

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.56 OF 1997

Prakash Dada Patil

...Appellant

vs.

The State of Maharashtra

...Respondent

Mr. A.S. Khandeparkar a/w Mr. Lokesh Zade i/b Khandeparkar & Associates.

Ms. A. A. Takalkar, APP for the State.

CORAM :- C. V. BHADANG, J

DATE :- 6th APRIL, 2017.

JUDGMENT :

. The Appellant (original accused No.1) was prosecuted along with three others for the offences punishable under sections 307, 323, 504 r/w 34 of the IPC before the learned Additional Sessions Judge at Kolhapur. By the judgment and order dated 17/1/1997, the Appellant was convicted for the offence punishable under section 307 of the IPC and was sentenced to suffer RI for 5 years and to pay a fine of Rs.2,000/-, in default, to suffer further RI for 4 months. The original accused Nos.2 to 4 came to be acquitted of the offences as charged. Feeling aggrieved by the conviction and sentence, the Appellant is before this Court.

2. The prosecution case may be briefly stated thus:

That the Appellant is the son of the complainant Dada Hari Patil (PW-4). According to the prosecution, the incident had occurred on 26/9/1992 at about 8.00 a.m. at village Thergaon, Shahuwadi, Kolhapur in front of the house of the complainant. It appears that there was a dispute between the Appellant on one hand and his father Dada Patil and

his brother Arun Patil (the injured). It is claimed that while Arun Patil was returning home from his field on bicycle after milching the she buffalos, the Appellant gave a push to the bicycle on which Arun Patil was riding, on account of which Arun Patil fell on the ground. It is claimed that the Appellant along with the co-accused abused and threatened Arun Patil with life. It is the prosecution case that in the incident the Appellant stabbed Arun Patil on his stomach and also on the left side of buttocks by knife, on account of which Arun Patil sustained bleeding injuries and became unconscious. Arun Patil was initially shifted to the hospital at Banbavade and, thereafter, to CPR hospital at Kolhapur. Police Head constable at CPR hospital filed a vardi at outpost at CPR hospital on the basis of which offence was registered. As the incident occurred within the jurisdiction of Shahuwadi and CR No.115/1992 was registered for the offence punishable under sections 307, 323 r/w 34 of the Indian Penal Code.

3. On investigation a chargesheet came to be filed only against the Appellant/Accused No.1. However, Dada Patil filed a private complaint before the learned Judicial Magistrate, First Class, Shahuwadi against all the accused and the said complaint was committed to the Court of Sessions along with chargesheet filed against the Appellant and was registered as Sessions Case No.3/1994. The learned Sessions Judge framed charge against all the accused for the offences as aforesaid to which the accused pleaded not guilty and claimed to be tried. The defence of accused was of total denial and false implication.

4. At the trial the prosecution examined in all 10 witnesses and produced contemporary record of the investigation. The Appellant and the

other accused did not lead any evidence in defence. On appreciation of the evidence and the material on record, the learned Sessions Judge found that the offence punishable under section 307 r/w 34 of the Indian Penal Code is proved only against the Appellant and the Appellant was convicted and sentenced accordingly.

5. I have heard Mr. A.S. Khandeparkar, learned counsel for the Appellant and Ms. A.A. Takalkar for the State. With the assistance of the learned counsel for the parties, I have gone through the prosecution evidence and the impugned judgment.

6. It is submitted by Mr. Kandeparkar, learned counsel for the Appellant that PW-4-Dada Pail who claims to be the eye witness to the incident has admitted in the cross examination that he had reached the spot of the incident when PW-7-Arun Patil was lying on the ground. He, therefore submits that PW-4-Dada Patil cannot be said to be an eye witness and no reliance can be placed on his evidence. Insofar as the evidence of PW-7-Arun Patil is concerned, it is submitted that according to the prosecution PW-7-Arun Patil was returning home with a milk can after milching the she buffalos. It is submitted that according to the prosecution case PW-7-Arun Patil fell on the ground, which would normally result into spilling of the milk, however, there is no reference of any spilling of milk in the spot panchanama. It is submitted that PW-7-Arun Patil did not produce his shirt during the course of investigation, which could have corroborated the prosecution case of the shirt being torn on account of PW-7-Arun Patil being stabbed in the stomach. It is further submitted that the evidence of recovery of knife from the Appellant is entirely untrustworthy as according to the prosecution, the Appellant produced

the knife at the time of his arrest. It is pointed out that the recovery of knife, is not relatable to section 27 of the Evidence Act. It is submitted that once the co-accused Nos.2 to 4 have been acquitted, the Appellant could not have been held guilty of the offence punishable under section 307 r/w 34 of the IPC.

7. On the contrary, it is submitted by the learned APP that it has come on record that there is enmity between the Appellant on one hand and his father Dada Patil (PW-4) and the injured Arun Patil (PW-7), which is the motive for the commission of the offence by the Appellant. It is submitted that the evidence of PW-4-Dada Patil and PW-7-Arun Patil taken as a whole is acceptable. It is submitted that the evidence of PW-4-Dada Patil is in consonance with what PW-7-Arun Patil has stated about presence of the Appellant and the co-accused at the spot when PW-7-Arun Patil was lying unconscious on the ground. It is submitted that there was recovery of the knife from the Appellant and the Forensic report shows the presence of blood having blood group 'B' which corresponds to the blood group of PW-7-Arun Patil. It is thus submitted that there is sufficient corroboration to the evidence of PW-4-Dada Patil and PW-7-Arun Patil and the learned Sessions Judge was justified in convicting the Appellant for the offence punishable under section 307 of the IPC.

8. I have carefully considered the circumstances and the submissions made. The material witnesses in this case are PW-4-Dada Patil and PW-7-Arun Patil. It has come in the evidence PW-7-Arun Patil that on the date of the incident at about 8 while he was coming on a bicycle taking milk, the Appellant gave a push to his bicycle on account of which he fell down. The Appellant then gave a blow of knife on his

stomach, left buttock and left hand finger on account of which he became unconscious. He regained consciousness at about 7.00 p.m. when he found himself in CPR hospital at Kolhapur. His dying declaration was recorded which is at Exh.38. In the cross examination, this witness states that the can having milk was on the bicycle. He was wearing a shirt and pant and the shirt was torn in the incident and there were blood stains on it. He however, did not produce the shirt before the Investigating officer. He denied that injuries were caused on account of fall from the bicycle.

9. PW-4-Dada Patil states that one month prior to Diwali'1992 while Arun Patil was returning after milching the she buffalos at about 8.00 a.m., the Appellant picked up a quarrel with Arun in front of his house and the Appellant gave a knife blow on the stomach of Arun Patil and also on the left side of his buttocks. He claimed that the accused Nos.2 to 4, who were present also assaulted Arun Patil with kicks and slaps. In the cross examination PW-4-Dada Patil states that the Appellant had entered the house when the quarrel started. It has further come in his evidence that near about 10-20 persons had gathered at the spot, none of whom tried to intervene in the incident. PW-4-Dada Patil states that he was behind his house and when he heard the 'noise' of the quarrel, he reached at the spot within 2 minutes, (after hearing the hue and cry), when his son Arun Patil was lying on the ground in unconscious condition. It can thus be seen that PW-4-Dada Patil cannot be said to be an eye witness to the incident of alleged assault by the Appellant on PW-7-Arun Patil. He admitted that the wife of the Appellant had filed a criminal case against him. He further denied that as a counter blast he has filed a complaint in the instant case.

10. It is now well settled that enmity is a double edged weapon. While on one hand it can be a motive for commission of the offence, at the same time it can also be a reason for false implication. The question essentially depends upon appreciation of the evidence on record in the context of attending circumstances. In the present case, although it has come on record that there were 10-20 persons who had gathered at the spot, none of them are forthcoming as prosecution witnesses. Although, PW-7-Arun Patil stated that the shirt which he was wearing was torn and was blood stained, he did not produce the same during the course of the investigation.

11. The spot panchanama(Exhibit 26) was drawn on 23/9/1992 i.e. on the next day of the incident between 10.30 to 11.15 hours. One of the spot panchas (PW-2) Krishna Jagannath Patil had turned hostile, while the other panch (PW-3) Shivaji B. Karnale who supported the spot panchanama admitted to be a close relative of the complainant and stays 10-12 km away from the spot of incident. Be that as it may, the panchanama does not show the presence of the bicycle or spilling of the milk.

12. The Medical Officer Lalasaheb S. Patil (PW-5) has admitted that the injuries on the person of Arun (PW-7) are possible if a person comes in contact of portion of the bicycle during the fall. Usually, such suggestions are given during the cross examination of a medical officer and admission of the Medical Officer that such injuries are possible by a mere fall, would not be relevant, unless the prosecution case itself suggests that there was such a fall. Here is a case, where the positive prosecution case is that on account of a push/dash by the Appellant, PW-

7-Arun Patil fell from the bicycle and in that view of the matter admission of the Medical Officer becomes relevant and assumes significance.

13. The prosecution has placed reliance on the recovery of weapon which is a knife (Article 4). The recovery cannot be said to be in pursuance of any confessional statement by the Appellant. In other words, the recovery is not relatable to section 27 of the IPC. The prosecution case is that the knife (Article 4) was found on the person of the Appellant on 1/10/1992 while the incident had occurred on 22/9/1992. The learned counsel for the Appellant submitted that the evidence of PW-8-Sadashiv Sawant, who is the sole panch examined on the point of seizure of knife from the Appellant is not trustworthy as he admitted that he has acted as panch in other cases also. He also submits that the Investigating officer is not examined in this case. Be that as it may be, it appears that the knife was allegedly found on the person of the accused when he was arrested on 1/10/1992 (when the incident had occurred on 22/9/1992) which appears to be improbable. It is highly improbable that the Appellant would carry the blood stained knife on his person after 8-9 days of the incident. In my considered view, no implicit reliance can be placed on the evidence of PW-4-Dada Patil and PW-7-Arun Patil, particularly in view of the fact that admittedly there was enmity between them and the Appellant and when the prosecution had failed to produce any independent witness although it has come on record that there were about 10-20 persons who had gathered at the spot and the incident having occurred in broad day light at 8.00 a.m. in the village. The evidence of recovery of weapon from the Appellant is also not trustworthy and acceptable. In my considered view, this is a case in which the Appellant is entitled to benefit of doubt as reasonable suspicion arises as to the veracity of the prosecution case and

the incident having occurred in the manner as claimed.

14. In the result, the following order is passed:

- i) Appeal is allowed.
- ii) The conviction and sentence awarded to the Appellant for the offence punishable under section 307 of the Indian Penal Code is hereby set aside.
- iii) The Appellant is acquitted of the offence punishable under section 307 of the IPC.
- iv) The bail bonds of the Appellant stand cancelled.
- v) Fine, if paid, be refunded to the Appellant.

(C. V. BHADANG, J.)