

(2007) 06 BOM CK 0096
In the Bombay High Court
Case No : Criminal Appeal No. 1154 of 2003

Vijay Pandurang Palaskar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-06-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 06 BOM CK 0096

Hon'ble Judges : Nishita Mhatre, J;D.G. Deshpande, J

Bench : Division Bench

Advocate : Abhaykumar Apte, instructed by V.V. Purwant, for the Appellant; A.S. Shitole, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—This appeal is directed against the judgment and order of the III Ad-hoc Additional Sessions Judge, Pune. By this judgment, the accused No. 1, the present appellant has been convicted u/s 302 of the Indian Penal Code and sentenced to suffer life imprisonment and payment of fine of Rs. 1000/-. The accused No. 2 has been acquitted of the offence punishable u/s 302 read with 34 of the Indian Penal Code. The story of the prosecution is that the deceased

2. Chandrakant was employed as a watchman in Amar Society. Accused Nos. 1 and 2 were his friends. They often visited Chandrakant at Amar Society. On 22.4.2002 Chandrakant was seen together with accused Nos. 1 and an unknown person by some of the prosecution witnesses. At midnight, the complainant in this case saw Chandrakant, accused No. 1 and another person walk through the premises of Amar Society. The deceased Chandrakant was walking between accused No. 1 and the other person. He saw them going towards Hanuman Nagar, talking to each other. At about 1.30 am. on 23.4.2002 about 10 to 15 women noticed one person lying near the gate of a bungalow near Amar society. They informed the complainant who was on duty at Amar Society. When he and another watchman reached the spot, they noticed Chandrakant lying in a pool of

blood with several injuries on his neck and chest. The complainant informed the Chairman of the Housing Society who in turn informed the police. The inquest panchanama and spot panchanama were drawn by the police on arrival at the spot. An offence was registered against accused Nos. 1 and 2 on the basis of the complaint lodged with the police. Both the accused were arrested on 23.4.2002. A gupti was recovered at the instance of accused No. 1 on 4.5.2002. A knife was recovered on 3.5.2002 at the instance of accused No. 2. The accused were charged for having murdered Chandrakant. They were tried by the Sessions Court, Pune. While accused No. 2 was acquitted, accused No. 1 has been convicted u/s 302 of the Indian Penal Code and sentenced accordingly.

3. The prosecution has examined witnesses to support its case against the accused. The entire case is based on circumstantial evidence as there are no eye witnesses to the incident. The main circumstance relied on by the prosecution is that, the victim was last seen in the company of the accused about one and half hours prior to the incident by the complainant. The other circumstance relied on by the prosecution is that a blood stained gupti was recovered at the instance of accused No. 1. The third circumstance which the prosecution claims to have proved is the recovery of blood stained clothes of accused No. 1.

4. Mr. Apte, advocate appearing for the appellant submits that the story of the prosecution that the accused is guilty of having murdered the victim cannot be believed since the complainant had seen the victim in the company of the appellant one and half hours prior to the incident. He submits that this period was too long for it to be believed that it was only the accused who could have been the assailant. He submits that the gupti was recovered a few days after the incident from an open space. He points out that the recovery was made, according to PW-6, at the foot of hillock named Hanuman Tekdi. It was found inside a pipe which was embedded in the concrete foundation at the foot of the hillock. The blade of the gupti had been bent several times over so that it could fit in the pipe. The learned advocate submits that such a recovery which was made on 4.5.2002 i.e. 10 days after the incident cannot be believed. As regards the post-mortem report, he submits that there is no definite conclusive proof as to which of the injuries sustained by Chandrakant resulted in his death and, therefore, it cannot be said definitively that it was the appellant who had caused Chandrakant's death. The learned advocate also points out that the accused No. 2 has been acquitted by the Sessions Court although a blood stained knife was recovered at his instance. He submits that there was no reason for the Sessions Court to treat the accused Nos. 1 and 2 differently and hence the appellant is entitled to be acquitted.

5. PW-1 who is the complainant, was employed with Amar Society. He knew the deceased Chandrakant as he was his co-workman. He has deposed that the appellant often met Chandrakant in the premises of Amar Society in the evening. He has then deposed that on the fateful day he saw Chandrakant walking towards the Society together with the appellant and a stranger. They walked

through the premises of the Society and went towards Hanuman Nagar. This happened at midnight. He had seen the appellant and the stranger walking on either side of Chandrakant and holding on to him. The complainant has then spoken about 10 or 12 women passing through Amar Society an hour later. After walking a certain distance from Amar Society they returned to the main gate of the Society and reported to him that a person was lying near a water tank in the vicinity of the Amar Society. He and his co-worker Manjrekar went towards the spot pointed out by the women and found Chandrakant lying there. Chandrakant had sustained several injuries from which blood was oozing out. He informed the Chairman of the Society of this incident and the police arrived at about 2.00 am. This witness has identified the shirt worn by the victim on the date of the incident. In his cross-examination, he has admitted that an entry register is maintained at the main gate but it was used only to mark the entry of vehicles. His cross-examination does not in any manner detract from the statements made by him in his examination-in-chief.

6. The deposition of PW-1 has been corroborated by PW-8. He was also on duty as a watchman at the relevant time. However, he has admitted in his cross-examination that he came to know the names of accused No. 1 when Chandrakant informed him only 2 to 4 days prior to his death.

7. PW-5 who has been examined by the prosecution is the Manager of the Society who alert the police about the incident when informed about the same by the complainant. He has thus corroborated the deposition of PW-1 to that extent.

8. Thus, from the testimony of PW-1, PW-5 and PW-8 it cannot be disputed that the victim was last seen together in the company of the appellant and a stranger.

9. PW-6 is the panch witness who has proved the recovery of gupti at the instance of the appellant. According to this witness, there were blood stains on the gupti. The panchanama indicates that the blade had been twisted and bent several times over so that it could fit into the pipe.

10. The report of the chemical analyzer indicates that human blood was found on the gupti. However, the analysis of the blood group of the blood stains on the gupti remained inconclusive. Thus the prosecution has proved the recovery of the gupti at the instance of the appellant. The recovery of the blood stained clothes of the deceased and the accused has also been proved by the prosecution through its panch witnesses.

11. The medical evidence on record is that of the doctor who performed the post-mortem examination of the deceased. He has been examined as PW-7. The deceased sustained as many as 13 injuries. Except injuries recorded at Sr. Nos. 2 and 13, all other injuries were either incised injuries or stab injuries on the chest, neck and upper part of the body. The doctor has opined that the gupti could have caused the cut throat and stab injuries mentioned in the post-mortem report when it was in its original shape. Thus, the medical evidence on record indicates that the gupti which has been recovered at the instance of the appellant could

have caused the injuries sustained by the victim, thus linking the appellant to the homicidal death of Chandrakant.

12. PW-9 has been examined to establish that the victim and the appellant frequently visited his shop together for drinking liquor. However, this witness has been declared hostile and, therefore, his deposition is of no consequence.

13. The investigating officer has been examined as PW-10. He has also spoken about the recovery of the gupti at the appellant's instance.

14. Taking into consideration the evidence which was led before the Sessions Court, we find that the prosecution has established the circumstances which unmistakably point to the involvement of the appellant. The victim was last seen together in the Company of the appellant. The victim was found lying in a pool of blood. The appellant was not found anywhere near the spot of the incident nor did he inform the police that the victim had been assaulted by some other person. The appellant has not been able to show that when he and the victim left the premises of Amar Society, they parted company and went their own ways. In fact, they were seen proceeding towards Hanuman Nagar. The recovery of the blood stained gupti which was found with its blade twisted, in the pipe which was embedded in the concrete foundation at the foot of Hanuman Tekdi has been proved. The medical officer has proved that the injuries could be sustained by the gupti which was recovered. Thus, the appellant has rightly been held guilty of committing murder.

15. We have perused the judgment of the Trial Court. The Trial Court has rightly acquitted the accused No. 2 and, therefore, the present appellant cannot seek parity. Accused No. 2 was not identified by any person and on this basis he has been acquitted. Apart from this, the recovery of the knife allegedly from accused No. 2 has not been proved in view of the testimony of PW-3. We find that the Sessions Court has correctly appreciated the evidence on record and drawn proper conclusions and inferences.

16. In the result, the appeal is dismissed.