
(2013) 08 BOM CK 0219
In the Bombay High Court
Case No : Criminal Appeal No. 528 of 2007

Suresh @ Ramchandra Laxman Bhopi	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 1 BomCR(Cri) 797

Hon'ble Judges : Revati Mohite Dere, J; P.V. Hardas, J

Bench : Division Bench

Advocate : Arfan Sait, appointed, for the Appellant; H.J. Dedhia, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Revati Mohite Dere, J.—The Appellant stands convicted for the offence punishable u/s 302 of the Indian Penal Code ("IPC") and sentenced to suffer RI for life and also to pay a fine of Rs. 1,000/-, in default, to suffer further RI for three months, by the 12th Ad-hoc Judge at Sewree, by Judgment and Order dated 21st February, 2007, in Sessions Case No. 288 of 2003. By this appeal, the Appellant questions the correctness of his conviction and sentence. The prosecution case can be briefly stated as under:

PW 9-Ramesh Waghmare was attached as a PSI to the Dadar Police Station and was the SHO on 20th February, 2003. He has stated, that on 20th February, 2003 at 22.45 hrs., he received an information from the K.E.M. Hospital, that one injured had expired before his admission to the Hospital. He disclosed the said information to PI Shri Naik, who accordingly made an entry in the Station Diary. Accordingly, PW 9-PSI Waghmare proceeded to the K.E.M. Hospital, where he met Santosh Patil (PW 1). He has stated, that Santosh Patil (PW 1) narrated the incident, pursuant to which, he recorded his statement and thereafter obtained the Crime Register Number from the Police Station. Accordingly, C.R. No. 38 of 2003 came to be registered with the Dadar Police Station, for the offence u/s 302

of the IPC, as against the Appellant. The said complaint lodged by Santosh Patil (PW 1) is at Exhibit 14. PW 9-PSI Waghmare, thereafter, prepared the inquest panchanama in the presence of the panchas at K.E.M. Hospital, which is at Exhibit 18. He also called for a photographer who took photographs of the dead body. He also seized the clothes of the deceased Nivrutti under a panchanama in the presence of the panchas, which is at Exhibit 17. PW 9-PSI Waghmare thereafter visited the scene of offence and drew the spot panchanama in the presence of the panchas, which is at Exhibit 31. He recorded the statements of the eyewitnesses and thereafter handed over further investigation of the said case to API Shri Chavan (PW 10).

PW 10-Subhash Chavan who was attached to the Dadar Police Station as API, took over the investigation of the said case from PW 9-Waghmare on 21st February, 2003. He has stated, that he was present with PSI Waghmare at the time of the registration of the offence and during the investigation conducted by him. He has stated, that he recorded the statement of five witnesses and thereafter arrested the Appellant and prepared his arrest panchanama in the presence of panchas. The said panchanama is at Exhibit 40. The clothes of the Appellant came to be seized at the time of his arrest. He has stated, that he had seen faint blood stains on the pant of the Appellant. He has identified the said clothes which were on the person of the Appellant, as Articles "B" & "C". He has stated that the further investigation of the said case came to be handed over to Subhash Shinde (PW 8) on 23rd February, 2003.

PW 8-Subhash Shinde was serving as a PI (Crime) at Dadar Police Station at the relevant time, when he took over further investigation of the said case on 23rd February, 2003. He has stated, that on 23rd February, 2003, the Appellant made a disclosure statement that he had concealed a knife in the dustbin near his house and that he was ready to produce the knife. The said memorandum statement was recorded in the presence of the panchas and is at Exhibit 28. He has stated, that he along with panchas and the Appellant and other police staff went to Worli Koliwada near Kranti Krida Mandal and the Appellant went near a dustbin which was outside his house and produced a knife from the dustbin. The blood stained knife produced by the Appellant was seized and sealed under a panchanama in the presence of panchas and is at Exhibit 29. He has identified the knife i.e. Article "A" which was recovered at the instance of the Appellant. PW 8-PI Shinde has further stated, that he had sent the clothes of the Appellant and the deceased and the knife to the Office of the Chemical Analyser for examination along with a requisition letter. He has stated, that he collected the C.A. reports which are at Exhibits 43 to 46 and the post-mortem report, which is at Exhibit 34. On completion of the investigation, charge-sheet came to be submitted by him in the Court of the Metropolitan Magistrate, Dadar.

2. On committal of the case to the Court of Sessions, charge came to be framed vide Exhibit 2 as against the Appellant for the offence punishable u/s 302 of the IPC. The Appellant pleaded not guilty and claimed to be tried.

3. The prosecution in support of its case, examined ten witnesses. The defence of the Appellant was of denial and of false implication. The Trial Court, after considering the evidence adduced by the prosecution, convicted the Appellant for the offence punishable u/s 302 of the IPC and sentenced him to suffer RI for life and also to pay a fine of Rs. 1,000/-, in default, to suffer further RI for three months.

4. In order to effectively deal with the submissions advanced before us by the learned Counsel for the Appellant, Shri Arfan Sait and the learned A.P.P. Shri H.J. Dedhia for the State, it will be useful to refer to the evidence of the prosecution witnesses.

5. PW 1-Santosh Patil, son of deceased Nivrutti has stated, that his father Nivrutti would regularly sing religious songs (bhajans). He has stated that on every Monday, Tuesday and Thursday, his father Nivrutti would sing bhajans on the Ota i.e. platform of their house and that several people from the locality would attend his bhajans. He has stated that the Appellant-Ramchandra Bhopi was also known as Suresh Bhopi. He has stated, that the Appellant was residing on the rear side of their house and was a priest of Gopaldevi temple. He has further stated, that about 5 to 6 years prior to the incident of 20th February, 2003, the Appellant had assaulted him and his friend Sandesh with a knife and for which, he was convicted and sentenced to suffer imprisonment of one year.

PW 1-Santosh has stated, that on 20th February, 2003 between 8.30 p.m. to 9.30 p.m., his father Nivrutti was singing bhajans on the Ota of their house. He has stated, that after the bhajans were over, his father went to answer nature's call near the creek and that the persons attending the bhajans had also dispersed. PW 1-Santosh has further stated, that when the bhajans were being sung, he had seen the Appellant loitering around the area and when his father went to answer nature's call, he had seen the Appellant following him through the lane. He has further stated, that he saw his father Nivrutti coming back through the same lane with his hand on the left side of his abdomen. He has stated, that his father Nivrutti disclosed to him that the Appellant Suresh had assaulted him.

PW 1-Santosh, with the help of his cousin Devendra, made Nivrutti lie down on the Ota and then went in search of the Appellant. He has stated, that his cousin Devendra took his father to the KEM Hospital. He has further stated that he went to the hospital at around 10.30 p.m. and on reaching the KEM Hospital, learnt from Devendra that his father had succumbed to his injuries before admission. He has further stated, that the police had come to the hospital and recorded his statement as disclosed by him. The said statement, recorded as an FIR, is at Exhibit 13. PW 1-Santosh handed over the clothes worn by his father at the time of the incident. He has identified the said clothes.

In the cross-examination of the said witness, nothing substantial has been elicited. It is sought to be suggested to the said witness; that he had not

witnessed the said incident; that his father Nivrutti had not made any disclosure to him regarding assault by the Appellant; and that he never chased the Appellant, all of which have been denied by the witness.

6. PW 2-Narendra Patil, a resident of Worli-Koliwada has been examined by the prosecution as an eye-witness. He has stated that he knew both-the deceased Nivrutti and the Appellant, as they were residents of the same locality, where he resides. He has stated, that on the day of the incident i.e. 20th February, 2003, he had seen deceased Nivrutti going past his house, towards the seashore and after some time, he had seen Suresh running towards Nivrutti and assaulting him with a knife. He has stated, that the Appellant assaulted Nivrutti on the left side of the abdomen as a result of which, Nivrutti fell in front of his house. He has stated that he shouted at the Appellant saying "Suresh Kay Kartos?" (Suresh, what are you doing?) and that the Appellant turned towards him with a knife in his hand. He has stated that as he was afraid, he went inside and saw the Appellant running towards the seashore. He has further stated that Nivrutti started walking towards his house, placing his hand on the abdomen.

PW 2-Narendra Patil has stated that he thereafter cleaned the Ota in front of his house, as there was blood lying on the scene. He has stated, that the police recorded his statement on the same night and that he learnt from the police that Nivrutti had died on the same night. He has stated that he had seen the blood stained knife in the hand of the Appellant and that the Appellant was wearing dark coloured clothes on his person at the time of the incident. PW 2-Narendra, has been cross-examined at length and there are certain contradictions which have been brought on record which are-portion marked "A" i.e. "Nivrutti was removed in an unconscious condition by Devendra and his neighbour Digambar for treatment to the KEM Hospital", portion marked "B" i.e. "on 20th February, 2003, he had gone for the wedding of his nephew at Matunga and had returned at about 9.30 p.m."; portion marked "C" i.e. "when the Appellant attacked Nivrutti with a knife, he ran into the neighbour's house". The said witness has denied the aforesaid portions marked "A", "B" and "C" in his statement recorded on 21st February, 2003. He has stated, in the cross-examination that there was a scuffle between the Appellant and Nivrutti.

7. PW 3-Vasudeo Patil is the panch to the inquest panchanama which is at Exhibit 18. He has stated that on 21st February, 2003, the clothes of the deceased came to be seized at the KEM Hospital. He has identified the clothes of the deceased, which were seized under a panchanama.

8. PW 4-Vikas Torankar has stated, that on 23rd February, 2003, he was called to the Dadar Police Station to act as a panch. He has stated, that in his presence, the Appellant made a disclosure statement, that he was ready to point out the place where he had concealed the knife and produce the same. He has identified his signature on the memorandum panchanama, which is at Exhibit 28. He has stated, that the Appellant along with the police staff and the panchas went to Worli Koliwada Junction and when they reached near the house of the Appellant

at Bhopi House, Room No. 3, the Appellant pointed out a dustbin outside his house and produced a knife from the dustbin. The panchanama of the seizure of knife was done in the presence of the panchas and is at Exhibit 29. He has identified the knife produced by the Appellant, which is Article "A". It is elicited in the cross-examination of the said witness that the dustbin was closed and was opened by the Appellant and thereafter, it was closed again and that the said place was an open place, accessible to all.

9. PW 5-Manohar Khedekar is the panch to the spot panchanama which was drawn in the presence of the another panch on 23rd March, 2003. He has stated that the spot was in front of Bala Patil's house and that there was water lying in front of the said house and that dry blood stains were collected. The said panchanama is at Exhibit 31.

10. PW 6-Dr. Vishwakarma conducted the post-mortem examination on deceased Nivrutti on 22nd February, 2003 and found the following external injuries on the person of the deceased:

i) stab wound 1.5 cm x 0.07 cm left third inter coastal space anterior axillary line, fresh injury, fatal injury.

PW 6 found the following internal injuries:

i) Left sided hemothorax (500 c.c.)

ii) the left lung was collapsed,

iii) the upper lobe was punctured

iv) hemorages

He has stated, that the injuries were ante-mortem and that the cause of death was hemorrhagic shock following penetrating stab injury over the chest and that the said injury was sufficient in the ordinary course of nature to cause death. The said post-mortem has been exhibited vide Exhibit 34.

11. PW 7-Rajesh Kore, is the panch to the arrest panchanama which is at Exhibit 40. He has stated that he was present in the Police Station when the Appellant came to be arrested and the clothes on the person of the Appellant came to be seized. He has identified article "B" i.e. black colour shirt and article "C" i.e. blue colour jean pant, as being on the person of the Appellant and has proved the panchanama, which is at Exhibit 40. Although this witness has been cross-examined at length, nothing substantial has been elicited so as to demolish the credibility of the said witness.

12. The learned Counsel for the Appellant, Shri Arfan Sait has canvassed before us-(1) that the evidence of the eye-witness (PW 2) to the said incident is not trustworthy and ought not to be relied upon (2) that the oral dying declaration made to PW 1 does not inspire confidence in the light of the evidence that has come on record and that his presence is doubtful, (3) the evidence of recovery

ought not to be relied upon, as the recovery of knife is from a place which is open and accessible to all, and (4) that it is incomprehensible that Appellant would continue to wear blood stained clothes for two days i.e. till he was arrested.

13. The learned A.P.P. has supported the findings of the Trial Court and has urged that the Judgment ought not to be interfered with, as the same is legal and proper.

14. We have given our anxious consideration to the submissions advanced by both the learned Counsels and are of the opinion that the prosecution has proved its case beyond reasonable doubt as against the Appellant.

15. We have perused the evidence of PW 2-Narendra, who is an eye-witness to the incident of assault on Nivrutti by the Appellant. We find that his evidence is precise, concise and categoric, with regard to him having witnessed Appellant assaulting Nivrutti on his abdomen (left side) with a knife; him having questioned the Appellant as to what he was doing; the Appellant turning towards him, resulting in him hiding in his neighbour's house; and thereafter Appellant running away towards the seashore and Nivrutti walking towards his house; and thereafter cleaning the ota, which was blood stained. We find, that he is a natural witness who has seen the assault on Nivrutti and so was his conduct. His statement has also been recorded on the very same day soon after the incident by the police. There is nothing elicited in the cross-examination to demolish his credibility as an eye-witness. We find that his evidence as an eye-witness is trustworthy and inspires confidence.

16. With regard to the evidence of PW 1-Santosh, the said witness has deposed, that he had seen the Appellant at the spot, prior to the incident and after the bhajans, following Nivrutti in the lane. His evidence corroborates the evidence of PW 2-Narendra with regard to the events, although PW 1-Santosh is not an eye-witness to the actual assault. As far as the oral dying declaration allegedly made by deceased Nivrutti to PW 1-Santosh, with regard to the assault by the Appellant, we feel that there is nothing to disbelieve the testimony of the said witness, as Nivrutti, after being assaulted, had held his stomach and was walking towards his house and this fact has been categorically deposed to, by both-PW 1-Santosh and PW 2-Narendra Patil. Therefore, what emerges is that Nivrutti was in a position to walk. Even if we exclude the oral dying declaration from consideration, there is nothing that has come on record to demolish the ocular evidence that has come on record corroborated with the medical evidence to disbelieve the evidence of either PW 1-Santosh and PW 2-Narendra Patil. PW 6-Dr. Vishwakarma has specifically deposed that he found a stab wound on the left third inter coastal space anterior axillary line, i.e. stab injury over the chest.

17. We find that, the ocular evidence is corroborated not only by the medical evidence, but also by the evidence of recovery of knife from a dustbin at the instance of the Appellant. The knife was concealed in a dustbin and the Appellant

produced the same. According to the Chemical Analyser's report, the blood stains found on the knife were that of the blood group of the deceased Nivrutti, which was "A". The clothes of the Appellant seized at the time of his arrest after two days of the incident, were also found to be blood stained. It was urged by Shri Arfan Sait, learned Counsel for the Appellant that no accused would wear clothes which were blood stained for a period of two days. We are unable to accept the said submission in view of the fact that the blood stains that were seen on the pant of the Appellant were faint spots on a dark pant and that it also appears from the evidence of PW 10-Chavan, that he had sent detection staff for searching the Appellant but he was not found in his house. The C.A. Report is a strong circumstance against the Appellant. The C.A. Report shows that the blood group found on the clothes of the deceased is "A", the blood group found on the clothes of Appellant i.e. jean pant was "A" and the blood group found on the knife was "A". Similarly, the blood samples collected from the scene of incident was also of blood group "A". It is pertinent to note that the blood group of the Appellant was "O" group.

18. In the light of the aforesaid evidence, direct and circumstantial i.e. ocular evidence corroborated by the medical evidence, recovery of knife having blood group of the deceased and finding of the blood group of the deceased on the pant of the Appellant at the time of the arrest, we find that the prosecution has proved its case beyond reasonable doubt. In the premise, we find no merit in the Appeal and accordingly dismiss the Appeal and confirm the conviction and sentence of the Appellant.