

(2015) 06 BOM CK 0046
In the Bombay High Court
Case No : Criminal Appeal No. 342 of 2007

Suresh Vishnu Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(ii)(v)

Citation : (2015) 3 BomCR(Cri) 713

Hon'ble Judges : P.V. Hardas, J; A.S. Gadkari, J

Bench : Division Bench

Advocate : Yug Mohit Chaudhary, for the Appellant; V.R. Bhosale, APP,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.S. Gadkari, J.

1. The Appellant has challenged the judgment and order dated 8th February, 2007 passed by the Ad-hoc Additional Sessions Judge, Islampur in Sessions Case No. 52/05 thereby convicting the Appellant for an offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year.

2. The facts which are necessary to decide the present Appeal can in brief be stated as under :

"i) The complainant - Smt. Lata Bhagwan Bhosale (P.W.7) is the wife of deceased Bhagwan Bhosale. The deceased Bhagwan Bhosale used to run his jeep at village Arala. The agricultural land of the Appellant-accused was adjacent to the land of the complainant and hence, the complainant was knowing the Appellant and his wife Smt. Ranjana. That the deceased Bhagwan was having illicit relations with

Ranjana i.e. the wife of the Appellant. The date of incident in question is 25th October, 2005. Before one year of the incident, Bhagwan and Ranjana had eloped. They were out of their house for about a month. They had resided at the residence of the cousin brother of Bhagwan viz. Dadasaheb Adsule, resident of Wathar, Taluka Karad during the said period. Thereafter P.W.6 - Ashok Bhosale, the real brother of Bhagwan and said Dadasaheb Adsule called the Appellant, and also convinced his brother viz. Bhagwan and Ranjana and thereafter, Ranjana went with her husband.

ii) On 25th October, 2005 P.W.2 - Kailas Patil saw the Appellant-accused and Bhagwan scuffling in the morning. He also saw Bhagwan started running from the said spot. P.W.3 - Shankar Jadhav saw the Appellant chasing Bhagwan in the morning at about 9.15 a.m. P.W.5 - Hanmant Shinde on 25th October, 2005 at about 9.30 a.m. when was in his shop heard the voice as "Aba Mala Vachwa". Hence, he went near the pan-patti shop of P.W.9 - Khashaba Suryawanshi. At that time, he saw that the Appellant was assaulting Bhagwan Bhosale in the shop of Khashaba by knife. That after assaulting, the Appellant went towards his house. He also saw that the Appellant was having knife in his hand stained with blood and his clothes were also stained with blood. A villager by name Ajay Nangre gave the information about the assault on Bhagwan Bhosale to his wife i.e. P.W.7 - Lata Bhosale, who in turn visited the spot, witnessed that her husband was lying in pool of blood in the pan-patti shop of P.W.9 - Khashaba Suryawanshi and thereafter she went to the police station for lodging a complaint.

iii) That P.W.7 - Lata Bhosale, the wife of Bhagwan Bhosale and police patil of village Sonawade, Arala went to the police station and P.W.7 - Lata Bhosale lodged a complaint which is at Exhibit 29. On the basis of the said complaint, C.R. No. 30/2005 for the offence punishable under Section 302 of the Indian Penal Code came to be registered and investigation of the same was handed over to P.W.11 - Vishnu Pawar. P.W.11 - Vishnu Pawar conducted inquest panchanama of the dead body of the deceased which is at Exhibit 5. He also prepared spot panchanama, Exhibit 12. He attached a pair of chappal and one knife stained with blood from the road. He collected sample of blood with the help of swab from the pool of blood lying in the shop of Khashaba Suryawanshi on the same day. He also attached the clothes of the deceased by effecting panchanama which is at Exhibit 8. He recorded the statements of the witnesses and arrested the accused on the same day i.e. on 25th October, 2005 and sent him for medical examination to primary health center, Kokrud. It was transpired during the course of investigation that deceased Bhagwan Bhosale was a Bouddha by religion and the accused is Maratha by caste. Therefore, the provisions of the Prevention of Atrocities Act were added. The further investigation was handed over to Dy. S.P. Islampur.

iv) P.W.12 - Vikram Deshmane was attached to Islampur Division as Deputy Superintendent of Police. As Section 3(ii)(v) of the Prevention of Atrocities Act was added to the said crime, the investigation of the said crime was transferred

to him under the orders of the Superintendent of Police, Sangli. On 26th October, 2005, he recorded the statement of four witnesses. The Appellant who was in police custody expressed his willingness to produce his clothes and the knife used in the present crime. The said knife was recovered at the instance of the Appellant by effecting seizure panchanama which is at Exhibit 18. During the course of investigation, P.W.12 collected the postmortem notes and other necessary and relevant documents. After completion of the investigation, he submitted a charge-sheet in the Court of Judicial Magistrate First Class, Shirala.

v) As the offence under Section 302 of the Indian Penal Code was exclusively triable by the Court of Sessions, the J.M.F.C. Shirala committed the case to the Court of Sessions, Islampur. After committal of the said case, the Trial Court framed charge below Exhibit 2. The said charge was read over and explained to the Appellant in vernacular to which he denied and claimed to be tried. The defence of the Appellant was that, he had been falsely implicated in the said case. The learned Trial Court thereafter recorded the evidence led by the prosecution and after hearing the parties to the said Sessions Case, was pleased to convict the Appellant for the offence punishable under Section 302 of the Indian Penal Code. The learned Trial Court, however, was pleased to acquit the Appellant for the offence punishable under Section 3(ii)(v) of the Prevention of Atrocities Act. The Appellant has impugned the said judgment and order dated 8th February, 2007 in the present Appeal as stated herein above."

3. Heard Mr. Chaudhary, learned counsel for the Appellant and Smt. Bhosale, learned APP for the State. Mr. Chaudhary, learned counsel for the Appellant submitted that as the wife of the Appellant was having illicit relations with deceased Bhagwan Bhosale, complainant - Lata Bhosale and the close relatives of Bhagwan Bhosale have falsely implicated the Appellant in the present crime with a view to take revenge of the said act. He further contended that the material witness i.e. P.W.5 - Hanmant Shinde and P.W.8 - Ajay Nangre did not support the prosecution case and therefore, there is no sufficient evidence to sustain the conviction of the Appellant in the present crime. Mr. Chaudhary lastly urged that the present Appeal may be allowed by setting aside conviction of the Appellant.

4. Per contra, the learned APP supported the impugned judgment and order dated 8th February, 2007 and submitted that there is sufficient evidence available on record which would sustain the conviction of the Appellant under Section 302 of the Indian Penal Code and she prayed that the present Appeal may be dismissed sustaining the impugned judgment and order.

5. With a view to appreciate the respective submissions of the learned counsel for the Appellant and the learned APP, it is necessary and useful to refer to the evidence in brief led by the prosecution in support of its case.

6. P.W.1 - Ashok Zade is a panch witness to the spot panchanama i.e. the scene of offence panchanama which is at Exhibit 12, wherein one knife and a pair of

chappal was also seized by the police. The said panchanama is dated 25th October, 2005 i.e. the date of incident. This witness has been cross examined at length by the Appellant. In his cross examination, this witness has admitted that he does tailoring job near Arala bus stop which is near the spot of incident. He has denied the suggestion that accused Suresh Patil was his competitor in his business and therefore, he deposed falsely against the Appellant. He also denied the suggestion that the deceased was his relative.

7. P.W.2 is Kailas Patil. P.W.2 in his testimony has stated that he runs a shop of gifts on Arala Chandoli Shirala Road situated at Arala village. That on 25th October, 2005 at about 9.15 a.m. the deceased Bhagwan Bhosale met him on the road. At that time when P.W.2 and Bhagwan Bhosale were chitchatting the Appellant-accused Suresh came there. After coming there, the Appellant started manhandling Bhagwan Bhosale. He separated them. Thereafter Bhagwan Bhosale started running towards S.T. stand and the accused followed him. P.W.2 - Kailas stayed there. After half an hour, he learnt that Bhagwan Bhosale was lying dead in the shop of Khashaba Suryawanshi. He went to the spot and saw Bhagwan dead. In the cross-examination of this witness, nothing fruitful, which would discredit the testimony of this witness has been brought on record.

8. P.W.3 is Shankar Jadhav. P.W.3 in his testimony has stated that his shop named and styled as "Kadaidheshawar Vada Pav Center" is situated on Kokrud-Chandoli Road within the vicinity of village Arala. That on 25th October, 2005 he opened his shop at 7.00 a.m. Thereafter at about 9.30 a.m. he was preparing "bhaji". At that time, he saw deceased Bhagwan Bhosale running towards S.T stand, Arala and the Appellant Suresh Patil was chasing him. As P.W.3 was busy in his work, he did not go out of his shop. He thereafter learnt that Bhagwan Bhosale was murdered by the Appellant. In the cryptic cross examination of this witness, no material has been brought on record which would tend this Court to disbelieve the testimony of this witness.

9. P.W.4 is Vaibhav Mali, a panch witness to the seizure of clothes and knife at the instance of the Appellant. The discovery panchanama of the said clothes and knife at the instance of the Appellant is at Exhibit 18 which has been duly proved by this witness. The cross examination of this witness is proceeded by putting him stock questions and no material which is useful to the Appellant has been brought on record at the instance of this witness.

10. P.W.5 is Hanmant Shinde. As this witness did not support the prosecution case, he was declared hostile. In the cross examination at the instance of the learned APP, this witness though initially admitted the fact about his witnessing the incident of assault on Bhagwan Bhosale by the Appellant in the shop of Khashaba Suryawanshi (P.W.9) by means of a knife, in further cross examination taken on behalf of the Appellant, this witness again took a summersault and resiled from his version given earlier. In short, though this witness was cited as an eye witness to the incident, he did not support the prosecution case and has turned hostile.

11. P.W.6 is Ashok Bhosale, the real brother of deceased Bhagwan Bhosale. This witness in his testimony has stated that on 25th October, 2005 at about 8.00 a.m. he left Banwadi along with his tempo and after doing his work, he came to Karad at about 4.00 p.m. At that time his cousin brother Laxman Kamble told him that one Suresh Patil has murdered his brother Bhagwan. Thereafter he came to Shirala and took the custody of the dead body of Bhagwan after the postmortem examination. He has further stated that his brother was having illicit relations with the wife of the Appellant viz. Ranjana. Before one year of the incident, his brother and Ranjana had eloped. They were out of the house for a month. During that period, they had resided in the house of his cousin brother, Dadasaheb Adsule, resident of Wathar, Taluka Karad. That during the said period, they both had come to his house. Thereafter he himself and Dadasaheb Adsule called Appellant Suresh. They also convinced his brother Bhagwan and Ranjana and thereafter Ranjana went with her husband. He has further stated that he belonged to scheduled caste and the Appellant was Maratha.

It is thus clear from the testimony of this witness that this witness was examined with a view to establish the motive behind the crime.

This witness was cross examined at length by the Appellant. However, according to us no material has been brought on record which would tend us to disbelieve the testimony of this witness.

12. P.W.7 - Lata Bhosale is the wife of deceased Bhagwan Bhosale. P.W.7 in her testimony has stated that before one year of the incident, her husband used to run his jeep at village Arala. She has agricultural land at village Sonawade. The land of the Appellant Suresh Patil was adjacent to her land and hence, she knew the Appellant and his wife Ranjana. P.W.7 was having telephone in her house. Ranjana used to telephone at her house for her husband. She had convinced her husband as well the husband of Ranjana about the same, but it was of no use. P.W.7 thereafter stated that her husband was having illicit relations with said Ranjana. That her husband and Ranjana had eloped and had resided in the house of Dadasaheb Adsule for about three weeks. Thereafter she herself, her brother-in-law Ashok Bhosale (P.W.6) and Dadasaheb Adsule convinced both of them and sent Ranjana along with the Appellant. Thereafter as the Appellant had threatened her husband, her husband was not running his jeep and used to stay in the house. That on 25th October, 2005 as her mother-in-law was ill, her husband Bhagwan had gone out of the house to bring medicine at about 8.30 a.m. Her husband did not return to the house till 9.45 a.m. and therefore, she herself and her sister-in-law viz. Kunda left for their land. When they reached at the stream-let of Murwal, one Ajay Nangre came there and told that, the Appellant Suresh Patil had murdered her husband Bhagwan. Hence, she herself and her sister-in-law went to Arala on feet. When they came near Sangli Bank, she found knife stained with blood and chappal of her husband was lying there on the road. Thereafter they went towards bus stand. At that time, she saw that the dead body of her husband was lying in the pool of blood in the pan-patti shop

of Khashaba Suryawanshi. Khashaba Suryawanshi told her that the accused Suresh Patil murdered her husband. The police patil met them at the spot and thereafter she went to the police station Kokrud and lodged a complaint. The said complaint is at Exhibit 29. This witness identified articles Nos. 1 and 2 i.e. knife and chappal. This witness was cross examined at length by the Appellant. Neither any omission, contradiction, nor any material which is beneficial to the Appellant to discredit the testimony of this witness has been brought on record and the testimony i.e. the examination-in-chief of this witness has gone unchallenged.

13. P.W.8 - Ajay Nangre is the person who informed P.W.7 - Lata Bhosale about the incident which took place in the shop of P.W.9 - Khashaba Suryawanshi. P.W.8 in his testimony has stated that on 25th October, 2005 at about 9.45 a.m. he was proceeding to Arala from village road Sonawade. When he reached village Arala, he learnt from people that accused Suresh Patil had murdered Bhagwan Bhosale. The deceased Bhagwan was resident of Sonawade. When he was coming to Arala, he saw the wife of deceased Bhagwan going to her land and when he went upto streamlet of Murwal, where he met the wife of the deceased and told her about the incident. That one Kunda Kamble was accompanying the wife of the deceased at that time. Thereafter they went to Arala and returned to Sonawade.

It appears to us that the knowledge of this witness about the incident is of hearsay in nature and this witness is not material witness for the prosecution.

14. P.W.9 - Khashaba Suryawanshi is the owner of a petal leaf shop situated on the main road of village Arala near S.T. stand. P.W.9 in his testimony has stated that he runs a pan-patti shop in the name and style as "Satyajeet Pan shop and Swapnil Soundraya Prasadhane and Katiri stores". The Appellant is a tailor by profession. His shop was also situated in the same line of the shop of P.W.9. The deceased Bhagwan Bhosale used to run his jeep on Arala Chandoli road. He knew both of them. On 25th October, 2005 he opened his shop at about 8.00 a.m. Thereafter at about 9.30 a.m. he heard the voice as "Aba Mala Vachwa". The said voice was of Bhagwan Bhosale. Bhagwan used to call P.W.9 as "Aba". That after giving a call, Bhagwan rushed in his shop and the Appellant-accused followed him. At that time the Appellant was having knife in his hand. Thereafter the Appellant caused Bhagwan to fall down and stabbed him for about 15 times in his presence. Out of fear, he came out of his shop. After stabbing Bhagwan, the Appellant went towards his house with knife in his hand and the clothes on his person were stained with blood. At that time, Hanmant Shinde (P.W.5) was near his shop. Thereafter he went to the police patil and narrated the incident. The police patil came to shop. So also the wife of deceased Bhagwan came there. Thereafter they went to the police station. The police came and prepared the panchanama. The blood of Bhagwan was splashed in his shop. In the cross-examination of this witness no omission and/or contradiction which is material from the point of disbelieving this eye witness has been brought on record by the

defence and in our considered opinion the testimony of P.W.9 i.e. examination-in-chief of this witness has not been contradicted and/or put at stake by the defence, which would create doubt in the mind of this Court about the presence of this witness at the spot of incident. It further appears to us that this witness is natural independent witness who was present on the spot at the relevant time of incident.

It is to be noted here that the postmortem notes pertaining to the autopsy of deceased Bhagwan Bhosale disclose that P.W.9 - Khashaba Suryawanshi has identified the dead body of Bhagwan Bhosale. It is further to be noted that column No. 17 of the said notes mentions about 14 incised wounds on the body of the deceased. In the said postmortem notes which is at Exhibit 6, the opinion as to the probable cause of death expressed by the Medical Officer "as the death was due to cardio respiratory arrest due to massive hemorrhage (bleeding) due to polytrauma causing hypodermic shock".

15. P.W.10 is Dr. Ramchandra Kulkarni a Medical Officer attached to primary health center, Kokrud, Sangli. P.W.10 in his testimony has stated that he has examined the Appellant on 25th October, 2005 and noticed three simple injuries on his body. This witness is a formal witness from the point of decision of this Appeal.

16. P.W.11 is Vishnu Pawar. This witness in his testimony has stated that in the year 2005 he was attached to Kokrud Police Station. On 25th October, 2005 one Lata Bhosale and police patil of village Sonawade Arala had come to the police station. The said Lata lodged a complaint which is at Exhibit 29. Crime No. 30/05 for the offence punishable under Section 302 of the Indian Penal Code came to be registered on the basis of the said complaint and further investigation was handed over to P.W.11. P.W.11 thereafter prepared inquest panchanama of the dead body of the deceased in the shop of Khashaba Suryawanshi which is at Exhibit 5. He also prepared the scene of offence panchanama which is at Exhibit 12. He attached a pair of chappal and one knife stained with blood from the road. Thereafter he collected sample of blood with the help of swab from the pool of blood lying in the shop of Khashaba Suryawanshi on the same day. During the course of investigation he recorded statements of witnesses and arrested the Appellant on 25th October, 2005. During the course of investigation it was transpired that the deceased was a Bouddha and the accused is Maratha by caste and the provisions of the Atrocities Act were added to the said crime and further investigation was handed over to Dy. S.P., Islampur.

17. P.W.12 - Vikram Deshmane, Deputy Superintendent of Police, Islampur was then attached to Islampur Division since 15th October, 2005. After adding the provisions of the Atrocities Act viz. Section 3(ii)(v) of the said Act, he took over the investigation under the orders of the Superintendent of Police, Sangli. He recorded statements of witnesses. He also recovered the knife and clothes which were used at the time of commission of offence by the Appellant by effecting a seizure panchanama which is at Exhibit 18. After receipt of C.A. report and other

relevant documents, he submitted a charge-sheet in the Court of Judicial Magistrate First Class, Shirala.

18. P.W.11 - Vishnu Pawar and P.W.12 - Vikram Deshmane were cross examined at length by the defence. However, it appears from the record that no material which is useful or beneficial to the Appellant has been brought on record which would create a doubt about their testimony in the mind of this Court.

19. After taking into consideration the entire evidence on record, it is thus clear that the chronology of events which occurred on 25th October, 2005 and which has been specifically mentioned by Kailas Patil (P.W.2) who saw the Appellant and deceased Bhagwan Bhosale initially entered into a scuffle, subsequently Bhagwan started running towards the S.T. stand, P.W.3 - Shankar Jadhav who saw the Appellant chasing deceased Bhagwan Bhosale prior to the incident and the evidence of independent eye witness i.e. P.W.9 - Khashaba Suryawanshi clearly demonstrate that the Appellant who was having a motive to assault deceased Bhagwan, assaulted the deceased by means of a knife on 25th October, 2015 in the shop of P.W.9 - Khashaba Suryawanshi by inflicting about 14 incised wounds to the deceased thereby causing his death. The evidence of P.W.2, 3 and 9 in unequivocal terms points out the finger of guilt to the Appellant and the Appellant alone as the perpetrator of the crime. The testimony of these eye witnesses undoubtedly inspires confidence in the mind of this Court and we are of the considered opinion that their testimony can be safely relied upon for basing the conviction of the Appellant under Section 302 of the Indian Penal Code. It is the settled position that though corroboration is not necessary to the testimony of an eye witness, P.W.4 - Vaibhav Mali who is a panch witness to the seizure of clothes and knife used in the crime by the Appellant has corroborated the prosecution case in its totality. In our considered opinion, the Trial Court has rightly and correctly convicted the Appellant under Section 302 of the Indian Penal Code and we find that there is no infirmity in the impugned judgment and order passed by the Trial Court.

In view of the above, we find that there are no merits in the present Appeal and the Appeal is therefore dismissed.