
(2012) 07 BOM CK 0170
In the Bombay High Court
Case No : Criminal Appeal No. 201 of 2001

The State of Maharashtra	Vs	APPELLANT
Laxman Tukaram Dudhakohale		RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 32, 62
Penal Code, 1860 (IPC) — Section 307, 323, 326

Citation : (2012) 07 BOM CK 0170

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Deshpande, APP for the State, for the Appellant; A.K. Bhangde, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Heard learned Counsel for the parties. This Appeal is directed against the Judgment and Order dated 27th February, 2001 passed by learned Assistant Sessions Judge, Wardha in Session Trial No. 26 of 1996 whereby the respondent-accused was acquitted of offence punishable u/s 307 of the Indian Penal Code read with Section 27 of the Arms Act.

2. The facts in brief stated are as under :

First Informant namely Gajanan Marotrao Gohane, Aged about 27 years, Resident of Village Talodi, reported about the quarrel took place with his uncle on the pretext of sharing of amount in respect of cultivating the land. When the quarrel took place on 25/2/1995 at about 6.00 p.m., the first informant Gajanan came on the spot with his friend Ashok Giri and others. At that time, accused also came on the spot while first informant was talking with his friend near Hanuman Temple in the village Talodi. The accused was armed with Suri (Knife) and he had suddenly assaulted the first informant causing injury below the chest

and ran away with weapon. The first informant was admitted in Sewagram Hospital and his report was recorded by Police Head Constable namely Kamalkar. The offence was registered by Selu Police Station as Crime No. 30/95 u/s 307 of the Indian Penal Code (Exh.38). The Investigating Officer had arrested the respondent-accused and also collected Injury Certificate from Sewagram Hospital.

3. It is case of the prosecution that the weapon was also seized from the accused under panchanama and query was made regarding the weapon seized by Dr. Mittal. The spot panchanama was drawn and after the statements of witnesses were recorded and investigation was complete, the respondent-accused was charge-sheeted u/s 307 of the Indian Penal Code. The accused pleaded not guilty and had claimed to be tried. The defence of the accused is of total denial. Learned trial Judge, upon examining of the evidence led by the prosecution, came to conclusion for want of medical evidence regarding injury allegedly suffered by the first informant. That the alleged offence was not proved beyond reasonable doubt. It was observed by learned trial Judge that alleged injury certificate issued by Dr. Taori on 25/2/1995, was not proved by the prosecution regarding alleged assault by the accused below the chest of first informant. Learned trial Judge also observed that when offence was registered u/s 307 of the Indian Penal Code, it was obligatory upon the prosecution to prove Injury Certificate in order to establish the guilt of the accused even u/s 326 of Indian Penal Code. Learned trial Judge also noted that there were material omissions and contradictions in the version of first informant namely Gajanan (PW2) and F.I.R. (Exh.21). Kishor (PW3) was an eye witness as well as panch witness. Sudhakar (PW4) and Suresh (PW5) were the alleged eye-witnesses, however, Suresh (PW5) did not support to the prosecution case. Suresh (PW5) was cross-examined but nothing had elicited during his cross-examination. Learned trial Court also found omissions and contradictions in the evidence of Kishor (PW3) and Sudhakar (PW4) in respect of their versions in the Court and previous statement recorded by police. It was also noted that they are relatives of the first informant and were interested to be eye-witnesses. There was no iota of evidence on record to show that police had called Kishor (PW3) in the police station at the time of memorandum panchanama (Exh. 23) and seizure panchanama (Exh. 24). Kishor is relative of the first informant Gajanan and being an interested witness, his version was not found reliable. Ashok (PW6) claimed that police had called him to the police station at the time of seizure panchanama (Exh.29), but when examined in the Court, Ashok (PW6) could not throw light as to from whom the articles referred to in seizure panchanama (Exh. 29) were seized by police. There was no letter to Ashok (PW6) to act as Panch. On that ground also, his evidence was found not reliable. The trial Court also did not file evidence of Police Constable Baba (PW7) reliable for want of corroboration. It is also noted that Dr. Taori had taken blood sample of the accused and issued Injury Certificate. However, in order to prove injury certificate, Dr. Taori, who allegedly issued Injury Certificate in respect of injury suffered by the first informant, was not examined. PW-10 - Anish was shown

certificate dated 25/2/1995 issued by Dr. Taori from Sewagram Hospital, however, he admitted frankly as follows:

It is true that on the basis of said certificate dated 25/2/1995, it may be simple injury.

4. Learned APP with reference to this statement submitted that the accused may be convicted for lesser offence punishable u/s 323 of Indian penal Code. However, there are further admissions in the course of cross-examination by PW-10, that certificate dated 25/2/1995 is not bearing seal of Sewagram Hospital. He also admitted that he had no occasion to see Dr. Taori, who issued the certificate.

5. Under these circumstances, in the absence of material evidence of Dr. Taori, with whom PW-10 had no occasion to have acquaintance in the past could not help the prosecution to prove the Injury Certificate. The prosecution had also examined Head Constable Tulshiram Bansod (PW11) regarding statement of Gajanan (first informant) recorded by him and Dadasaheb (PW9) who had collected Injury Certificate from Sewagram Hospital.

6. Learned APP also placed reliance on the ruling in the case of Prithi Chand Vs. State of Himachal Pradesh, , which is cited on the ground that the secondary evidence is admissible regarding the Injury Certificate. The Apex Court had considered the admissibility of document which was carbon copy made by one uniform process of certificate of doctor given in discharge of professional duty and it was observed that Doctor's attendance could not be procured without an amount of delay, therefore, carbon copy was made admissible and was accepted in view of Section 32 of the Evidence Act and 62 read with explanation 2 thereof. In the present case, however, Dr. Anish (PW-10) was not acquainted with Dr. Taori and could not have deposed about signature or writing of Dr. Taori. Dr. Taori was not examined nor anybody acquainted with him was examined, hence the ruling in Prithi Chand (cited supra) is not attracted. However, it appears that the prosecution miserably failed to prove the injury certificate as received by the first informant-Gajanan, as also nature thereof. When accusations were serious u/s 307 of Indian penal Code, it was obligatory for the prosecution to summon Doctor concerned and to prove the injury received by the first informant. As the accused was facing trial on the charge of attempted murder by causing grievous hurt to Gajanan by means of knife, the version of Gajanan, therefore, for want of material corroboration to his evidence could not help the prosecution. The first informant in the course of his cross-examination was suggested that there was scuffle between himself and the accused on the pretext that the first informant was asking the accused as to why he was abusing his uncle. It was also suggested that the first informant sustained injury to his stomach in the scuffle. The accused had in his statement u/s 313 of Code of Criminal Procedure denied the prosecution case. Therefore, considering the entire evidence led by the prosecution, the view taken by the trial Court which led to acquittal of the accused u/s 307 of Indian Penal Code and Section 27 of the Arms Act, cannot be

considered unreasonable and unsustainable. There are no compelling or substantial grounds to interfere with the impugned Judgment and Order. The High Court does not interfere with the Judgment and Order of the Appellate Court when two views may be reasonably possible because the presumption of innocence is available to the accused throughout the trial is further bolstered up by an order of acquittal in his favour. Apart from above reasons, considering that the incident which was occurred in the month of February - 1995 viz. about 17 years long back, no interference is called for in the Judgment and Order. Hence, Appeal is dismissed.