

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO. 40 OF 2017

The State of Goa,
through Police Inspector,
Calangute Police Station,
Calangute, Bardez, Goa.

..... Appellant/
State.

Versus

Pavel Neuhausl,
Czech Republic National,
C/o. Kalpesh Paulekar,
House No.136/A, Serra Alto,
Mapusa Municipal Council,
Bardez, Goa.

..... Respondent/
Accused.

Mr. Pravin Faldessai, Additional Public Prosecutor for the Appellant-State.

Mr. Sahil Sardessai, Advocate for the Respondent-Accused.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 21st October, 2020.

ORAL JUDGMENT: (Per M.S. SONAK, J.)

Heard Mr. Pravin Faldessai, the learned Additional Public Prosecutor for the Appellant-State and Mr. Sahil Sardessai, for the Respondent-Accused.

2. This Appeal is directed against the Judgment and Order

dated 15th March, 2017, made by the Additional Sessions Judge, Mapusa in Sessions Case No.67/2013, acquitting the Respondent-Accused of the offence of murder under Section 302 of the Indian Penal Code (IPC).

3. The case of the Prosecution was that the Accused, between 09.00 hours on 6/8/2013 and 02.55 hours on 7/8/2013, at Room No.2, Green Leaf House, Umtta Vaddo, Calangute, with an intention to cause death of his room partner Ms. Markita Horka, Czech National, stabbed her on the neck and breast, thereby murdering her.

4. The Accused refused to plead guilty to the charge as framed and claimed to be tried, and the trial ensued. The Prosecution examined 19 witnesses. Thereafter, the statement of the Accused was recorded under Section 313 of the Cr.P.C. The learned Additional Sessions Judge, after assessing the evidence on record, has acquitted the Accused of the offence punishable under Section 302 of the IPC. Hence, this Appeal by the State.

5. Mr. Faldessai, the learned Additional Public Prosecutor submits that the view taken by the learned Additional Sessions Judge is perverse inasmuch as there was sufficient evidence on record to convict the Accused and the Prosecution has established beyond reasonable doubt, the complicity of the Accused in the murder of Ms. Markita Horka.

6. Mr. Faldessai points out that the learned Additional Sessions Judge has failed to separate chaff from the grains and gave undue importance to the minor discrepancies, in order to give benefit of doubt to the Accused. Mr. Faldessai submits that in this case, the evidence in the form of recovery of the incriminating articles in pursuance of the statements made by the Accused, as well as the medical evidence, establish the complicity of the Accused in the crime. He submits that additionally the complaint made by the Accused was investigated and found to be false. He submits that filing of a false complaint in order to deflect the blame of murder upon himself, is an additional circumstance incriminating the Accused. He, however, submits that the learned Additional Sessions Judge has unduly excluded this circumstance and, therefore, the acquittal recorded by the learned Sessions Judge warrants interference. For all these reasons, Mr. Faldessai submits that this Appeal may be allowed and the Accused be convicted of the offence punishable under Section 302 of the IPC.

7. Mr. Sahil Sardesai, the learned Counsel for the Accused defends the impugned Judgment and Order based upon the reasoning reflected therein. He points out that the circumstances were not proved by the Prosecution and, therefore, the learned Additional Sessions Judge has quite correctly acquitted the Accused of the offence under Section 302 of the IPC. He points out that the view taken by the learned Additional Sessions Judge is imminently a plausible view and, therefore, the same may not be interfered with

in this Appeal.

8. The rival contentions now fall for our determination.

9. At the very outset, we must note that the scope of an appeal against acquittal is quite limited. Therefore, as long as the view taken by the learned Additional Sessions Judge is a plausible view, there is no question of any interference with the acquittal recorded. In *Chandrappa and ors. vs. State of Karnataka*¹, the Hon'ble Supreme Court has explained the contours of interference in an appeal against acquittal. Paragraph 42 of this decision, reads as follows :

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the

¹ (2007) 4 SCC 415

reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

10. Applying the aforesaid principles to the present case, we are satisfied that the Prosecution has not made out any case to interfere with the plausible view taken by the learned Additional Sessions Judge in this matter.

11. The Prosecution has alleged that the Accused committed murder of his partner between 09.00 hours on 6/8/2013 and 02.55 hours on 7/8/2013. However, the evidence of LPSI Devyani Naik, (PW.8), makes it clear that when she was attached to Calangute Police Station as PSI and was a Duty Officer, on 7/8/2013 at around 2.25 a.m. one Head Constable of Mapusa Police Station appeared at the Calangute Police Station, along with the Accused and handed over to her a written complaint filed by the Accused, which was

earlier registered at the Mapusa Police Station as Zero CR for want of jurisdiction. According to her, she commenced the investigation after registering the complaint vide CR No.195/13.

12. The complaint filed by the Accused at Exhibit 37 indicates that it was indeed registered at 02.25 hours on 7/8/2013. In the complaint, the Accused states that since 3/8/2013, he was residing with his girlfriend Marketa Horka (deceased) at Green Leaf House, Calangute, Goa and every day he used to move out of the hotel room to make purchases of his daily things. On 6/8/2013, he left his room at about 08.00 hours to purchase some fruits and his partner was sleeping alone in the room. At about 09.00 hours, when he returned to the room, he went to kitchen and was busy in cutting coconut. While his partner continued sleeping, at that time two male persons, aged 25 to 30 years of semi dark complexion, appearing to be Indians, forcibly entered his room speaking in aggressive tone in local language. The complaint describes that one of them was wearing blue T-shirt and dark blue jeans and the second one was wearing long pant and T-shirt/shirt which he could not recollect. On hearing sound, his girlfriend woke up and came to him in the kitchen. Both the persons followed her in the kitchen and the person who was wearing blue shirt and dark blue jeans took a knife from top of the table in the kitchen. On sensing danger, the Accused had scuffle with the two persons who tried to assault him. The complaint then states that the two persons then forcibly took him towards bathroom and assaulted him with slabs, kicks, fist blows

and then the person carrying knife, assaulted him with the knife, causing cut injuries to his hand. The complaint states that thereafter the person with knife dragged him out from the room and the second person remained in room and thereafter, he forcibly put him in one silver/white colour car, in which he fell unconscious. The complaint states that when the Accused regained consciousness, he found himself near railway under bridge and on seeing him, some members of the public gathered at the spot, called for ambulance and shifted him to a hospital for medical treatment.

13. Now, we agree with the learned Additional Sessions Judge that the complaint of the accused was required to be seriously investigated. However, the evidence on record bears out that there was absolutely no serious investigation into the complaint of the Accused even though it relates to the same incident in respect of which he was charged with murder.

14. LPSI Devyani Naik (PW.8) states that 'B' Final Report was filed in Crime No.195/2013. She deposed that she did not investigate into the truthfulness of the statements given by Vinayak Gopal Krihna Natekar and Gautam Gurudas Naik in Crime No.195/2013. When PW.8 was questioned as to the basis on which she filed 'B' Final Report, she replied that such conclusion was based upon the statements recorded by her. From all this, it is evident that there was no serious investigation into the Crime No195/13 and in this case,

the Prosecution was launched on the basis of the alleged confession by the Accused before the Police Officer that he was the author of the crime. Naturally, any confession before the Police Officer is not even admissible in evidence and could not have been proved by the Prosecution.

15. Failure on the part of the Prosecution to carry out investigation into the complaint of the Accused renders it quite unsafe to rely upon the Prosecution version in this matter that it is the Accused who was indeed author of the crime. The learned Additional Sessions Judge has quite correctly held against the Prosecution on this count.

16. There is serious discrepancy about the time of the murder which, according to the Prosecution, took place between 09.00 hours on 6/8/2013 and 02.55 hours on 7/8/2013. The Investigating Officer (IO) – PW.18, in his cross examination, however, stated that the offence was committed on the intervening night of 5/8/2013 and 6/8/2013 and as per his investigation, the murder took place prior to 09.00 hours on 6/8/2013. Thus, there is discrepancy between the timing stated in the charge and the timing deposed to by the IO.

17. The aforesaid discrepancy could have been overlooked as pointed out by Mr. Faldessai, the learned Additional Public Prosecutor, however, Mr. Gautam Naik, who was examined as PW.9

by the Prosecution, in his evidence, stated that on 7/8/2013 when he was going home on motor cycle, at about 9.30 p.m., he saw a male person lying by the side of the road, near railway bridge at Kansa. He stopped his motorcycle and tried to wake up this person, but he did not respond. Hence, he phoned the police by calling 100. The Police told him to call 108 – emergency service. 108 ambulance came to the spot and gave first aid to the said person, who started speaking in English after gaining consciousness. The witness identified the said person as the Accused in the present case. This means that if the time of the offence was between the intervening night of 5/8/2013 and 6/8/2013, then, there is no explanation as to how PW.9 saw the Accused lying on the road on 7/8/2013 at about 9.30 a.m.

18. PW.4, the Pancha to the CCTV footage uploaded on the laptop and PW.19 identified the Accused as the same person who was seen in the CCTV footage of the main entrance of the Thivim Railway Station. Even the screen shot was shown to the witness. The Prosecution has failed to explain the presence of the Accused at the railway platform on 6/8/2013 and the learned Additional Sessions Judge has quite correctly held this circumstance as a failure to explain the same by the Prosecution.

19. Even the timing as indicated by the medical evidence does not corroborate the version of the Prosecution in the matter.

20. The medical evidence also does not support the Prosecution version that injuries on the person of the Accused were self inflicted. The Accused in the course of his statement under Section 313 of Cr.P.C. also reiterated what he had stated in his complaint which came to be registered at Crime No.195/2013. The incident as described by him in the complaint, so also in the statement under Section 313 of Cr.P.C. is at least probabalized by the prosecution evidence itself. Ultimately, the Accused has to prove his defence on the preponderance of probability, unlike the Prosecution which has to establish the guilt of the Accused beyond reasonable doubt.

21. There are several discrepancies in relation to the scene of offence panchanama and the learned Additional Sessions Judge has quite correctly raised the reasonable doubt about the same. Similarly, the Prosecution has failed to explain how the passport was again found in the pant of the Accused at the time of his arrest, when, according to the Prosecution itself the said Passport was in the custody of the investigating agencies during the record of the scene of offence panchanama. All this, undoubtedly cast a doubt on both, the scene of offence panchanama, as also the arrest panchanama. The benefit of such doubt was correctly extended to the accused in this matter.

22. The recovery panchanamas also do not inspire much confidence in the present case. The learned Additional Sessions Judge

has dealt with this aspect in quite detail and the view taken by the learned Additional Sessions Judge certainly cannot be stigmatized as some impossible view, or a perverse view, or rather we feel that the learned Additional Sessions Judge has taken a plausible view, based upon appropriate evaluation of the evidence on record

23. The evidence, thus, indicate that some blood was found on the person of the Accused. However, it is satisfactorily explained by the defence taken by the Accused in this matter. The learned Additional Sessions Judge, in this case, has noted that significantly no blood having blood group 'O' (that of the deceased) was detected on the clothes of the Accused, though, it is the case of the Prosecution that it is the Accused who stabbed her and left her in a pool of blood. The learned Additional Sessions Judge has noted the discrepancy with regard to the blood group of the blood detected upon the clothes of the Accused. This, coupled with the doubtful scene of offence panchanama, obviously did not render it safe to record any conviction against the accused.

24. In ***Sharad Birdhichand Sarda vs. State of Maharashtra***² relied upon by the learned Additional Sessions Judge, the position with regard to evaluation of the circumstantial evidence is clearly set out. Applying the principles set out in this decision, it is difficult to hold that the Prosecution, in this case, has proved beyond reasonable doubt involvement of the accused in the offence of murder.

² (1984) 4 SCC 116

25. For all the aforesaid reasons, we see no ground to interfere with the impugned Judgment and Order. This Appeal is, accordingly dismissed.

26. There shall, however, be no order as to costs.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.