

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 581 OF 2004

The State of Maharashtra	}	Appellant (Orig. Complainant)
VERSUS		
Mahendra Ganapati Pednekar, Age 32 yrs. Occu. Business, R/o 22-B, Paschim Apartment, In front of Kirti College, Prabhadevi, Mumbai	}	Respondent (Orig Accused)

Mr A.R. Patil, APP for the Appellant – State.
None for the Respondent.

CORAM : PRASANNA B. VARALE &
V.G. BISHT, JJ.

DATED : DECEMBER 17, 2020.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the 04th Ad-hoc. Assistant Sessions Judge, Kolhapur in Sessions Case No. 04/2003, dated 06th February, 2004, whereby respondent herein (Original Accused) was acquitted of the charges for committing offences punishable under Sections 307, 352, 353, 506 of the India Penal Code (for short “IPC”), the present Criminal Appeal is preferred by the

Appellant – State of Maharashtra.

2. Learned APP vehemently submitted that the learned Trial Court failed to appreciate the evidence in the form of ocular testimony of eye witnesses as well as medical evidence supporting the case of prosecution and arrived at an erroneous conclusion. It is also submitted by the learned APP that the learned Trial Court gave an undue importance to certain minor discrepancies and prayed for allowing the appeal.

3. None appeared for the Respondent – Original Accused.

4. With the assistance of learned APP, we have gone through the record.

5. The case of the prosecution can be summarized as follows:

Mahendra (Orig. Accused) and his wife Mayuri (PW 9), though they were blessed with a child, but the relations between the couple were strained and Mayuri was staying with her parents at Sangli whereas Mahendra staying at Kolhapur. Mahendra visited his in-laws house prior to the date of incident i.e. 13.05.2002. In his stay of couple

of days Mahendra on pretext of going for a stroll took away the minor child with him and proceeded to Kolhapur. From Kolhapur he made a phone call to his wife Mayuri and told his desire of proceeding to Mumbai. On receipt of the said phone call Mayuri rushed to Kolhapur along with her brother. A dispute again arose between respondent accused Mahendra and his wife Mayuri. Mayuri was opposing for going to Mumbai whereas Mahendra was insisting and took away minor child along with him and proceeded towards the bus stand at Kolhapur. The incident in question which took place on 13.05.2002 is divided in two parts as per the prosecution case. The first part is, the accused boarded Ajara-Mumbai bus with his minor son Ganesh for proceeding to Mumbai. Mayuri (PW 9) who was opposing the accused rushed to a policeman who was at duty at bus stand and informed him the incident. Policeman Mr. Mane (PW 10) who was on duty at bus stand entered in the bus and requested accused to handover the child to mother i.e. Mayuri (PW 9). Accused was not in a mood to pay any heed to request made by Mr. Mane and accused was armed with knife and he was wielding the knife and warned Mr. Mane against his proposed action of taking the child Ganesh back from the respondent Mahendra. Due to

such a stressful situation, Mr. Mane asked the conductor and driver of the bus to take the bus to Shahapuri police station. Second part starts from this stage. The bus then proceeded to Shahapuri police station, the police personnel who were present at Shahapuri police station were informed about the situation as such, these policemen Shri. Satpute (PW 8), Shri. Narayan Bhoi (PW 11), Shri Tipugade – ASI, and head constable Bodake made an attempt to persuade the accused to give the child back. Accused was not paying any heed to the persuasion made by these police personnel, meantime Mr. Mane (PW 10) entered in the bus through the emergency door from the rear side of the bus. Mr. Bhoi who was in the bus and persuading the accused made an attempt to take the child back from the accused. The accused who was opposing gave knife blow to Mr. Bhoi near the left side of scapular region. The knife blow cause a bleeding injury to Shri Bhoi (PW 11). Other police personnel i.e. Mr. Bodake was successful in snatching the knife from the hands of accused and Mr. Tipugade was also successful in taking away the child from the accused. Police personnel in that process were successful in overpowering accused and he was caught hold by the police personnel and was ultimately taken to the police station.

6. Shri. Mane (PW 10) lodged a report of the incident. Shri. Gujar carried out the investigation by taking necessary steps. As accused was injured and had sustained bleeding injuries, his clothes were also blood stained and accordingly, necessary steps such as, drawing arrest panchanama, seizure panchanama of the clothes of accused were taken. As stated above, one police personnel Mr. Bhoi who was injured referred to CPR hospital for medical examination and treatment. Seizure of knife was effected by drawing a panchanama. Knife was produced by Shri. Bodake who was successful in snatching the same from accused. Statement of witnesses were also recorded as certain witnesses were injured and clothes of those witnesses were blood stained, those clothes were seized. As the injured witnesses were referred to medical examination, the medical papers were also collected. The blood samples drawn were forwarded to forensic science laboratory for chemical examination.

7. On completing all the necessary formalities of investigation, charge-sheet was filed in the Court of CJM, Kolhapur against the accused for commission of offence punishable under Sections 307, 352, 353, 506 of the IPC. As certain offence being exclusively triable by the Court of

Sessions, the case was committed to the Court of Sessions. Learned Additional Sessions Judge framed the charges against accused persons. Accused was subjected to statement under Section 313 of the Cr.P.C. The defence of the accused persons is of total denial and further defence that he was severely beaten by the policemen and to save themselves from clutches of law he was falsely implicated in the said crime.

8. On hearing the respective parties and on appreciation of evidence the learned Trial Judge framed the points for consideration and recorded his negative findings. As the learned Judge was of the opinion that the prosecution failed to prove the charges against the accused beyond reasonable doubt as well as the prosecution suppressed the certain material facts, the learned Trial Judge recorded the judgment and order of acquittal.

9. On going through the evidence and the record placed before us, we are of the opinion that neither any error is committed by the learned Trial Judge in appreciating the evidence nor any error is committed in arriving at the ultimate conclusion of acquittal.

10. On the scrutiny of the evidence, we found that there are two

set of witnesses, the first set of witness consists of police personnel who supported the case of prosecution in chorus, as against this, the other set of so called independent eye witnesses failed to inspire the confidence of the Court about the truthfulness of their version. It can be said that these witnesses improved their version. There are inconsistencies in the version and though the prosecution claims that the first set of witnesses i.e. police personnel and the second set of witnesses i.e. independent witnesses had occasion to witness not only the incident but the sequence of incident namely, two parts of the incident, but there are major inconsistencies in the version of these witnesses resultantly, the case of prosecution becomes doubtful and suspicious.

11. Now we may refer to the witnesses in brief. Firstly, we may refer to the evidence of Mayuri Pednekar (PW 9) who is the wife of accused. Needless to state that the relationship between the Mayuri (PW 9) and accused – Mahendra, as wife and husband is not disputed. Mayuri (PW 9) in her examination-in-chief provides certain details of the marriage solemnized between herself and accused. Then their strained relationship, then her stay on her parental house and visit of the accused to his in-laws house, taking away the child and proceeding to Kolhapur

and then making the phone call from Kolhapur, then reaching to Kolhapur along with her brother, then going to bus stand and then dispute between herself and accused on account of an opposition from herself to take son Ganesh to Mumbai. Then she states about seeking assistance from the policeman who was on duty at relevant time, then she states that she, her brother and her sister's husband Nilesh and policemen entered in the bus.

It is now useful to state that she further states that as Mahendra was not ready to return Ganesh the policemen started beating Mahendra. She further stated that the policemen beat Mahendra with stick on his head and body. Then as this witness was not supporting the prosecution case, she was declared hostile and was subjected to the cross-examination. The part of evidence of this witness that the accused was subjected to beating at the hands of police personnel who were on duty at bus stand is supported by other material placed on record by the prosecution.

12. Now we may refer to the another important witness Mr. Vilas Krishna Mane (PW 10) who had lodged the report and on his complaint the investigating agency set in motion. Mr. Mane states before

the Court that on 13.05.2002 he was on duty at Central Bus Stand and his duty hours were 09.00 am to 09.00 pm. Then he stated that at about 08.15 pm while he was in police chowky at bus stand a woman rushed to him and told him that her child being taken away by her husband and she apprehends danger of life of her son. He then rushed to Ajra-Mumbai bus, the accused who was in the bus was pointed out by the lady. He further stated that he went near the accused and asked him to hand over the child at that time the accused had child in his left hand whereas he had knife in his right hand. Accused paid no heed to his request and on the contrary gave him a threat, as such he told the conductor to take the bus at Shahupuri Police Station along with passengers. The driver took the bus to Shahupuri Police station and parked it in front of the police station. He stated that the mother who sought his help also boarded in the bus and she told the name of the accused and name of herself as well as name of the child to this witness. Then he stated about the other police personnel present in the police station namely, head constable Bhoi, head constable Satpute and head constable Bodake. Then he apprised the police personnel above referred act of accused. All these police personnel entered in the bus and asked

the passengers to get down from the bus but accused refused to get down from the bus. Then he stated that he along with other police personnel asked the accused to handover the child but accused did not pay any heed and was giving threats if anybody comes forward he would stab the child. Then he stated that he entered in the bus through emergency door from the rear side. He further stated that when head constable Narayan Bhoi asked the accused to give the child back the accused acted in aggression and dealt blow of knife on the back of Mr. Bhoi. Then he states that he along with other constables namely, Bodake and Satpute pounced on the accused and took away the knife whereas Mr. Tipugade took away the child. Then he stated that due to the knife blow Mr. Bhoi sustained the bleeding injury as such he was referred to the hospital and the accused was taken to police station. Then he states about the lodgment of complaint.

In the cross-examination, this witness stated that except four police personnel who entered in the bus nobody-else was in the bus. He further stated that while getting inside the bus he was the last. In the cross-examination he further stated that he did not remember whether after getting down he had closed the door of the bus and further stated

that he entered the bus through emergency door at his own. It is interesting to note that an omission is brought on record on an important aspect in the complaint, it is stated that this witness and other police personnel namely, Mr. Satpute, Bodake, the conductor of bus and Mr. Tipugade pounced on the accused and gave him fist and kick blows and Mr. Tipugade snatched the child from the accused.

13. Now we may refer to the version of Subhash Shivaji Patil (PW 4) who was the passenger in Ajra-Mumbai bus was traveling from Gargoti to Mumbai on the day of incident i.e. 13.05.2002. This witness stated about the help sought for by the lady i.e. Mayuri (PW 9) from the police. Then the police entering in the bus requesting the accused to handover the child. Then policeman (PW 10) asking the driver to take the bus to Shahapuri Police Station. Then the bus reaching to Shahapuri Police Station. Then he stated about the threats given by the accused to the police personnel who asked him to give custody of the child. Then he stated about the scuffle between the accused and policeman in the process of taking child and the accused giving a knife blow to policeman causing an injury.

In the cross-examination, this witness stated that only one

policeman who entered in the bus was in uniform. He then stated that all passengers got down from the bus except accused. He further stated that that person (accused) had not threatened any other passenger. He further stated that he had not seen as to whether the clothes of that person (accused) were stained with bloods. He had also not seen anybody whose clothes were stained with bloods. Thus, what emerges from the perusal of testimony of this witness is, though this witness is claimed as an alleged eye witness to the incident the defence was successful in raising a reasonable doubt as to whether this witness actually witnessed the incident and accused either inflicted blow of knife on the police personnel while police personnel made an attempt to take away the child from the accused.

14. Now we may refer to Gajanan Mutale (PW 1) who is the panch witness. Perusal of his testimony shows that this witness is resident of town Ichalkaranji and on 13.05.2002 he had been to Kolhapur. The police machinery informed him about the purpose namely, effecting arrest of the accused and Gajanan (PW 1) along with other panch witness Dinkar proceeded to the police station. He stated that in presence of himself and other panch witness the clothes of accused namely, pant,

shirt and baniyan were attached. It is useful to note that Gajanan (PW 1) stated that these clothes were stained with blood. He further stated that the clothes were wrapped in a paper and labels were attached to them. Then he stated about the physical appearance of the accused. He further stated that there was an injury mark on the forehead of accused and his nostrils were bleeding. The accused was arrested in presence of the panchas. It is also interesting to note that there is nothing in the evidence of this panch witness that the clothes of the accused were sealed. It is also interesting to note that Gajanan (PW 1) found a fresh injury mark on the forehead of the accused and his nostrils were bleeding whereas, Subhash Patil (PW 4) is an eye witness, as per the prosecution case, is silent on the aspect of any injury caused to the accused leave aside any bleeding injury. Gajanan (PW 1) further stated that on next day also he visited Kolhapur and was called by police for panchanama. The clothes of injured police personnel Narayan Bhoi (PW 11) were attached and there is no mention of sealing of the clothes.

In the cross-examination, this witness admitted that he is running a cycle-mart in Ichalkaranji. The distance between Ichalkaranji and Kolhapur is about 30 to 35 Kms. It is again interesting to note that

in the cross-examination, this witness refers to the cause of visit the hospital that is CPR Hospital as his relative admitted in the CPR hospital but he is unable to tell name of that relative.

15. Subhash Desai (PW 2) is another panch to the panchanama Exhibit 26. As per his version he along with another panch entered in a bus bearing number MH-12-AQ-8099. Police constable Mane led panch and other police personnel to the place near seat number 16, 17, 18, 19 and 20 where blood was lying. Subhash (PW 2) then stated that the sample of blood was collected from the spot in the glass bottle. The bottles were sealed and labels were affixed. Then he admitted that there was some overwriting in respect of timing in the panchanama.

16. Kapse (PW 3) is the panch in whose presence police head constable Bodake produced the knife and the same was attached, labels were affixed on the knife. This witness also fails to mention about the sealing of the weapon knife. Kapse (PW 3) is also panch for the production of clothes by the injured witness i.e. PHC Satpute. He stated about affixing labels to the clothes but here also there is no mention of sealing of the clothes.

17. Sanjay Gosawai (PW 5) is the conductor of the said Ajra-Mumbai bus. The prosecution seeks support from this witness on the aspect of the assault by knife on the police constable at the hands of accused. Interestingly enough this witness comes before the Court with a different story i.e. when the police personnel made attempt to snatch knife from the accused and to save the child, in that scuffle the accused came in contact with bar of the seat causing oozing of blood from his nostrils.

Then certain omissions are brought on record in the cross-examination. In the cross-examination, he admitted that the police personnel who entered in the bus were having stick with him, though he denies that threats by stick were given to the accused by police personnel.

18. Dr. Ajay Keni (PW 6) is the medical practitioner who is running hospital under the name Aadhar Nursing Home. Police constable Narayan Bhoi was referred to Dr. Ajay for the treatment on 17.05.2002. Dr. Keni stated that police constable Bhoi suffered pneumothorax and as such was required to be operated. Police constable Bhoi was discharged from the hospital on 24.05.2002.

19. Dr. Patil (PW 7) is medical officer attached to CPR Hospital. He stated that on 13.05.2002 patient Narayan Bhoi was admitted in the hospital at about 09.00 am. On examination, he noticed an incised stab wound on left side having size 2x1x4 center in lateral broader scapular. Then he stated that patient was discharged as against medical advise on 17.05.2002 at about 03.10 pm. He further stated that MLC to that effect was issued to him and the said certificate is at Exhibit 35.

This witness was subjected to a detailed cross-examination. It is material to note that police constable Bhoi was initially admitted in the CPR hospital and was under treatment and discharged from CPR hospital on 17.05.2002 against medical advise and then was admitted in the Aadhar Nursing Home and was discharged on 24.05.2002. No reason is coming forth as to why against medical advise police personnel was shifted from CPR hospital to private hospital.

20. S.R. Satpute (PW 8) is another police personnel who was attached to crime branch at the relevant time. He stated that on 13.05.2002 he was on duty along with police constable Narayan Bhoi, Ram Bodake, ASI – Tipugade. At about 08.35 pm ST Bus reached to the police station and constable Mane got down from the bus. He told that

one Mahendra took boy from one lady and in spite of his request made to him he is not ready to hand over the boy. Then the passengers were told to get down and Satpute (PW 8) along with Narayan Bhoi, police constable Bodake and Tipugade entered in the bus. He stated that police constable Bhoi was ahead of the other persons and he told accused to handover the child and got down from the bus, to which the accused replied that if anybody come ahead he will stab him and then he reached towards Narayan Bhoi. He further stated that Narayan Bhoi was about to take the knife and child from the accused, as he got down the accused stabbed him on his back by knife. Then he caught accused and police constable Bodake snatched knife from him and ASI Tipugade took child from him. It may not be out of place to state here that this witness stated that police personnel were approaching him and were asking to handover the child and got down from the bus, the accused stated that if anybody will come ahead he will stab him whereas the another witness Mane (PW 10) deposed before the Court that accused stated that if anybody comes ahead he would stab child. This witness also denies of any injuries suffered by the accused.

21. Now we turn to the evidence of another important witness

i.e. injured witness Narayan Bhoi (PW 11). It may not be necessary for us to refer to entire version of this witness as the preliminary part i.e. the bus brought to the Shahapuri police station already referred to in the version of other witnesses. Bhoi (PW 11) entered in the bus along with other police personnel. He further stated that he was in the front, he saw accused, the accused was having child in his left hand and the knife in the right hand. He further stated that he requested the accused to give child to which the accused replied by threatening him that if police party step forward he will kill the child. At the cost of repetition, we state that witness S.R. Satpute deposed before the Court that the threats given by accused was of killing the person who would come forward whereas, this witness deposed before the Court that the accused given a threat that if anybody comes forward he would kill the child. Then he stated that again accused was requested and accused threatened police party to kill them. He further stated that when he tried to take the child from accused, accused stabbed him with the knife on the left side of his back near shoulder resulting in a bleeding injury. Then he identified the accused who was in the Court. This witness was also subjected to a detailed cross-examination and certain omissions are also brought on

record. The perusal of cross-examination shows that an attempt was made to suggest that this witness and other police personnel were not on duty as they were not wearing their uniform, an attempt was also made to suggest that this witness was already injured in some other incident and not in the alleged incident, these suggestions are denied.

22. Sanjay Padhye (PW 12) is the causality medical officer at CPR hospital, Kolhapur. He deposed before the Court that on 13.05.2002 at about 11.00 pm he was working as causality medical officer at CPR Hospital. Accused was referred to him by API Shri. Gujar of Shahapuri Police Station. He examined the patient and found following injuries:

C.L.W. on fore-head 3x1x3 cms simple in nature age within 24 hours caused by hard and blunt object.

He further stated that such type of injury is possible if one is pushed against horizontal bars which are behind the benches in ST bus. He further stated that there may not be profuse bleeding from the injury mentioned in the certificate. There could be heavy bleeding due to episthesis. Injury could be possible by being hit on vertical bar also in bus.

In the cross-examination, this witness stated that a yadi is generally sent alongwith patient and if a patient directly came to the hospital in MLC matter we inform the police. Patient's name is mentioned in the yadi. He has not mentioned history given by the patient in certificate. He further stated that wooden bar is also hard and blunt object. Such type of injury is possible by forcible blow of lathi. He has not mentioned direction of the injury. It can be horizontal also. It is not necessary that the blood dropping on the shirt in case of nasal bleeding will flow downwards in linear direction. He further stated that there are linear strains on the shirt now shown to him. He further stated that it is less likely that forehead injury will result into blood stains on the shirt as are seen on Art. No. 2 now. It is not necessary that in case of nasal bleeding there will be superficial injury on the nose. He further stated that it is true that forcible blow on forehead may cause nasal bleeding. He further stated that Shahapuri police station might be about 1 km from CPR Hospital. He cannot say whether first aid was given to patient before coming to CPR hospital. In case blood is sprinkled on some cloth there will be blood stains on those clothes also. He further stated that in case of injury on the head to have nasal bleeding blow should be forcible.

23. Now the last witness is Rasiklal Manilal Gujar (PW 13), who is Investigating Officer. He stated before the Court about steps taken by him in the process of investigation on lodgment of the report and entrusting the matter to him as an investigating officer. This steps include drawing of the various panchanamas, seizure of the articles, clothes, blood from the spot, recording the statement of witness, seizure of weapon used in the offence namely, knife. He also confronted with the statement of witnesses so as to bring on record the omissions. Then he stated about forwarding the necessary material to the forensic laboratory and receiving the report from CA.

In the cross-examination, he admitted that local panchas were not called for. He also admitted that panch Gajanan Mutalik is resident of Ichalkarani which is 30-35 kms away. Another witness Prashant Airekar is resident of peth vadgaon which is 15-20 km away from Kolhapur. Then there is very important aspect emerged from the perusal of this witness i.e. of an unexplained and inordinate delay in forwarding the first information report to the learned JMFC. Gujar (PW 13) admits that the FIR was forwarded to the Court of JMFC on 27.05.2002, when the incident took place on 13.05.2002. No

explanation is offered for such an inordinate delay. Then he admitted in cross-examination that it transpired during the investigation that the accused was highly educated and was not having any criminal record. It also reveals that though the accused was injured and having bleeding injuries, no sufficient care was taken to conduct medical examination of the accused and place on record the medical / injury certificate. Gujar (PW 13) also admitted that the FIR discloses Satpute, Bodake, Tipugade and conductor of bus had beaten the accused.

24. The perusal of record shows that the accused was referred for medical examination on 13.05.2002 at about 11.00 pm CPR Hospital Kolhapur. Dr. Sanjay (PW 12) in his deposition before Court stated that injury to accused was possible by any wooden bar and such type of injury is possible by forcible blow of lathi.

25. Now considering the above referred evidence, we are of the opinion that there are material inconsistencies in the version of witnesses and the evidence of so called eye witnesses failed to inspire confidence of the Court. There is also room to state that the prosecution is not disclosing the entire material before the Court. There is also no

explanation to the inordinate delay for referring the first information report to the Court. Learned Judge was justified in making the following observations on that aspect:

20. Sec. 157 of Cr.P.C. required that on receiving information of commission of offence officer-in charge of the police station shall forthwith send the report of the same to a magistrate. This provision does not leave any discretion to the police station officer and report of such information has to be officer and report of such information has to be immediately sent to the magistrate. In the instant case as seen from record the said report was sent on 27.05.2002 i.e. after lapse of about 14 days from the incident. This delay has not at all been explained. It was pointed out on behalf of the accused that there are many lacunas in the investigation. Panchanama were not properly drawn, accused was sent to the hospital late, while injured Bhoi was allegedly sent to the hospital immediately. Evidence of witnesses was full of inconsistencies. It was therefore, submitted on behalf of the accused that unexplained delay in sending report to magistrate u/s. 157 of Cr.P.C. could have lot of bearing on the case of benefit of it was required to be given to the accused. Admittedly no explanation has been given by the prosecution in this respect.

26. There is also no plausible explanation as to why the investigating agency selected the witnesses which are from the place away from Kolhapur. There is also serious lacuna in the version of prosecution

on the aspect of non sealing of the material articles.

27. Considering this aspect, we are of the opinion that the accused was certainly entitled for benefit of doubt and the learned Trial Judge on appreciation of evidence adopted the possible view resulting in acquittal of accused. We see no illegality or perversity in the judgment and order of Trial Court. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)