

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 214 OF 2015

Shankar s/o Bhausahab Walke,
Age : 30 years, Occu : Agriculture,
R/o. Village Ukkhalgaon,
Taluka Shrigonda,
District Ahmednagar.

[At present the Appellant is in
Ahmednagar District Prison,
Ahmednagar, Taluka and District
Ahmednagar]

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra,
through the Sub Divisional Police Officer,
Karjat Division, Taluka Karjat,
District Ahmednagar.

[Notice to the Respondent to be served
through the Public Prosecutor,
High Court of Bombay, Bench at Aurangabad]

... Respondent

.....
Advocate for the appellant : Mr. Govind L. Kulkarni h/f Mr. Rajendra S.
Deshmukh
AGP for respondent/State : Mrs. P. V. Diggikar
.....

WITH
CRIMINAL APPEAL NO. 250 OF 2015

Ramdas s/o Ananta Bhosale,
Age 46 years, Occu. Agriculture,
R/o Loni Vyankanath, Taluka Shrigonda,
District Ahmednagar.

... Appellant

Versus

1. Shankar s/o Bhausahab Walke,
Age 29 years, Occu. Agriculture,
2. Sharad s/o Bhausahab Walke,
Age 28 years, Occu. Agriculture,

Both R/o Ukkhalgaon, Taluka Shrigonda,
District Ahmednagar.

3. The State of Maharashtra

[Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay, Bench
at Aurangabad]

... Respondents

.....
Advocate for the appellant : Mr. Anil M. Gaikwad
AGP for respondent No.3 : Mrs. P. V. Diggikar
.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATE : 23rd JUNE, 2016

ORAL JUDGMENT :- (PER A.V. NIRGUDE, J.)

1. This appeal challenges the judgment and order dated 30.1.2015 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 271 of 2013 thereby convicting the appellant for the offence punishable under Section 307 of I.P.C. And to suffer R.I. for 10 years and to pay fine of Rs.5000/- with default clause.

The appellant was acquitted of the offence punishable under section 3 (2) (v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 and under Section 3/25 of the Arms Act.

2. The appellant and co-accused Sharad were tried in the said sessions Case for the offences punishable under section 307 r.w. 34 of I.P.C. and Section section 3 (2) (v) of Scheduled Caste and

Scheduled Tribes (Prevention of Atrocities) Act 1989 and under Section 3/25 of the Arms Act.

3. It was alleged that on 2.5.2013, the accused took Ramdas to his agricultural field, where both of them assaulted him. The accused No.1 then took out a revolver and fired one shot towards Ramdas which caused injury to his abdomen. Ramdas was taken to the hospital and was operated. The bullet was found in his abdomen. Rather belatedly a complaint was lodged.

4. At the trial stage, the prosecution examined in all 8 witnesses. Out of them, two witnesses are important. One is complainant Ramdas and another is his wife Savita - P.W.3. Both supported the prosecution case. They stated that on 2.5.2013 they went to meet accused No.1 at his village Ukkhalgaon for recovery of old dues. They went to agriculture field of accused No.1. Accused No.1, on reaching agriculture field, made a phone call to his brother Sharad - accused No.2 and asked him to bring the amount of Rs.50,000/-. Accused No.2 Sharad then came there. Accused No.1 then asked the complainant Ramdas as to whether he had brought diary (probably containing the account) with him. Ramdas answered in affirmative and handed over the diary to accused No.1. After going through the diary, accused No.1 slapped Ramdas, due to which Ramdas fell down. Accused No.2 pushed Ramdas further on the ground. Accused No.2 also caught hold of Ramdas's feet.

Thereafter, accused No.1 took out revolver and fired a bullet towards the left side of Ramdas's chest. Ramdas got injured and fell down. His wife came near him, saw the wound and then made phone call to his son Shirang. His son Shirang and nephew came there. They took Ramdas to the hospital of Dr. Lad at Kashti. Ramdas was referred to Dr. Hole at Shrigonda and thereafter, was taken to KEM Hospital, at Pune, where the bullet was removed from the abdomen. While Ramdas was in KEM Hospital, police came there and recorded his statement. Ramdas asserted that he was not in proper consciousness when the police recorded his statement in KEM hospital at Pune. He stated that after recovery from illness he went to Belwandi police station and lodged a report on 9.6.2013 (Exh. 29).

5. The next important witness is Dr. Vinod Naik, Consulting Surgeon, KEM Hospital, Pune. He stated that on 03rd May, 2013, he and one more doctor, performed surgery for removal of foreign body i.e. bullet from the abdomen of P.W.1 Ramdas. Besides giving the detailed report about the injury etc., this witness, in cross-examination admitted that Ramdas was quite conscious after the incident. His blood pressure was normal. Even after surgery, he stated that Ramdas was stable.

6. The prosecution places reliance on letter dated 3.5.2013 signed by police head constable, Samarth police station, Pune and addressed to Police Inspector, Shrigonda police station. In this letter,

it was intimated to the police inspector of Shrigonda police station that since the incident took place within the local limits of his police station he should take further action. Unfortunately, this letter though written on 3.5.2013, was dispatched on 9.5.2013. It reached to Belwandi police station on 18.5.2013, within whose local limits the incident took place. The station diary entry was taken to that effect but unfortunately no further action was taken by the police of Belwandi police station. Nonetheless, this document clearly establish that the Police Constable of Samarth Police Station, Pune had recorded statement of PW-1 while he was in KEM Hospital at Pune. The forensic expert recorded his testimony. He opined in his report which is at Exh.64 that the pallet recovered from the abdomen of Ramdas was a 7.65 mm Pistol bullet having certain mark. He also opined that it could have been fired from a weapon having smooth bored barrel.

7. Based on primarily this material the impugned judgment is based. We have find out whether the prosecution proved its case? Our answer is in negative.

8. We found that the the prosecution case suffer from inordinate delay in lodging the complaint:- It is admitted fact that Ramdas and his wife did not lodge any complaint while Ramdas was taken to the hospital at Kashti and thereafter at other places. Even while the complainant was taking treatment at KEM hospital, Pune the

complainant did not take steps for lodging the complaint. No explanation is given as to why lodging of the complaint got delayed for more than one month though the incident and the injury was quite serious. In the cross examination, Ramdas admitted that while he was in KEM hospital, the police had come to record his statement. They were from Samarth police station, Pune. They even recorded certain statements.

9. The testimony of Dr. Vinod Naik would on the other hand clearly established that Ramdas was not unable to make statement while he was in KEM Hospital or even prior thereto.

10. The question we asked across the bar during the argument was: What had happened to the statement which was recorded in Samarth Police Station, Pune? We perused the original record and could locate the original statement of Ramdas recorded by Police Constable of Samarth Police Station, Pune on 2nd May, 2013. We are aware that this document was not exhibited in the lower court, but we have no hesitation in exhibiting it now because of the following reasons: About this statement, Ramdas has given admission in his cross-examination. This document gets further support from the letter Exh.69, which was sent by Police Head Constable of Samarth Police Station, Pune. This statement was part of the charge sheet. During cross-examination of prosecution witness No.1 Ramdas, the cross-examiner could have easily shown this

statement to Ramdas who could have admitted his thumb mark on it. It seems that the cross-examiner went up to asking Ramdas as to whether his statement was recorded while he was in K.E.M. Hospital when the answer came in affirmative. The next question in the cross-examination could have been showing the document to the witness. Once such document was shown, the Court would have exhibited the same. Besides, this document could have been proved through the statement of prosecution witness Dhiraj Patil, the I.O. In the cross-examination, this witness has admitted that he had seen report of Samarth Police Station and the letter of Samarth Police Station addressed to Shrigonda Police Station along with statement of complainant. The cross-examiner could have easily asked this witness as to whether the statement, which we discussed above, was the same. This witness could not have denied its existence. Besides, the prosecution does not deny the existence of this document or the incident which had occurred between Ramdas and Police Head Constable of Samarth Police Station, Pune.

11. While perusing the original record of the case we located the report of Police Head Constable Mr. Shirke, attached to Samarth Police Station who apparently recorded the statement of Ramdas by visiting him in the hospital. The same also deserves to be read in evidence because it is not a disputed document and it is also relevant. It is clear that the statement of Ramdas and the report of

Police Head Constable Shirke, together, were sent to Samarth Police Station, Pune, and these two documents were further referred to Shrigonda Police Station by entry No. 00 of 2013.

12. As said above, the Investigation Officer Dhiraj Patil admitted having seen these two documents. In view of this, we mark these two documents as Exh.73-A and 73-B.

13. Now, let us examine the contents of document Exh.73-B. Ramdas, in his statement, stated that in order to recover old dues, he went to Ukkhalgaon and met accused No.1, who agreed to settle his dues. Accused No.1 then was accompanied by three more unknown persons. Ramdas stated that thereafter, the unknown persons assaulted him and pushed him, due to which, he fell down. Amongst these three unknown persons, someone fired a bullet at him and caused injury.

14. The prosecution case gets weakened because of inaction on the part of Ramdas as he did not lodge complaint in reasonable time disclosing as to who the perpetrators were. The disclosure made by him in his statement recorded at Pune further weakened the case of prosecution. We are therefore, not inclined to believe the prosecution case that it was accused No.1 who fired the bullet.

15. There is one more serious lapse on the part of investigating officer in this case. As said above, there is a clear allegation that a bullet was shot utilizing a fire arm. Even the assailant's name was

mentioned in the so called F.I.R.. Accused Nos. 1 and 2 were arrested and yet the fire arm was not recovered during the investigation. Unless the fire arm and the pallet recovered from the abdomen of the victim were sent for ballistic examination by an expert, the Court could not have found as to whether the fragment of pallet found in the abdomen was actually fired from the fire arm which belonged to or which was recovered from the assailant. The investigating officer did not recover the fire arm from which this bullet was fired.

16. The prosecution failed to prove its case. The accused deserves benefit of doubt. Hence, we proceed to pass the following order:

O R D E R

- I. Criminal Appeal No. 214 of 2015 is hereby allowed.
- II. The judgment and order dated 30.01.2015 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.271 of 2013 is hereby quashed and set aside to the extent of accused No.1 Shankar Bhausaheb Walke.

- III. The appellant/original accused No. 1 Shankar Bhausahab Walke is acquitted of the offence punishable under Section 307 of I.P.C. and he be released forthwith, if not required in any other crime.
- IV. Fine amount, if paid, be refunded to the appellant/original accused.
- V. In light of the above, Criminal Appeal No. 250 of 2015 filed by appellant/original complainant is hereby dismissed.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

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