
(2013) 08 BOM CK 0047

In the Bombay High Court

Case No : Criminal Appeal No. 30 of 2011

Vikram Purshottam Chauhan and Suryabhan Vikram Chauhan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302, 324, 34, 504, 506

Citation : (2013) 08 BOM CK 0047

Hon'ble Judges : Revati Mohite Dere, J; P.V. Hardas, J

Bench : Division Bench

Advocate : Jagdish Shetty, for the Appellant; H.J. Dedhia, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Revati Mohite Dere, J.—The Appellants who stand convicted for the offence punishable u/s 302 r/w Section 34 of the Indian Penal Code ("IPC") and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 3,000/- each, and in default, to undergo further imprisonment for a period of three months; and u/s 324 r/w Section 34 of the IPC to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- each, and in default, to undergo further imprisonment for a period of one month, by the Additional Sessions Judge, Vasai, by the Judgment and Order dated 26th October, 2010 in Sessions Case No. 288 of 2007, by this Appeal, question the correctness of their conviction and sentence. The prosecution case can briefly be stated as under:

PW 8-Waman Patil was serving as a PSI at the relevant time at the Manikpur Police Station. He has stated, that on 4th February, 2007, the said case came to be referred to him for investigation. Pursuant to the same, he proceeded to the spot, prepared the spot panchanama and recorded the statements of witnesses. He has further stated, that he thereafter went to the Bhagwati Hospital and learnt that injured Suresh had succumbed to his injuries while undergoing

treatment and accordingly drew the inquest panchanama of the dead body and seized the clothes of the deceased under a panchanama. He thereafter arrested three accused, including the present Appellants in the said case and seized the clothes on their person at the time of their arrest. He has stated, that he found blood stains on the clothes of the accused. PW 8-PSI Patil has stated, that a disclosure statement came to be made by Vikram Chauhan (Appellant No. 1), pursuant to which two stumps came to be seized under a panchanama. The said memorandum is at Exhibit 39 and the panchanama is at Exhibit 39/B. He thereafter referred the muddemal articles to the Chemical Analyser. He also obtained the medical certificate and the reports of the blood sample analysis of the Appellants, the deceased and their clothes. On completion of investigation, he submitted a charge-sheet in the Court of Judicial Magistrate First Class at Vasai.

On committal of the case to the Court of Sessions, the Trial Court framed charge vide Exhibit 10, as against the Appellants and one Punwasi Vikram Chauhan for the offence punishable u/s 302 r/w Section 34 of the IPC i.e. for causing the murder of Suresh Chauhan; for the offence punishable u/s 324 r/w Section 34 of the IPC i.e. for causing hurt to the complainant, Rajendra Chauhan; for the offence punishable u/s 504 r/w Section 34 of the IPC i.e. for intentionally insulting and provoking the complainant, complainant's wife and nephew, with the intention that such provocation would cause them to break public peace; and for the offence punishable u/s 506 r/w Section 34 of the IPC i.e. for criminal intimidation by threatening the complainant Rajendra, his wife and nephew of the deceased, with intent to cause harm to them. The Appellants pleaded not guilty to the aforesaid charges and claimed to be tried.

2. The prosecution in support of its case, examined eight witnesses. The Trial Court, after considering the evidence adduced by the prosecution, convicted the Appellants for the offence punishable u/s 302 r/w Section 34 and for the offence u/s 324 r/w Section 34 and sentenced them as afore stated in para 1. The Trial Court acquitted Punwasi Chauhan of all the offences. Both the Appellants also came to be acquitted for the offences punishable under Sections 504, 506 r/w Section 34 of the IPC. Both the sentences awarded to the Appellants were directed to run concurrently.

3. We have heard the learned Counsel for the Appellants, Shri Jagdish Shetty and the learned A.P.P. for the State, Shri H.J. Dedhia,

4. In order to effectively deal with the submissions advanced by the learned Counsel, it would be apposite to advert to the evidence that has been adduced by the prosecution.

5. The prosecution in support of its case, has relied on the ocular evidence of PW 3-Rajendra Chauhan, who is the complainant and injured eye-witness to the said incident of 3rd February, 2007 and PW 4-Matoshri Chauhan, who is the wife of PW 3-Rajendra. PW 3-Rajendra has stated that the incident occurred on 3rd

February, 2007, at 11.00 p.m. He has stated that he, Kapil, Vikram (Appellant No. 1) and Suryabhan (Appellant No. 2), together had gone to attend the marriage of one Bhagat and thereafter all of them had gone to G.R. Hotel on the highway for dinner. He has stated, that after dinner, there was a quarrel between them and therefore, they started returning towards their house. According to PW 3-Rajendra, he was responsible for removing Punwasi (original accused No. 3) from the house of Kapil and therefore, original accused no. 3-Punwasi was angry with him. He has further stated, that as a result of the same, the Appellants started assaulting him with a stump on his head, near his house. He has stated, that as a result of the bleeding injury, relatives who had come from Mumbai, came there and separated them. He has further stated, that Suresh (deceased) was also assaulted by the Appellants as a result of which he fell down. He has stated, that they had gone to the Golden Park Hospital and thereafter to Bhagwati Hospital. While undergoing treatment, Suresh succumbed to the injuries and died. He has stated, that he filed a complaint which is at Exhibit 33.

In his cross-examination, PW 3-Rajendra has admitted, that he was not assaulted by stump. He has further stated, that the Appellants were his friends and that for a period of two months prior to the incidents, the Appellants had not made any inquiry as to why Punwasi (original accused No. 3) was removed from the room. He has further admitted in his cross-examination that, Suresh (deceased) had not sustained a bleeding injury and that only he had sustained a bleeding injury and that there were blood stains on his clothes. He has further stated, that the neighbours had not gathered and that though there was a scuffle, there were no blood stains on their clothes. He has also admitted that there was no electricity light at the relevant time.

6. PW 4-Matoshri Chauhan, the wife of the complainant has stated that the incident of assault took place on 3rd February, 2007 and that both the Appellants had assaulted her husband with a stump. She has stated, that on hearing the quarrel, she and her daughter went to the spot and started shouting. She has further stated, that when Suresh (deceased) tried to separate the quarrel, he was assaulted. She has stated that thereafter, the injured was taken to a hospital at Vasai and Suresh was referred to Bhagwati Hospital, where he succumbed to his injury. She has further stated that her husband PW 3-Rajendra had sustained a head injury.

In her cross-examination, she has admitted that there was no electricity light; that 10-20 persons had gathered; and that at a distance of 15-20 feet away from the house, the quarrel had taken place. She has stated that her husband (PW 3-Rajendra) had fallen on the ground and that there were no blood stains on the spot. It was suggested to PW 4-Matoshri that her husband PW 3-Rajendra had consumed alcohol; that there was some riot in the lane and in that riot, PW 3-Rajendra sustained an injury, however, the same has been denied.

7. PW 7-Dr. Kalyankar conducted the post-mortem examination on the dead body of deceased Suresh and found the following surface wounds:

1. Two small contused abrasions over left side forehead, 3 cm above left eyebrow. 3 cm apart each other. Each size half by half cm., reddish in colour with swelling of whole forehead.
2. CLW over right side a parietal vertex region, one cm. Right to midline. 2 x half cm. By scalp skin deep.
3. 3 small contused abrasions, over left side lateral aspect of wrist. Half cm apart one above another, each size half x half cm. Reddish in colour.
4. 2 small contused abrasions over middle aspect of wrist, half cm. Apart one above another, each size is half x half cm. Reddish in colour.

The cause of death, opined by PW 7-Dr. Kalyankar, was that deceased died due to head injury in an alleged case of assault. The post-mortem report is at Exhibit 53.

8. The prosecution has examined PW 1-Sukhai Chauhan to prove the inquest panchanama of the dead body of Suresh, which is at Exhibit 27 and the panchanama of seizure of clothes of the complainant, which is at Exhibit 28. In the cross-examination, PW 1 Sukhai Chauhan has stated that, he was unable to tell the clothes seized under the panchanama. He has not identified the clothes that were allegedly seized in his presence.

9. PW 2-Chandrabahadur Chauhan, panch has been examined to prove the spot panchanama, which is at Exhibit 30 and the panchanama of the seizure of clothes of the deceased Suresh, which is at Exhibit 31.

10. PW 5-Ramesh Gurav was examined as a panch to the disclosure memorandum, which is at Exhibit 39, with respect to recovery of stumps at the instance of Appellant No. 1 u/s 27 of the Evidence Act. The said panchanama, recorded in the presence of the Panchas is at Exhibit 39-B.

In the cross-examination, PW 5-Ramesh Gurav has admitted, that the panchanama signed by him at the Police Station was already prepared and that the Appellant No. 1 had not made any disclosure in their presence.

11. PW 6-Nitin Maragaje, Police Constable, has been examined to prove the fact, that the seized muddemal was carried by him on 23rd February, 2007 to the Chemical Analyser and that the same was deposited by him with the F.S.L., Mumbai.

12. The learned Counsel for the Appellants, Shri Jagdish Shetty has urged before us, that the prosecution had not proved the case as against the Appellants beyond reasonable doubt; that the ocular evidence is wholly unreliable and untrustworthy and as such ought to be discarded; that the recovery evidence suffers from several infirmities and as such, ought not to be relied upon; and that, there is no evidence brought on record by the prosecution to prove the injuries sustained by Rajendra Chauhan (PW 3) and as such, considering the evidence, the Appellants ought to be acquitted by giving them the benefit of

doubt.

13. The learned A.P.P. on behalf of the State contended that the Judgment is legal and proper and urged that the same ought not to be interfered with.

14. Having given our anxious consideration to the submissions advanced by the learned Counsel, we are of the opinion that the prosecution has not been able to prove its case as against the Appellants beyond reasonable doubt.

15. At the outset, we may state, that the defence has not seriously disputed that deceased Suresh died a homicidal death, and as such we hold that the prosecution has proved the same.

16. We have perused the evidence of the complainant, PW 3-Rajendra Chauhan, who is also an injured eye-witness to the said incident. It is alleged by PW 3-Rajendra, that as he was responsible for removing Punwasi (original accused No. 3) from Kapil's room, Punwasi was angry with him on account of the same. It is pertinent to note, that the said witness in the cross-examination has admitted, that the said incident of removing Punwasi from the room of Kapil had taken place two months prior to the incident, and therefore, the alleged motive seems to be far fetched. PW 3-Rajendra, in his cross-examination, has stated, that although Suresh was assaulted by a stump, Suresh had not received any bleeding injury and that only he had received a bleeding injury. PW 4-Matoshri, has admitted in her cross-examination that there were no electricity light and that there were 10-12 persons who had gathered there. She has also stated that her husband PW 3-Rajendra had fallen on the ground and that there were no blood stains on the spot. Considering the ocular evidence i.e. of PW 3-Rajendra Chauhan and PW 4-Matoshri Chauhan, we find that their testimony does not inspire confidence with regard to the incident of assault on Suresh as well as on PW 3-Rajendra, inasmuch as, it is not only cryptic but also bereft of any details. It is pertinent to note that although PW 3-Rajendra has stated that Suresh was not bleeding, the stump allegedly recovered at the instance of Appellant No. 1 appears to be stained with the blood group of the deceased Suresh, and in the light of the same, the Chemical Analyser's Report becomes suspect. With regard to the injury sustained by the complainant, it appears that although PW 3-Rajendra has stated that he had sustained a bleeding injury, PW 4-Matoshri his wife, has stated that there were no blood stains on the spot. It appears, that the second stump that was seized in the said case was found to have the blood group of the complainant, PW 3-Rajendra. In the absence of any medical evidence, in the form of an injury certificate or evidence of the doctor, we find that the prosecution has failed to prove the alleged injuries sustained by PW 3-Rajendra. In the light of the evidence, we find it extremely unsafe to place any reliance, much less, implicit reliance on the evidence of both PW 3-Rajendra Chauhan and PW 4-Matoshri Chauhan.

17. The prosecution has examined PW 5-Ramesh, panch to the recovery panchanama i.e. with respect to the recovery of stump at the instance of the

Appellant No. 1, however, the said witness has turned hostile and has not supported the prosecution case. It is settled law, that even if the panch witness has turned hostile, the evidence of the Investigating Officer can be relied upon for proving the said recovery u/s 27 of the Evidence Act. In the present case, we are unable to rely on the evidence of PW 8-PSI Patil, in the absence of any substantive evidence of the said witness, to show, that there was authorship of concealment or that the articles recovered were sealed. It is pertinent to note that PW 6-Nitin, had deposited the articles with the FSL on 23rd February, 2007, and that there is no evidence to show that the articles continued to be in a sealed condition. Even otherwise, the evidence of recovery and seizure of clothes of the deceased and the complainant and the Chemical Analyser's report becomes doubtful, in the light of the ocular evidence and the evidence of panch witnesses that has come on record. It also appears that the Appellants had no motive whatsoever to assault either the deceased or the complainant. The circumstantial evidence on record, is also not free from embellishment and as such cannot be relied upon. In the light of the aforesaid facts and circumstances, considering the nature of evidence that has come on record, the Appellants ought to be given the benefit of doubt, as the prosecution has failed to prove its case beyond reasonable doubt. In the premise, Criminal Appeal is allowed. The conviction and sentence of the Appellants is hereby quashed and set-aside and the Appellants are acquitted of the offences with which they were charged and convicted. Fine, if paid, by the Appellants, be refunded to them. Since the Appellants are in jail, they be released forthwith, if not required in any other case.