
(2010) 09 BOM CK 0131
In the Bombay High Court
Case No : Criminal Appeal No. 131 of 2010

Vasanta Natthuji Chidam

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2010) 09 BOM CK 0131

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

Bench : Single Bench

Advocate : J.R. Kidilay, for the Appellant; J.B. Jaiswal, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—By means of this Appeal, the appellant has challenged the judgment and order dated 22.1.2010 passed by learned 1st Ad-hoc Additional Sessions Judge, Wardha, in Sessions Case No. 90/2009 whereby the appellant was found guilty of offence punishable u/s 307 of the Indian Penal Code (in short, "IPC") and sentenced to suffer RI for three years and a fine in the sum of Rs. 5,000/-, in default, was directed to suffer RI for six months.

2. Prosecution case in brief is that, one Moreshwar Kumare was standing in front of pan kiosk of Madavi on or about 11.3.2009 at about 1.00 p.m. It is the case of the prosecution that suddenly the appellant came with a sword and gave a blow on the abdomen of Moreshwar, as a result he sustained bleeding injury and his intestine protruded. Moreshwar somehow tied his injury with dupatta and rushed to his house. His father-Fagoji took Moreshwar to Sevagram Hospital at an autorickshaw. Moreshwar was admitted in ICU. Fagoji, on the next day morning, reported the incident to Police Station, Dahegaon. The investigation followed. The appellant was arrested. The Investigating Officer API Chate proceeded to the spot of the incident and recorded Panchnama. He also recorded statements of some witnesses in the course of investigation. It is also alleged that the

memorandum panchnama was drawn and weapon was recovered at the instance of the appellant. The Investigating agency also seized clothes of the injured and the articles which were seized in the course of investigation were referred to the Forensic Science Laboratory, Nagpur, for the purpose of analysis. Upon completion of the investigation, the appellant was charge-sheeted on the ground that he had attempted to commit murder of Moreshwar.

3. The charge sheet was submitted on 8.6.2009 and the case was committed to the Court of Session at Wardha. The charge was framed against the appellant on 26.6.2009; whereas the appellant pleaded not guilty and claimed to be tried.

4. The prosecution examined a total of nine witnesses in support of the case. The appellant was defended on the ground that he had an enmity with Moreshwar; he used to be under the spell of liquor. Moreshwar had abused the appellant under influence of liquor and public had objected to his unruly behaviour and chased him. He ran away and fallen on iron gate having pointed object by the gate-side and was injured. It is, thus, case of the defence that accused was falsely implicated.

5. Learned Advocate for the appellant took me through the evidence on record and contended that the presence of the appellant at the spot was not proved beyond reasonable doubt. It is alleged that stab was allegedly given by the appellant by means of sword but according to the appellant Moreshwar who ran away from the spot, was injured as a result of fall chased by infuriating public after he had abused the appellant under the influence of liquor. It is further contended that father of the victim examined as PW 5 was not an eye witness to the incident as his report to the police was based upon hearsay statement. It is also submitted that there were 16 to 18 hours delay in reporting the incident to the police as the incident had occurred much earlier before statement of alleged victim was recorded in the Hospital.

6. According to the learned Advocate for the appellant of all witnesses who were examined as witnesses namely, PW 1, PW 2 PW 6 turned hostile to the prosecution case and chose not to support it. Thus, spot Panchnama as alleged, memo and seizure of weapon, panchnamas were not proved by the legal evidence. Learned Advocate criticized the evidence of PW 3 who, according to prosecution, is an injured witness. Injured witness appears to have stated that the incident took place on the day of Dhuli-vandan in between 12.00 noon and 1.00 p.m.; while alleged eye witness PW 4 gave a different time stating that the incident occurred between 1.00 and 3.00 p.m. According to the injured witness, the appellant came from his back side and suddenly gave a blow of sword on his abdomen and ran away. He stated clearly in the cross-examination that Sattur (muddemal - article No. 1) before the Court is not the same weapon. In paragraph 5 of his deposition, he claimed that the day on which he got consciousness, the police had recorded his statement twice. Thereafter, his statement was not recorded. Moreshwar was admittedly having consumed liquor must be under the influence of liquor. It is suggested to Moreshwar that he had

fallen on the arrow shape rod of the Gate and that he sustained injury on his abdomen due to that fall; however it is his case that appellant came from his back side; while PW 4 claimed to be an eye witness and gave a different time of the incident and stated that the appellant Vasanta gave a blow of sword on the abdomen of Moreshwar while in the course of cross-examination Yogesh (PW 4) admitted that Moreshwar had gained consciousness on the next day in the hospital and furthermore that after 4 to 5 days of the incident, the police had recorded the statement prior to that he had not approached the Police Station with a request to the police to record his statement. The father of the alleged victim was examined as PW 5 who deposed on the basis of what Moreshwar had told him. Therefore, his evidence is not of much consequence for the prosecution. PW 7 API Sangole stated about sending seized articles to CA. His evidence appears to be silent as to whether the Muddemal articles were forwarded to C.A. in a sealed condition so as to prevent possibility of tampering of the same. The Investigating Officer Mr. Chate, API was examined as PW 8 regarding the investigation carried out into the alleged incident. The last prosecution witness is Medical Officer Dr. Aditi Agrawal. Learned Advocate for the appellant also relied upon the evidence of Medical Officer Dr. Agrawal in respect of Exh. 49. She had in the course of her cross-examination agreed with the suggestion that if a person under the influence of liquor falls upon a pointed substance then there is possibility of causing injuries as mentioned in the Certificate Exh.49. Under these circumstances, the learned Advocate for the appellant submitted that when two views were possible on the basis of evidence, the view favouring the appellant/ accused ought to have been adopted by the learned trial Judge. It is contended that the defence had succeeded in raising reasonable doubt regarding genuineness of the prosecution case by putting suggestions to material prosecution witnesses PW 3, 4 and 5 and PW 9 and created a reasonable doubt in the mind as to the truth of the prosecution case therefore, benefit of doubt could have been granted in favour of the appellant by the trial Court.

7. Learned APP, on the other hand, supported the impugned judgment and order and submitted that there was evidence of CA report regarding the blood stains found on the weapon, clothes, seized during the course of investigation and under the circumstances eye witnesses were corroborated by the findings of CA. Learned Advocate for appellant swiftly pointed out that the CA report was disbelieved by the learned trial Judge by making observations in paragraph 33 to 35 of the impugned judgment and order. It was clearly observed that though the prosecution succeeded to prove the recovery and seizure Panchnama, it failed to rule out the possibility of tampering of the seized article. As such one cannot safely place reliance upon recovery and seizure panchanama in the aforesaid background and made reference to citation in Chintaman Ramaji Mahakalkar Vs. Education Officer (Primary), Zilla Parishad and Others, , submitted on behalf of the defence.

8. I have perused the impugned judgment and order as also the evidence

pointed out from the record. It does appear that suggestions which were consistent with defence adopted by the appellant were put to the witnesses. In a criminal trial there are three categories of witnesses, i.e. (i) wholly unreliable, (ii) wholly unreliable; and (iii) neither wholly reliable nor wholly unreliable.

9. The Court has to be circumspect and look for corroboration in material particulars to a testimony before acting upon testimony of any alleged eye witness. In the present case, it was the specific case of the defence that injured Moreshwar was under the influence of liquor; his conduct was resented by public at large who chased him and as a result Moreshwar may have possibly fallen on the pointed object which resulted in injury which were found on his person. The medical witness was also questioned in the cross-examination consistently with the defence version and she agreed that injuries as mentioned by her in Exh. 49 (Injury certificate) were possible if a person falls as suggested. Therefore, I think it is the duty of this Court as an Appellate Court to re-appreciate the evidence, to find out whether the accused was wrongly convicted or whether the prosecution had proved beyond reasonable doubt that the accused had committed the offence, as alleged. Considering the delay of 16 to 18 hours in reporting the incident to the police as also variance in material particulars about exact time of the incident and suggestions given to the eye witnesses and medical witness do lead to a conclusion that finding of guilt cannot be based on any presumption disregarding the alternate possibility suggested by defence. There must be material beyond all reasonable doubt to prove the guilt of the accused, which must be sure conclusion and not based on surmises, conjectures and guesswork. The evidence must be of witnesses who are wholly reliable or whose evidence is acceptable beyond reasonable doubt.

10. Looking to the evidence on record, therefore, I think benefit of reasonable doubt ought to have been given in favour of the appellant considering the drawbacks or defects of the case and material which could be elicited in the cross-examination of prosecution witnesses. In the result, it has to be concluded that the prosecution had failed to discharge its burden to prove offence beyond reasonable doubt. The appellant was, therefore, entitled to benefit of reasonable doubt regarding his guilt. That being so, the appeal has to be allowed. The impugned judgment and order passed by the learned trial Judge is set aside. The appellant shall be released forthwith, if not required in any other pending criminal case. Fine amount, if paid, be refunded to the appellant.