

(2016) 09 BOM CK 0033
In the Bombay High Court
Case No : Criminal Appeal No. 109 of 1999

State of Maharashtra

APPELLANT

Vs

Shivaji

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 342

Citation : (2016) ALLMRCri 4436 : (2017) 1 BomCR(Cri) 196

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mrs. Vaishali N. Jadhav-Patil, A.P.P, for the Appellant/State; Mr. M.P. Kale, Advocate, for the Respondent Nos. 1 and 2; None, for the Respondent No. 3 though served

Final Decision : Dismissed

Judgement

Sangitrao S. Patil, J.—This is an appeal against the judgment and order dated 14.10.1998, delivered in Sessions Trial No. 108 of 1996 by the learned Sessions Judge, Parbhani, whereby respondent Nos. 1 to 3 came to be acquitted of the offences punishable under sections 307 and 342 of the Indian Penal Code (for short, "I.P. Code").

2. Briefly, the case of the prosecution is that there was some dispute between the informant viz:- Vikram Tukaram Solav, resident of Barbadi, Taluka Purna, District Parbhani and respondent No. 2 on account of agricultural land bearing Block No. 133 admeasuring 1 H 13 R situate within the local limits of village Adagaon. The Tahasildar, Purna passed an order on 16.09.1995 in favour of the informant in respect of that land. It is alleged that on 26.10.1995 at about 8.30 p.m., when the informant was going to his agricultural land from his village Barbadi, the respondents restrained him on the way near a Tower. They uttered that the informant was troubling them very much. Thereafter respondent No. 3 gave sword blow on the left wrist of the informant, while respondent Nos. 1 and 2 gave sword blows on his head. The informant sustained bleeding injuries on his

wrist and head. He started shouting. On hearing his shouts, one Sitaram Gound, Gangadhar Bhore and others rushed to the spot of the incident. The informant had caught hold of respondent No. 1. However, by giving a jerk to the informant, he fled away with the sword.

3. The informant immediately went to Police Station, Purna along with Sitaram Gound, Gangadhar Bhore and Datta. He narrated the incident before the police. The police recorded his First Information Report ("report" for short). On the basis of that report, Crime No. 120 of 1995 came to be registered against the respondents for the offences punishable under sections 307 and 341 read with section 34 of the I.P. Code.

4. The informant was referred to the Medical officer for examination and treatment at Purna in the same night, from where he was referred to the Government Hospital at Nanded. He was admitted there as an indoor patient for a period of six days. The investigation followed. The spot panchanama was prepared. The statements of witnesses were recorded. The respondents were arrested. The clothes of the informant and that of the respondents came to be seized. The swords used in the commission of the alleged offences came to be discovered at the instance of the respondents. The seized articles were sent to the Chemical Analyser for examination and report. After completion of the investigation, the respondents came to be charge-sheeted for the above mentioned offences in the Court of the learned Judicial Magistrate First Class, Basmat.

5. The offence punishable under section 307 of the I.P. Code, being exclusively triable by the Sessions Judge, the case was committed to the Sessions Court for trial.

6. The learned Sessions Judge framed the charges against the respondents for the above-mentioned offences vide Exhibit-2 and explained the contents to them in vernacular. The respondents pleaded not guilty and claimed to be tried. Their defence is of total denial and false implication on account of previous rivalry. The prosecution examined in all six witnesses including the informant and the alleged eye witnesses namely Sitaram Govindrao Gound, Gangadhar Vithoba Bhore. After evaluating the evidence on record, the learned Sessions Judge held that the prosecution failed to prove guilt of the respondents for the above mentioned offences beyond reasonable doubt. He, therefore, acquitted them as per the impugned judgment and order.

7. The learned A.P.P. submits that there is strong evidence to establish that the respondents assaulted the informant by means of swords (i.e. dangerous weapons) and caused serious injuries to him. The version of the informant has been corroborated by the evidence of eye witness-Sitaram (PW-2) to the extent that on hearing shouts of the informant, he went to the spot of the incident, found the informant there with injuries on his head and left hand and then took the informant to Police Station, Purna. She submits that though this witness

subsequently did not support the prosecution, the evidence of the informant who is injured witness, cannot be discarded for want of further corroboration by Sitaram (PW-2). According to her, there was no reason for the informant to implicate the respondents falsely in this case. The evidence of the informant has been supported by medical evidence and discovery of the swords at the instance of the respondents. According to her, the evidence produced on record reveals beyond reasonable doubt that the respondents attempted to commit murder of the informant by giving sword blows on his person and particularly on the vital part of his body i.e. the head. She submits that the learned Sessions Judge wrongly acquitted the respondents. She, therefore, prays that the impugned judgment and order may be set aside and the respondents may be convicted and sentenced for the above mentioned offences.

8. As against this, the learned counsel for the respondents submits that there was previous enmity between the informant on one hand and the respondents on the other. Therefore, independent corroboration to the version of the informant was essential for convicting the respondents. He submits that even the alleged eye witness i.e. Sitaram (PW2) also does not support the informant on the point of involvement of the incident in question. He submits that the medical evidence shows that the injuries found on the head and wrist of the informant are possible by sharp object. According to him, the recovery of the swords at the instance of the respondents has not been proved by the prosecution. There is no reliable evidence to connect the respondents with the incident in question. According to him, the learned Trial Judge rightly acquitted the respondents of the above mentioned offences. He, therefore, prays that the appeal may be dismissed.

9. As seen from the evidence of the informant himself, recorded at Exh.10, there was previous dispute between the respondents on one hand and himself on the other, on account of an agricultural land. No doubt, previous rivalry is a double edged weapon. It may attribute motive to the accused and at the same time, may lead one to hold there is false involvement of the accused in the alleged incident of violence. Therefore, it would be necessary to scrutinise the evidence on record cautiously and carefully before relying on the sole uncorroborated evidence of the informant who is in inimical terms with the respondents.

10. The informant deposes that on 26.10.1995 at about 8.00 p.m., he started from his house situated at village Barbadi to go to his agricultural land, Block No. 133, situate within the local limits of village Adagaon. He reached near a tower. The respondents obstructed him on the way. They were armed with swords. They alleged that he had become very arrogant. Respondent No. 2 gave a sword blow on his head and thereafter respondent No. 1 inflicted two blows of sword on his head. He states that thereafter respondent No. 3 gave sword blow on his left hand. He raised shouts. On hearing of his shouts, Sitaram (PW2) (Exh.12), Gangadhar (PW3) (Exh.13) and one Datta came to the spot of the incident. On seeing them, the respondents fled away from the spot of the incident. He informed Sitaram (PW2), Gangadhar (PW3) and Datta that the respondents had

assaulted him.

11. Sitaram (PW2) and Gangadhar (PW3) did not at all support to the version of the informant. They did not state that the informant had narrated the incident to them. Therefore, their evidence is of no use to connect the respondents with the incident in question.

12. Dr. Shaikh (PW7) (Exh.36), who examined the informant in Primary Health Centre at Purna, states that he examined the informant on 26.10.1995 and found the following injuries.

1. Incised wound, over head on right side on parietal region., 2cm x 2cm x 2cm. Oblique with regular margin.

2. Incised wound over head on left side in occipital region., 3cm x 2cm x 1cm, Oblique with regular margin.

3. Incised wound over left hand on lateral aspect below elbow joint, 5cm x 2cm x 1cm., Oblique with regular margin.

13. Dr. Shaikh (PW7) states that the above mentioned injuries might have been caused by the hard and sharp object, within 24 hours of his examination. Accordingly, he issued Injury Certificate (Exh.37). He states that the injuries found on the person of the informant were possible by the swords Art. Nos. 4, 5 and 6 shown to him. In his cross-examination Dr. Shaikh (PW7) admits that in Medico-Legal Cases, it is the practise to ask history of the injuries to the informant. However, he does not state that he asked the history of the injuries to the informant when the informant was referred to him for medical treatment. The Injury Certificate (Exh.37) is totally silent in this regard. Had the history of the injuries been given by the informant to Dr. Shaikh (PW7), it would have been reflected in the Injury Certificate (Exh.37) and would have lent some corroboration to his version. The absence of the history of the injuries in the Injury Certificate (Exh.37) and in the evidence of Dr. Shaikh (PW7) creates doubt about the case of the prosecution.

14. Dr. Shaikh (PW7) states in his cross-examination that if a person falls on the broken pieces of glass, the above said injuries noted on the person of the informant were possible. He further states that if the assault by sharp edged stones is made, then also such injuries are possible. Thus, he has expressed alternate possibility of cause of injuries found on the body of the informant. Consequently, it can be held that the said injuries were caused by the swords only.

15. Pandurang (PW4) (Exh.15) happened to be a panch to the spot panchanama (Exh.16). He simply proved the fact of preparing a spot panchanama (Exh.16) and putting thumb impression thereon. He states that the sample of blood mixed soil was seized by the police from the spot of incident. However, he does not state that the said sample was packed in any container and that it was sealed on the spot itself. Anyway his evidence is of formal nature and does not directly

incriminate the respondents.

16. The prosecution has examined Jani Khan (PW5) (Exh.17) to prove the seizure of clothes from the person of the informant as well as discovery of the swords allegedly made in consequence of the statements given by the respondents. This witness does not at all support the prosecution. He states that he was called by the police on 26.10.1995 to act as a panch. The police obtained his signatures on some papers. His evidence is of no use to connect the respondents with the alleged offences.

17. In the absence of independent evidence to establish that incriminating articles were seized from the respondents or at their instance, the evidence of P.S.I. Mule (PW6) (Exh.24), which is silent on the points that he seized blood stained swords at the instance of the respondents, wrapped them tightly, sealed them on the spot immediately after their seizure and sent them to the Chemical Analyzer in the same condition, would not be helpful to the prosecution to establish that the swords alleged to have been seized by this witness were used at the time of the incident.

18. P.S.I. Mule (PW6) does not state that he seized the clothes of respondent No. 1. He states that he arrested respondent No. 2 on 02.11.1995 and seized the clothes from his person vide panchanama (Exh.23). However, he does not state that the said clothes were stained with blood. Therefore, seizure of the clothes of respondent No. 2 would not connect him with the incident in question.

19. P.S.I. Mule (PW6) further deposes that he arrested respondent No. 3 on 02.11.1995 and seized his blood stained clothes under panchanama (Exh.22). However, this evidence is very vague and general. He does not state about the description of the clothes seized from the person of respondent No. 3. The incident took place on 26.10.1995. It does not appear to be natural and probable that after committing the alleged offences, respondent No. 3 would continue to wear the same clothes until his arrest on 02.11.1995, so as to enable P.S.I. Mule (PW6) to collect incriminating evidence against him. Moreover, there is no whisper in the evidence of P.S.I. Mule (PW6) that he wrapped those clothes, sealed them and sent them to the Chemical Analyzer in the same condition. In the circumstances, the seizure of clothes of respondent No. 3, even if accepted, would not connect him with the incident in question.

20. The alleged motive behind the incident does not appear to be natural and probable. The informant states that the respondents uttered that he had become arrogant and started giving sword blows on his person. When, in what manner and what arrogance was shown by the informant is not made clear before the Court. The informant could have made mention of certain prior incident on the basis of which it could have been inferred that the respondents were prompted to cause deadly assault on the informant. There is absolutely nothing on record to show as to why the respondents would think of killing the informant. Thus, the very ingredient of the offence punishable under Section 307 of the I.P. Code, i.e.

intention to commit murder, is not established by the prosecution.

21. As stated above, there is sole uncorroborated testimony of the informant to show the involvement of the respondents in the incident in question. There was previous rivalry between the informant on one hand and the respondents on the other. The version of the informant has not been corroborated even by Sitaram (PW2) and Gangadhar (PW3), who, according to the informant, had reached the spot of the incident immediately after hearing his shouts. In the circumstances, it would be risky to rely on the sole uncorroborated testimony of the informant. The evidence of the informant alone is not sufficient to establish guilt of the respondents for the above mentioned offences beyond reasonable doubt.

22. The learned Trial Judge rightly appreciated the facts of the case and rightly held that the prosecution failed to establish the above mentioned offences against the respondents beyond reasonable doubt. The learned Trial Judge rightly extended the benefit of doubt to the respondents. We find that the view taken by the learned Trial Judge is quite possible one and is not perverse. We find no reason to interfere with the impugned judgment and order.

23. In the above circumstances, the appeal is liable to be dismissed. In the result, we pass the following order:-

ORDER

24. The Criminal Appeal is dismissed.