

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 810 OF 2014

Sou. Lata Satyanarayan Bajaj,
Age : 37 years, Occu. - Household & Agril.,
R/o Lamjana, Tq. Ausa,
Dist. Latur .. Appellant

VERSUS

The State of Maharashtra
through Police Station Killari,
Tq. Ausa, Dist. Latur .. Respondent

Mr. S.M. Pandit, Advocate for the appellant
Mr. N.T. Bhagat, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 17/02/2016

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the conviction for the offence punishable under section 307 of the Indian Penal Code and consequently recording of the sentence of rigorous imprisonment for 10 years against the original accused in Sessions Case No. 45 of 2011, decided by the learned Adhoc Additional Sessions Judge-1, Latur on 03/12/2012, the present appeal is preferred.

3. According to the prosecution, the present appellant has hit her husband PW5 – injured, by stone in the night time due to which he has received serious injuries.

4. The prosecution case in short, is as under :-

. On 12/3/2011, PW3 – Rajendra Patil, the Police Patil of village Lamjana, Tq. Ausa, Dist. Latur filed complaint at Exhibit 29 with Police Station, Killari, alleging therein that the present appellant was always insisting her husband to dispose of his property from the village and to reside at Latur. Even she used to beat her husband on the said cause. She even did not use to carry household work. In the circumstances, many elders from the village tried to give understanding to her but she did not improve.

. In the circumstances, on 12/3/2011, at about 3.00 am in the night, one Subhash Shinde, a villager came to him and told that appellant has hit a big stone over the head of PW5 – Satyanarayan at their home. The complainant therefore went at the spot. He found that

the son of the couple i.e. PW6 – Shubham was weeping by the side of the injured, who was lying unconscious. The complainant made enquiry with PW6 – Shubham, whereupon he told that at about 2.00 am, he woke up due to the sound of the stone and due to the loud groaning of his father. After awaking, he saw that his mother was standing by the side of the head of the injured. She was again and again taking up the stone and was hitting the injured. He started weeping. Later-on Subhashrao Shinde came at the spot and he went away to bring the complainant. In the circumstances, the injured was taken by the villager as well as his nephew Dr. Nogja by an auto-rickshaw to Government hospital at Killari and from Killari, he was taken to civil hospital, Latur and, thereafter, the complaint came to be filed with the Police Station.

. PW7 – Sunil Jaitapurkar, the then Assistant Police Inspector conducted the investigation in the case. He first arrested the appellant. He thereafter visited the spot of incident and drew the panchanama of spot of occurrence. From the spot, blood stained pieces of bedsheet were collected. The statements of

the witnesses including that of PW6 – Shubham was recorded. The saree worn by the appellant was also collected. The blood stained shirt of the injured and his son Shubham were also seized.

. While in custody, the appellant made a statement leading to the recovery of the blood stained stone from under a manure garbage. The same was seized. All the property was sent to the chemical analyzer. The injured was unable to make any statement as he was unconscious. After the injured's health became stable, his statement was recorded and the chargesheet came to be filed.

5. Before the learned Additional Sessions Judge, in all 8 witnesses were examined including the panch witnesses and the witnesses, as detailed supra.

6. Learned counsel for the appellant Mr. S.M. Pandit took me through the evidence on record. He submits that it has been clearly established that the appellant was falsely implicated in the incident at the behest of Dr. Shriniwas Nogja, who is the nephew of

injured PW5 – Satyanarayan. He submits that though according to the prosecution case, the injured was immediately taken to the rural hospital, Killari, where said Dr. Nogja was the Medical Officer and wherefrom the injured was taken to the civil hospital, yet there is no injury certificate issued by this Doctor. In-fact, there is no clear-cut injury certificate as such on record.

. The evidence of injured PW5 – Satyanarayn, the injured would show that due to the darkness, there could not have been any opportunity to identify the person assaulting the injured. His son PW6 – Shubham was however tutored to such an extent that, against the statement of his father, he made a statement that there was light at the spot and even the Gram Panchayat had provided an electric bulb.

. Learned counsel for the appellant further took me through the variances in the oral evidence and submits that the prosecution has failed to prove beyond reasonable doubt that the appellant has committed the offence.

7. According to the appellant, the injured, in-fact was addicted to liquor and that was the cause of quarrel between the injured and the appellant. He was not earning anything and in the circumstances, in the night of the incident, injured had consumed liquor and fell in the courtyard, however, with the help of his nephew due to the earlier bickering, the appellant is falsely implicated.

8. On the other hand, learned A.P.P. submits that the statement of PW6 coupled with statement of the injured PW5 would show that the injured and his son were able to see the appellant assaulting the injured. The said fact was immediately reported by PW6 to complainant. In the circumstances, it was submitted that the appeal be dismissed.

9. On the basis of this material, following point arises for my determination :-

. Whether the prosecution has proved that in the night between 11/03/2011 and 12/03/2011 at about 2.00 am at village Lamjana, the present appellant has

attempted to commit murder of her husband
– Satyanarayan ?

My finding to said point is in the negative. Criminal Appeal is therefore allowed and the appellant is acquitted of the offence, for the reasons to follow.

R E A S O N S

10. FIR at Exhibit 64 would show that the same was filed with the Killari Police Station after the injured was taken to the civil hospital from the Rural Hospital of Killari. PW5 – injured Satyanarayn has admitted that his nephew was the Medical Officer of the said rural hospital. Thus, though the complaint is filed after the nephew of the injured has examined the injured, we do not find any injury certificate issued by this Medical Officer on record. The very fact that the FIR came to be filed belatedly after carrying all the activities, would show that there is certain probability of false implication.

11. This false implication is further explicit

from the prosecution evidence itself. PW5 – Satyanarayan in examination-in-chief deposed on the prosecution line that as his wife hit him with a stone, he opened his eyes and saw that his wife was standing in front of him. He further deposed that when he regained consciousness in civil hospital, Latur, he recalled that his wife injured him by a stone hit on his head.

. During cross-examination, however, he admitted that he was injured in the courtyard of his house. No electric bulb was provided in the courtyard. When it was specifically questioned to him that it would not have been possible to see anything in such a darkness, he answered that one can see 'a little bit'.

. Upon further probing, he ultimately admitted that due to the darkness in the courtyard, it is not possible to identify a person standing in the courtyard.

12. According to the prosecution, it was a quick operation. The appellant had hit the injured with a stone. It is not the case of the injured that she has

hit him for many times, thus giving ample opportunity to see the assailant in somewhat darkness.

13. As against this, PW6 – Shubham, 13 years old son of the appellant however went ahead in his zeal to show that his mother had hit his father. He denied that there was no electricity in the courtyard. He went on to say that an electrical pole is provided by the gram-panchayat. He denied that he was not able to see the appellant. This is against the statement of his father. It is an admitted fact that this witness is in the custody of the injured while the appellant – his mother is in jail.

. While the earlier statement of PW6 recorded by the learned Additional Sessions Judge, under section 164 of the Code of Criminal Procedure is silent regarding as to how many times, hitting was given, in his examination-in-chief, the witness deposed that he woke up due to the noise of the stone and, thereafter, he found that for second time, his mother was hitting his father. This is an improvement over the statement recorded by the learned Additional Sessions Judge.

14. Not only this, in the statement recorded before the learned Judicial Magistrate First Class under section 164 of the Criminal Procedure Code, PW6 went on to state that after the hitting of the stone, appellant – his mother went to the borewell, washed the stone with a soap and kept the same behind one panpatti. According to the prosecution, however, as detailed supra, the appellant has made a statement leading to the recovery of blood stained stone from under a manure garbage.

15. If all this evidence is taken into consideration, in my view, the prosecution has failed to prove beyond reasonable doubt that the present appellant has attempted to commit murder of her husband PW5 – Satyanarayan.

16. It appears that the learned Additional Sessions Judge was swayed away by the fact that PW6 – the child witness, who is the own son of the appellant, had deposed that his mother was the perpetrator of the crime. In the zeal, however, the learned Additional Sessions Judge even accepted the inadmissible evidence

and considered the same when it was recorded by him that the appellant at the time of making the recovery of the stone has made a statement that she has attempted to commit murder of her husband by the said stone. In view of all these facts, the following order:-

: O R D E R :

17. Criminal Appeal is hereby allowed.

18. The impugned judgment and order dated 03/12/2012 passed by the learned Ad-hoc Additional Sessions Judge-1, Latur, in Sessions Case No. 45 of 2011, convicting the present appellant for the offence punishable under section 307 of the Indian Penal Code is hereby set aside. Consequently, the sentence awarded to the present appellant is also set aside.

. Instead, the appellant is acquitted of the offence punishable under section 307 of the Indian Penal Code.

19. Appellant - Sou. Lata Satyanarayan Bajaj be released forthwith, if not required in any other offence/s.

20. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/