

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 583 of 2002

Gopal Mahadeo Godkar & Anr	.. Appellants
Versus	
The State of Maharashtra	.. Respondent

WITH

CRIMINAL APPEAL NO. 943 of 2002

The State of Maharashtra	.. Appellant
Versus	
Gopal Mahadeo Godkar & Anr	.. Respondents

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Mr. A.S. Khandeparkar, Spl.P.P with Ms.A.S. Pai, App for the appellant/State in 943/2002 and Respondent in Cr.Appeal No.583/2002.

Mr.Harshad Bhadbhade for the appellant in Cr.Appeal No.583/2002 and Respondent Nos.1 and 2 in Cr.Appeal No.943/2002.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 27th AUGUST 2019

ORAL ORDER:- (Per BHARATI DANGRE, J)

1 On a complaint filed by a lawyer practicing at Vengurla on 4th November 1990, an FIR came to be registered by

the Vengurla Police Station for the offence punishable under Section 307, 452 r/w Section 34 of IPC against the two accused persons i.e. Gopal Godkar and his father Ladoba Godkar. The complaint proceeded to state that Narayan (PW 1) is a permanent resident of Aravali where he resides with his father, mother, brother Arun (PW 6) and sister Tejashree. It is stated that on the day of incident i.e. 4th November 1990 at 8.00 p.m when he was sitting in the verandah of his house and reading papers, accused persons entered in the house being armed with sword and with an intention to kill him, Gopal Godkar (A1) assaulted the complainant on neck, head and left hand wrist. When Janardan Godkar (PW 5) intervened, he was also assaulted by Ladoba (A2) on his neck, left hand arm and wrist thereupon both the complainant and his father fell on the ground, bleeding. At that time, his brother Arun and sister Tejashree as well as the neighbours rushed towards them and one Vinayak Yeshwant Walavalkar admitted them to the Government hospital. The complainant stated that both the accused persons were residing in the neighbourhood and there was a dispute with them on account of certain portion of land and Janardan had filed proceedings against the accused and the verdict was delivered in their favour. It is alleged in the complaint that the accused persons had an axe to grind against the complainant and his father. Based on the said complaint, the offence was registered and both Gopal and Ladoba were arraigned as accused.

2 The complainant was referred to the Civil Hospital and was examined by Dr.Sadhana (PW 7) who recorded the following injuries :-

- 1) *Incised wound over left side of neck of the size 4 inch x 1 inch x 1 cm. Bleeding was present.*
- 2) *Incised wound over left forearm of the size 2 inch x 1 inch x 1 cm. Bleeding present.*
- 3) *Incised wound over head from front to back 10 inch in long bleeding present.*
- 4) *Incised wound in front of chest near neck 3 inch.”*

He was further referred to the Civil Hospital, Sawant wadi for further treatment and an X-Ray recorded a fracture of Calvical left side with multiple wounds. Similarly, PW 5 was also examined by PW 7 and following injuries were found.

- 1) *Incised wound on neck left side below Mandibul of the size 5 inch x 1 inch x 1 inch. Bleeding was present.*
- 2) *Incised wound on back of left forearm of the size 3 inch x ½ inch x 1/4th inch. Bleeding was present.*
- 3) *Incised wound on left wrist of the size 2 inch long. Bleeding was present.*

3 Laxman Sawant (PW 7) carried out the investigation. He conducted a spot panchnama where a pool of blood was seen and the clothes soaked in blood came to be recovered from the

said spot which were forwarded for Chemical Analysis. The accused persons came to be arrested on 10th November 1990 and statement of accused no.1 under Section 27 lead to a disclosure of sword concealed in the front portion of his house and accordingly, a memorandum was drawn. The said sword was recovered and detected with blood stains belonging to Group 'A'.

4 On completion of investigation, the accused were tried by the Additional Sessions Judge, Ratnagiri. The prosecution examined eight witnesses including the complainant PW 1, Janardan – father of the complainant (PW 5), Arun – brother of the complainant (PW 6). The accused persons examined two witnesses – DW 1 Vishnu Angaj and DW 2 Vinayak Walawalkar.

Accepting that the prosecution has successfully established its case and by holding the plea of *alibi* sought to be placed by the accused persons being unproven, the trial Court held that accused were guilty of the offence punishable under Section 307 and 452 IPC read with Section 34 IPC and sentenced to suffer RI for 7 years for the offence punishable under Section 307 IPC and to pay fine of ₹ 3,000/- each. As far as offence punishable under Section 452 is concerned, both the accused were sentenced to suffer RI for five years and to pay fine of ₹ 2,000/-. Both the sentences are directed to run concurrently.

5 On perusal of the evidence brought on record by the accused and in particular through DW 1 Vishnu Angaj who had deposed that he was working with Johnson & Johnson Company where the accused persons were engaged as contractors, the trial Court did not find the said defence to be reliable in absence of the original record recording that the accused persons were on duty on the date of incident. The trial Court was justified in not believing this witness. There is another witness examined by the accused i.e. Vinayak Walawalkar. This witness assume relevance as he deposed before the Court that on 4th November 1990, at around 7.00 to 7.30 p.m, he was present near Maruti Mandir and on his way back to home, he was accompanied by Arun Godkar (PW 6) and thereafter, he went to the tailoring shop of one Mr.Amrut and since the clothes were not ready, he was waiting at the said shop. He further deposed that at that time, step mother of Arun came there and started shouting that Sham and Bhai were assaulted by two persons who were wearing black mask and help of Vinayak was sought to take the injured to the hospital in an auto rickshaw. He deposed that in an auto-rickshaw he accompanied Arun and his mother and went to the house which is located at a distance of 200/300 paces from the shop and Sham and Bhai were then taken in rickshaw to the hospital in Shiroda. The witness was subjected to extensive cross-examination by the prosecution. He denied the suggestion that he was falsely

deposing that wife of Janardan came to the place and gave shouts that two persons wearing black mask assaulted Sham and Bhai.

6 In light of the testimony of this witness, we have scanned the evidence brought on record by the prosecution. The list of articles collected during the course of investigation refers to 15 articles and include one black colour open bu-shirt with six white buttons. It also has presence of one black colour cloth measuring 37” in length and 20” in width with two holes cut out, depicting two eyes. It is this mask which is sought to be the bone of contention of the counsel for the appellant. The panch witness Chandrakant Gadekar (PW 2) who executed the panchnama at Exhibit 35 is in relation to recovery of the clothes from the spot. Another panchnama Exhibit 37 executed by Pramod Kavle (PW 3) is in regard to the seizure of the clothes from the room where the offence took place and this covers article 1 to 4 i.e. the piece of clothes which was put to use for collecting the blood on the spot. Yeshwant Mantri who is signatory to the Memorandum Panchnama (Exhibit-39) of a disclosure statement made by A1-Gopal is a panch of recovery of a sword. In cross-examination, he denied the suggestion that the black mask and black shirt was shown to him by the police and he deposes that a panchnama for seizure of the black mask and black shirt was not prepared in his presence. He also denies the suggestion that the panchnama for putting a black mask and black shirt on the person of the accused

was not prepared in his presence and he was rather called by the police only to prepare a panchnama about recovery of sword.

7 An important witness of the prosecution is Laxman Sawant PW 8 – the Investigating Officer who carried out the investigation. He admitted recording of statement of Tejaswini Godkar, Sumati Godkar, Udaynath Godkar and Walawalkar on 6th November 1990. In the cross-examination, he admitted that a black shirt and black mask were seized by him from a forest area. He admitted that the two articles were seized as a part of evidence in the crime. Then, he makes a statement that these two articles are not related to the crime and further proceeds to state that he has yet to establish the connection of these two articles with the crime. He admits that the panchnama was made for a demonstration of putting on the mask on the person of A-1 Gopal. He denies the suggestion that investigation was further made for search of other black mask and black shirt. He further depose in the Court that information was received that a mask and a shirt was worn by the same person and it was important to identify the accused with the mask and the shirt. In further part of the cross-examination, he admits that the black mask and black shirt was not sent for Chemical Analysis. He also makes a reference about a stick being seized from the spot of offence under the panchnama. This Investigating Officer also admits recording statement of Vinayak Walawalkar (DW 2) on 5th

November 1990 and admits that investigation was made with Walawalkar regarding mask and the shirt. However, he denied the suggestion that it had transpired in the investigation that offence was committed by two persons who were wearing black mask and black shirt. He however fails to explain as to why demonstration of mask and the shirt was done by preparing the panchnama. In the cross-examination the Investigating Officer admitted that at the instance of A-2, no sword was recovered but a chappal, a mask and a short was found in the forest which is at a distance of about 5 – 6 furlong towards east of the house of the complainant.

During investigation, one chit has also emerged and it is the Investigating Officer through him it has been brought on record. As regards the said chit (Exhibit-64) PW 8 has deposed that the contents in the chit disclose that a threat was given to the father of the complainant regarding the lady by name Sunita. He also clarified that Godkar Guruji referred in chit (Exhibit-64) is one of the injured person but he had not made any investigation regarding the lady by name Sunita and expressed that he had no suspicion that the incident had occurred on account of the said lady and therefore he had not made any investigation regarding the person in love with Sunita and he could not conclusively state whether the incident had occurred because of the said love affair. The panchnama (Exhibit-65) of the paper book executed on 5th November 1990 is in relation to the recovery of one shirt and

black cloth. It is this black cloth partaking a mask which was recovered from a forest area near Aravali, Maruti Mandir. It is pertinent to note that the Investigating Officer (PW 8) has made reference to the seizure of black shirt and black mask from the forest area. This panchnama is brought on record by PW 8 and it is admitted by him that the black cloth was having two holes of the size of eyes. This evidence of the prosecution has been lost sight of and it is worth noting that Sumati Godkar was not examined as a witness.

8 It is pertinent to note that the complainant do not dispute the presence of Vinayak Walawalkar and in his complaint he state that on being attacked by the two accused persons, Vinayak Walawalkar took the injured to the hospital and admitted them. The said witness ought to have been examined as a prosecution witness since he completed the chain of evidence in taking the injured persons to the hospital, but we can only observe that the prosecution did not cite him as a witness and the reason is obvious.

On being brought to the witness box as a defence witness, Vinayak had deposed that the step mother of PW 6 Arun who was waiting along with Vinayak at the tailor shop came out of the house and she raised an alarm that Sham and Bhai were assaulted were assaulted by two persons who were wearing black mask. Vinayak who rushed to the spot on a call from the mother

of Arun took the complainant and his father to the hospital. The lady who came out of the house sounded off by stating that the complainant and Bhai were assaulted by two persons who were wearing black mask. She is not examined as a witness but version of her as a candor statement coming out of the mouth of Vinayak, who again has been withheld by prosecution and is compelled to come before Court as defence witness clears a doubt in the prosecution version and in particular a doubt is created about the identity of the persons who had assaulted the complainant and his father. The prosecution case cannot be doubted to the extent that the complainant and PW 5 were injured. However, since the complainant himself has proceeded to state that there was a previous enmity with the accused persons and there was a verdict staring in the face of the accused, they had assaulted the complainant and his father, the case of the prosecution in light of the statement of the defence witness who ought to have been examined as a prosecution witness creates a reasonable doubt in the version of the prosecution.

9 The burden of proof to establish its case lies on the prosecution and an accused is presumed to be innocent until proven guilty. The prosecution has to prove its case beyond reasonable doubt and on a failure to do so the accused is entitled to the benefit of doubt. The reasonable doubt is the one which occurs to a prudent and a reasonable man. The duty of the Court

while scrutinizing the evidence placed before it by the prosecution is to ascertain from the evidence read as a whole, is truthful or not. The prosecution case is not affected on account of some trivial or infirmities or deficiencies. However, discrepancies which are incompatible and affect the credibility of the prosecution case itself, then the prosecution case will fall. The Court has to examine the cumulative effect of the evidence in order to determine whether the prosecution has been able to establish its case beyond reasonable doubt or that accused is entitled to benefit of doubt. It is well accepted principle that mere lapse in investigation would not partake the form of benefit of doubt but at the same time and it is not every doubt but only a reasonable doubt of which the benefit can be given to the accused. Only that doubt which a rational Judge/a prudent man would reasonably, honestly and *conscientiously* entertain would deserve an attention and not mere scepticism or a sketchy doubt which is nothing but creature of a mind. We would gainfully refer to the observations of the Apex Court in case of Suresh Chandra Jana Vs. State of West Bengal, (2017) 16 SCC 466.

16. It may be mentioned that it is not every doubt but only a reasonable doubt of which benefit can be given to the accused. A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by

marshalling the evidence, but what is to be borne in mind is - whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt, i.e. the doubt which rational thinking man would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism. The administration of justice has to protect the society and it cannot ignore the victim altogether who has died and cannot cry before it. If the benefits of all kinds of doubts raised on behalf of the accused are accepted, it will result in deflecting the course of justice. The cherished principles of golden thread of proof of reasonable doubt which runs through web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.

10 The reasonable doubt is one which occurs to a prudent and reasonable man. Making reference to Section 3 of the Evidence Act which refers to two situations in which a fact is said to be proved (i) when a person feels absolutely certain of a fact i.e. believes it to exist” and (ii) when he is not absolutely certain and thinks it so extremely probable that a prudent man would act on the assumption of its existence.

 The doubt which law contemplates is not of a confused mind but of a prudent man who is assumed to possess the capacity to affirm either to the existence of a fact or presumed of its existence with a high degree of probability.

The degree of proof need not attain certainty but it is sufficient even if it carried a high degree of probability.

11 Examined in light of these settled principles, the present case of the prosecution raises a doubt since the defence witness who ought to have been examined as a prosecution witness has categorically deposed that the complainant PW 1 and PW 5 were attacked by assailants who were wearing masks and this was said by none else than one of the member of the family who rushed out of the house raising an alarm and seeking help. The prosecution has chosen not to examine the mother of the complainant Narayan. The benefit of doubt which is created must go to the accused persons. It is the case of the complainant in the complaint and also as deposed before the Court that there was a dispute over agricultural land between the accused persons and the complainant who were on cross terms. In a statement recorded under Section 313, the accused, when called upon to answer a question about false implication has admitted that Narayan and Arun are deposing falsely since there is a dispute of agricultural land. They also responded by stating that witness Yeshwant is deposing as the complaint was filed against him by accused Gopal. In all such probabilities, the case of the prosecution becomes doubtful as prosecution has not been able to establish its case conclusively by cogent and reliable evidence that it is the accused persons who had assaulted PW 1 and PW 5 but

has left several loose strings and the accused are entitled to derive a benefit from it as the case of the prosecution miserably fails to bring home the guilt of the accused persons.

12 Resultantly, we quash and set aside the conviction of the accused no.1 Gopal Mahadeo Godkar and accused no.2 Ladoba Mahadeo Godkar for the offence punishable under Section 307 IPC and 452 IPC read with Section 34 IPC and so also we set aside the sentence imposed on them by impugned judgment dated 22nd May 2002.

13 Resultantly, we allow Criminal Appeal No.582 of 2002 filed by the accused persons. As far as Criminal Appeal No.943 of 2002 filed by the State for enhancement of sentence deserves to be dismissed and is accordingly dismissed.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE