

(1999) 07 BOM CK 0107
In the Bombay High Court
Case No : Criminal Appeal No. 118 of 1992

Tukaram Ganpat Thite

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 12-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (1999) 101 BOMLR 498

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Through this appeal, the appellant challenges the Judgment and Order dated 30.1.1992 passed by the Sessions Judge, Raigad-Alibag in Sessions Case No. 210 of 1990 whereby he has been convicted and sentenced to undergo two years S.I. for offence u/s 307 of the I.P.C.

2. In short, the prosecution case runs as under:-

The victim Tatyaba P.W. 3 and Sakharam P.W. 7 were the first cousins of the appellant inas much as their fathers and the father of the appellant were real brothers. Tatyaba, Sakharam and the appellant had a real uncle called Putalaji. The appellant's case was that Putalaji had adopted him. In 1957, the appellant had been convicted for an offence u/s 302 of the I.P.C. While he was in prison and undergoing sentence, Putalaji had sold four acres of land to Sakharam. By the time he was released from prison, Putalaji and his wife were no more. On coming out from the prison, the appellant started saying that the land purchased by Sakharam belonged to him. He was asking Sakharam to give back the land. A meeting of panchas was called. Sakharam offered to sell the said land to the appellant but, he denied to purchase it.

On 2.6.1990 at about 12 noon, Tatyaba returned home from the field and found the appellant sitting in the eastern padvi of his house. He had a conversation with the appellant. Then he asked his daughter-in-law Usha whether the meals were ready. She answered in the affirmative. He told her that after giving fodder, to the cattle he would take the meals. Thereafter, he proceeded to the cattle shed for that purpose. The appellant was following him. After feeding the cattle when he was standing near the jack fruit tree, the appellant inflicted two knife blows on his stomach resulting in his falling down. Hearing the cries of Tatyaba, Ladibai, wife of the son of Tatyaba's brother came. Thereafter, the appellant inflicted three more knife blows on Tatyaba's person. Ladibai fell upon Tatyaba to prevent a further assault on him. The appellant told her that she should go otherwise he would kill her. Ladibai did not accede to the wishes of the appellant. At that time, Sakharam P.W. 7 came and enquired as to why the appellant had assaulted Tatyaba. The appellant threatened to kill him resulting in his running away.

Ladibai and Usha took Tatyaba inside the house, in the meantime, a police vehicle arrived and he was taken to Poladpur Hospital.

3. The injuries of Tatyaba were medically examined same day at 2.15 p.m. at Poladpur Hospital by Dr. Ganesh Bhalerao P.W. 5 who found on his person the following injuries : -

1. Incised wound between T. 10 and T. 11 ribs on left side through which a felt is coining out i.e. omentum.
2. Incised wound lateral aspect of lf. shoulder 2" x 1/2".
3. Incised wound right shoulder lateral aspect 1"x 1/2".
4. Incised wound right scapular region 1/2".
5. Incised wound over the abdomen through which the intestines about 2 mtrs. in length coming through the wound and hanging over the abdomen.

In the opinion of Dr. Bhalerao, the said injuries were inflicted with a sharp and heavy object and were grievous in nature. On being shown the knives recovered, on the pointing out of the appellant, namely article Nos. 3 and 4. Dr. Bhalerao stated that the injuries could be caused by the said knives.

In his statement, in the Trial Court, Dr. Bhalerao stated that the injuries were cumulatively sufficient in the ordinary course of nature to cause death and injury No. 5 was independently sufficient to cause death.

4. The F.I.R. of the incident was lodged the same day by Ladibai P.W. 2 at police station Poladpur. On its basis, PSI Shrirang Bhilare P.W. 8 registered an offence u/s 307 of the I.P.C. It is pertinent to point out that same day, the appellant was arrested by H.C. Ashok Patil P.W. 4. He was carrying two knives and was putting on blood stained clothes. They were seized under a panchanama.

5. The investigation was conducted in the usual manner by PSI Bhilare. After completing the same, the appellant was charge-sheeted.

6. The case was committed to the Court of Sessions in the usual manner where the appellant was charged for an offence punishable u/s 307 of the I.P.C. He pleaded not guilty to the said charge and claimed to be tried.

During the trial, in all the prosecution examined eight witnesses, three of them namely Ladibai P.W. 2, Tatyaba P.W. 3 and Sakharam P.W. 7 were examined as eye-witnesses. The trial Judge believed the evidence of the said witnesses and convicted and sentenced the appellant in the manner stated above.

Hence, this appeal.

7. I have heard learned Counsel for the parties and perused the entire material on record. So far as the commission of the offence u/s 307 of the I.P.C. is concerned, I am implicitly satisfied that the appellant has committed the said offence. Apart from the evidence of Ladibai and Sakharam, I find that there is (lawless evidence of the victim Tatyaba, P.W. 3 in the instant case. I have set out the prosecution story, in para 2 of this Judgment, on the basis of the recitals contained in Tatyaba's examination-in-chief. Consequently, I do not wish graphically recounting the same.

In short, Tatyaba stated that when at about 12 noon on the date of the incident, he returned from the field, he found the appellant in his house. He talked with him. Thereafter, he asked his daughter-in-law Usha whether food was ready. She replied in the affirmative whereupon, he told her that after providing fodder to the cattle, he would take his meals. Consequently, followed by the appellant, he went to give food to the cattle and after he had fed them, the appellant near the jack fruit tree inflicted two knife blows on his stomach resulting in his falling down and thereafter he inflicted three more knife blows on his person. In the meantime, Ladibai and Sakharam are also alleged to have rushed to the scene of the incident.

The manner of incident given out by Tatyaba is corroborated by the medical evidence. In the earlier part of Judgment, I have extensively set out the injuries found on the person of Tatyaba by Dr. Bhalerao P.W. 5. The evidence of Dr. Bhalerao shows that he had suffered five incised wounds which were distributed between his abdomen, stomach, left shoulder and right scapular region. In his statement, Dr. Bhalerao stated that the said injuries could be caused by the knives shown to him (the knives which were recovered from the appellant by H.C. Ashok Patil when he arrested him on the date of the incident itself). In my view, the medical evidence lends a seal of assurance to the claim of Tatyaba that the appellant assaulted him with a knife.

Since it was a broad day light incident and the appellant was the first cousin of Tatyaba, there could be no question of mistaken identity. I am also not prepared to believe that Tatyaba has excluded his real assailant and falsely implicated the

appellant.

Although Tatyaba was subjected to a searching cross-examination but, nothing could be extracted therefrom which would discredit his evidence in any manner.

8. In my view, Tatyaba's solitary statement is itself sufficient to sustain the conviction of the appellant for the offence u/s 307 of the I.P.C. Learned Counsel for the appellant despite frantic efforts could not point out any infirmity in Tatyaba's evidence which could dissuade me from accepting his evidence.

9. I make no bones in observing that the defence of the appellant that when Tatyaba went to feed the bullocks, they fought amongst themselves and he got injured from their horns is a tissue of lies. Dr. Bhalerao P.W. 5 in his cross-examination categorically denied that the incised wounds suffered by Tatyaba could be caused by the horns of cattle. I accept this opinion of his because, it is common knowledge that horns of bullocks would cause punctured wounds and not incised wounds.

10. I have not taken into consideration the ocular account furnished by Ladibai P.W. 2 and Sakharam P.W. 7.

The former because, although in her examination-in-chief, she claimed that she saw the appellant inflicting knife blows on the person of Tatyaba but, in her cross-examination, she stated that when she came out of the house, she saw Tatyaba lying on the ground and admitted that the appellant did not assault him in her presence.

The latter because, he admitted that he was not on talking terms with the appellant and in his statement recorded u/s 161 of the Cr.P.C. there are some omissions on some vital aspects of the prosecution case with which he was confronted during his cross-examination and could offer no plausible explanation.

11. In my view, the circumstance that I have not taken into consideration the evidence of Ladibai P.W. 2 and Sakharam P.W. 7 would be no ground for not sustaining the conviction of the appellant on the solitary testimony of the victim Tatyaba. A conviction can be recorded/sustained on the testimony of a solitary witness. It is a trite that evidence has to be weighed and not counted. This is the rationale which is ingrained in Section 134 of the Indian Evidence Act which provides that "no particular number of witnesses shall in any case be required for the proof of any fact."

To repeat, Tatyaba's evidence is of a sterling quality and is by itself a safe and sufficient basis for accepting the involvement of the appellant in the crime.

12. Since Dr. Bhalerao stated that the injuries of the victim Tatyaba were grievous in nature and were sufficient in the ordinary course of nature to cause death, there can be no dispute that the offence committed by the appellant would fall within the four corners of Section 307 of the I.P.C.

13. Mr. Limaye learned Counsel for the appellant having failed to assail the

conviction of the appellant on merits urged that since the appellant is aged about 83 years and has been in jail for 3 1/2 months, it is a fit case wherein his substantive sentence be reduced to the period already undergone and some fine be imposed on him which should be directed to be paid as compensation to the victim Tatyaba.

On the converse, Ms. Pawar, Additional Public Prosecutor urged that since the appellant inflicted as many as five knife blows on the person of the victim Tatyaba who was his first cousin, and three of the blows were on vital parts of body, he deserves no sympathy. In her contention, age should have made the appellant wiser.

I have reflected over the rival submissions. In my view, merely because the appellant is aged 83 years today would be no ground to reduce his sentence. He caused grievous injuries on vital parts of victim's body and should thank his stars that he has got away with a pat on the cheek and the State of Maharashtra (not to my surprise) has not preferred an appeal for enhancement of sentence.

14. In the result, I confirm the conviction and sentence of the appellant for the offence u/s 307 of the I.P.C. and dismiss this appeal. The appellant is on bail and shall be taken into custody forthwith to serve out his sentence.