his name is deleted in this appeal.

For the sake of convenience, we shall refer to the respondents as they were referred before the trial Court i.e accused Nos. 1 to 6 respectively.

2. The prosecution case briefly stated, is as under:

(a) Deceased Suresh was the husband of PW 3 Asha. Suresh was working in the wine shop of his uncle PW 1 Dharmu. This wine shop was situated at Ulhasnagar. Suresh was working as salesman in the said shop. He also used to go to various

places in Ulhasnagar, Kalyan, Dombivli and Thane to collect the dues from the customers.

(b) On 16.4.1991 at about 8.00 to 9.00 a.m., Suresh left his house to go for work. He boarded a train. When the train was in between Dombivli and Thakurli Railway Station, the respondents assaulted Suresh with knives and snatched the pouch which he was carrying. This incident was witnessed by PW 2 Rajaram and PW 7 Chandrashekhar who were travelling in the compartment adjoining the compartment in which Suresh was assaulted.

(c) At about 1.00 p.m., Dharmu received a phone call that Suresh had sustained injuries in his stomach with a knife and he should come to Kalyan Railway Station. He rushed to Kalyan Railway Station. At Kalyan Railway Station, he came to know that Suresh was taken to railway hospital at Kalyan. On reaching the railway hospital at Kalyan, Dharmu came to know that Suresh had expired. Dharmu then lodged the F.I.R. Exh. 59. Thereafter, investigation commenced.

(d) The dead body of Suresh was sent for postmortem. Seven injuries were found on the body of Suresh. Three of them were incised wounds on the left hand, left thigh and back. There was two stab injuries on the right hypochondrium and right side chest. In addition, there was CLW on the sternum and fracture of third rib. In the opinion of the Doctor, the cause of death was stab injury causing mesenteric vessel cut with perforation of transverse colon with right haemothorax causing hemorrhagic shock. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the respondents -original accused under Section 396 of IPC. The respondents/accused pleaded not guilty to the said charge and claimed to be tried. Their defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge acquitted the respondents of the offence punishable under Section 396 of IPC, hence, this appeal by the State.

4. We have heard learned APP for the State and Advocate Mr. Ashish Sawant for respondent Nos. 1 to 4 and 6. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the view of acquittal taken by the learned Sessions Judge is a reasonable and possible view and hence, it does not call for any interference.

5. In order to set aside the acquittal, the prosecution has relied on the evidence of two eye witnesses i.e PW 2 Rajaram and PW 7 Chandrashekhar. Both these witnesses have stated that on 16.4.1991, they were travelling in local train from Thane. After Dombivli Railway Station, they heard commotion from the adjoining compartment. On peeping in the adjoining compartment through the net, they saw that one person was being assaulted by some persons. When the train

reached Thakurli Railway Station, the persons who were assaulting got down and ran away.

6. PW 2 Rajaram had only identified accused No. 3 Anil before the trial Court and PW 7 Chandrashekhar has identified accused No. 1 -Shankar, accused No. 2 -Ashok, "accused No. 3 -Anil" and accused No. 6 -Vinod, however, it is pertinent to note that PW 10 Shri. Vasant Patil, the Special Executive Magistrate who held the Test Identification parade on 18.5.1991 has stated that PW 7 Chandrashekhar had identified accused No. 1 -Shankar, accused No. 2 -Ashok, "accused No. 5 -Raju" and accused No. 6 Vinod in the parade. In such case, identification by PW 7 Chandrashekhar of accused No. 3 -Anil cannot be safely relied upon.

7. It is an admitted fact that the accused persons were not known to PW 2 Rajaram and PW 7 Chandrashekhar and for the first time, both these witnesses have seen the accused persons at the time of the incident. In such case, holding of test identification parade (in short "TIP") would be necessary and the investigating agency has indeed held the TIP on 18.5.1991 at Adharwadi Jail. In the parade, PW 2 Rajaram has identified accused No. 3 Anil and PW 7 Chandrashekhar has identified accused No. 1 -Shankar, accused No. 2 -Ashok, "accused No. 5 -Raju" and accused No. 6 Vinod. On going through the evidence of PW 10 SEM Shri. Vasant Patil who held the parade on 18.5.1991, we find that there are various lacuna in the parade due to which it would not be safe to rely on identification of accused Nos. 1, 2, 3, 5 and 6 by PW 2 Rajaram and PW 7 Chandrashekhar. As far as accused No. 4 is concerned, it may stated that he has not been identified by any of the witnesses.

8. The evidence of PW 10 SEM Shri. Patil shows that all the six accused were put in one and the same parade and he selected 24 persons as dummies to stand along with six accused in the parade. This is in blatant violation of the guidelines issued by the High Court regarding holding of TIP. The Guideline 16(i) states that more that two accused should not be paraded together and the guideline 16(h) clearly states that two suspects of similar appearance should be paraded with at least 12 other persons and when the two suspects are not similar, separate parades should be held using different persons in each parade.

9. In the present case the evidence of PW 10 SEM Shri. Vasant Patil clearly shows that all the six accused were put in one and the same parade and the ratio of suspects to dummies was highly inadequate i.e for six accused 24 dummies were put in the parade. Looking to these lacuna, we are of the opinion that identification of accused Nos. 1, 2, 3, 5 and 6 cannot be relied upon.

10. Thereafter, the prosecution has placed reliance on the evidence of PW 8 Ramdas and PW 9 Vishnu who are the panch witnesses to recovery of four knives at the instance of accused No. 2 Ashok. As far as this recovery is concerned, it is to be noted that none of these weapons were sealed at the time of seizure. In this connection, useful reference may be made to a decision of the Supreme

Court in the case of Amarjit Singh Vs. State of Punjab, (1995) CriLJ 3984 : (1995) 3 Crimes 409 : (1995) 5 JT 529 : (1995) 4 SCALE 555 : (1995) 3 SCC 390 Supp , wherein the Supreme Court has held that the non-sealing of the articles at the spot is a serious infirmity because the possibility of tampering with the said articles cannot be ruled out. The same view was followed in two decisions of the Division Bench of this Court in the case of Ashok Premaji Nirbhawane Vs State of Maharashtra 1 and Rajaram Limbaji Babar Vs. The State of Maharashtra 2. In this view of the matter, we are not inclined to rely on the circumstance of recovery of knives at the instance of accused No. 2.

11. As far as other panch witnesses are concerned i.e PW 15 Suresh, PW 16 Moti and PW 17 Deepak, they have not supported the prosecution case. The evidence of remaining witnesses does not connect any of the respondents-accused to the crime.

12. There is no other cogent and clinching evidence on record to connect any of the respondents to the crime. Looking to the evidence on record, we find that conclusion arrived at by the learned Sessions Judge is a reasonable and possible view.

13. The plenitude of power available to the Court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction, but, however, there are a plethora of decisions of the Supreme Court which hold that the court hearing an appeal against acquittal, will not interfere solely because a different possible view may arise on the evidence. The Supreme Court in the case of C. Antony Vs. K.G. Raghavan Nair, AIR 2003 SC 182 : (2006) 4 BC 295 : (2002) 112 CompCas 611 : (2003) CriLJ 411 : (2003) 1 SCC 1 : (2003) 1 UJ 36 has observed that while hearing an appeal against an order of acquittal, if two reasonable conclusions can be reached on the basis of evidence on record, the appellate court should not disturb the finding of the trial court. We have already observed that the view taken by the learned Sessions Judge is a reasonable and possible view. In this view of the matter, we are not inclined to interfere in the judgment and order of acquittal. In view of the above, the appeal is dismissed.

1Criminal Appeal No. 886 of 2012 decided on 11.04.2014 (Coram : P.V. Hardas & A.S. Gadkari, JJ) 2Criminal Appeal No. 899 of 2005 decided on 27.01.2014 (Coram : P.V. Hardas & A.S. Gadkari, JJ)