

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 489 OF 1998

The State of Maharashtra	]	...Appellant (Orig. Complainant)
Versus		
1. Uttam Raghunath Lad	]	
R/o. Nanibai Chawl, Room No. 1,	]	
Arrey Road, Marwadi Compound,	]	
Goregaon, Mumbai-62.	]	
2. Sunil Sitaram Ambekar	]	
R/o. Nanibai Chawl,	]	
Arrey Road, Marwadi Compound,	]	
Goregaon, Mumbai-62.	]	...Respondents (Orig. Accused)

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APPEARANCES-

Mrs. S.V. Sonavane, APP for Appellant.
None for Respondents.

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**CORAM : S. S. SHINDE &
V.G. BISHT, JJ.**

DATE : 03rd FEBRUARY, 2020.

JUDGMENT [PER: S S SHINDE, J.]

1. This appeal takes an exception to the judgment and order passed by the Additional Sessions Judge, Greater Bombay on 07.01.1998 in Sessions Case No. 498 of 1984, thereby acquitting the accused from the offence punishable under Section 302 read with 34 and 307 read with 34 of Indian Penal Code (for short "IPC").

2. The prosecution case as stated by Dilip Katara (PW 2), in brief is as under:-

Accused No. 1- Uttam Lad was known to Dilip Katara (PW 2) as he happened to see Accused No. 1 while passing through the road. It is the prosecution case that, Dilip (PW 2) used to go for a walk daily on Aarey Road near petrol pump and he also used to see Accused No. 1 along with his friend. In August 1983, Dilip (PW 2) along with Deepak Shah had gone for a walk at about 10.30 p.m., the said Accused No. 1 happened to ask Rs. 50/- from Deepak Shah by way of loan. Deepak Shah was not having any money. Hence Dilip (PW 2) offered Rs. 50/- to Deepak Shah, which he paid to Accused No. 1. According to Dilip (PW 2) he had also seen Accused No. 2 sometimes walking along with Accused No. 1.

3. On 25.03.1984 at 9.00 pm., Dilip (PW 2) returned at home. At about 9.45 pm., his friends Anoop and Ashok came to his house. He took them to Rachana Snack Bar for a cup of tea. He ordered tea when he noticed two Bhayya's were fighting in front of Rachana Snack Bar near Styles Tailor. Rachana Snack Bar and Stylex Tailor are adjacent to each other. He was knowing those Bhayya's. Hence, he went forward and separated them. One of the Bhayya's had sustained injury. At that time, the accused came and enquired with Dilip (PW 2) as to why he intervened. He told them that, as they were

fighting, he intervened. In spite of the explanation, both the accused threatened with dire consequences as those Bhayya's were their persons. Thereafter, the accused went towards the lane. On hearing the commotion, brother of Dilip (PW 2) namely Suresh came near Rachana Snack Bar. He enquired about the commotion. While he was explaining at that time both the accused suddenly came from Jain Mandir. Accused No. 2 was armed with Gupti and Accused No. 1 was armed with knife. Suddenly, Accused No. 1 gave a blow of knife on left thigh of Dilip (PW 2). He sustained injury to left thigh. Brother of Dilip (PW 2), Suresh came to his rescue. At that time, Accused No. 2 gave a blow of Gupti to Suresh on the left side of abdomen. Dilip (PW 2) went to rescue Suresh when Accused No. 2 raised his hand to assault Dilip (PW 2) which he warded off by his palm. Thereafter, he ran away in the direction of the lane.

At the relevant time, one Prakash Samant, Bharat Shah and Vilas Save had come on the spot. They took Suresh in the taxi. Dilip (PW 2) went to his residence as he was scared of both the accused. Ashok and Anoop followed him at his residence. After about half an hour he went to Cooper Hospital and got the first-aid. His statement was recorded. He along with police came back to his residence, changed his clothes and produced the same which were on his person at the time of assault. He pointed out the scene of offence.

According to him, when he reached Cooper Hospital, came to know that his brother Suresh was also admitted in Cooper Hospital for 21 days and on 15.04.1984 Suresh died.

4. It is the prosecution case that, injured Suresh was brought to the police station before he was taken to Cooper Hospital and thereafter Pandurang Satam (PW 11) at about 11.30 pm., went to Cooper Hospital. Pandurang Satam (PW 11) also stated that, he received a telephonic message from Cooper Hospital that the injures Suresh was admitted in ICU. He recorded the statement of injures Suresh in ICU. As per his narration vide Exhibit-29 and he also got the offence telephonically registered vide C.R. No. 128 of 1984 under Section 324 of the Indian Penal Code. The clothes of the injured Suresh were handed over to him which were attached vide Exhibit-30. He also recorded the statement of Dilip (PW 2). Dilip (PW 2) pointed out the scene of offence vide Exhibit-24.

5. Accused No. 1 came to be arrested on 28.03.1984. Accused No. 2 was arrested on 29.03.1984. The injured Suresh expired on 15.04.1984. Hence, the section 302 of IPC was invoked. According to Pandurang Satam (PW 11), after Accused No. 2 was arrested, he was taken to Cooper Hospital and he was identified by Suresh as being the same person who assaulted him with Gupti.

On 01.05.1984, Accused No. 1 who was in custody was interrogated and he disclosed the place where he had kept the Gupti. He led police to Mahad and pointed out one Bamane and at his instance and the said Bamane produced one Gupti vide Exhibit-26 and 26-A. The attached articles and clothes were sent to the Chemical Analyser vide Exhibit-34 and C.A. report was received vide Exhibit-35.

6. After completion of investigation, charge-sheet was submitted in 24th Metropolitan Magistrate Court, Borivali, on 09.07.1984 and as offence punishable under Section 302 is exclusively triable by the Court of Sessions, hence, 24th Metropolitan Magistrate Court, Borivali, on 30.08.1984 committed the case to the Sessions Court.

At the time of trial, the prosecution examined in all 12 witnesses. Vijay Pawaskar (PW 1) is a clerk working in Cooper Hospital. Dilip Katara (PW 2) is the injured brother of Suresh (deceased). Anup Menon (PW 3) is the friend of Dilip Katara (PW 2). Dr. Arunkumar Sahu (PW 4) is the medical officer. Dr. Bharat Pandya (PW 5) is also the medical officer. Dr. Krishnaji Gore (PW 6) is also the medical officer. Sham Katara (PW 7) is the brother of Dilip Katara (PW 2) and Suresh (deceased). Nicholas Parera (PW 8) is panch of the scene of offence. Bhagwan Ransing (PW 9) is a panch of recovery

of Gupti at the instance of Accused No. 1. Sunil Bamane (PW 10) is a person to whom Accused No. 1 had given the Gupti. Pandurang Satam (PW 11), retired Police Inspector and Jagannath Waingankar (PW 12) is the Head Constable.

7. In order to find out, whether the death is suicidal, homicidal or accidental, the prosecution has examined Dr. Bharat Surendra Pandya (PW 5). Dr. Bharat (PW 5) has stated in his examination in chief that, in 1984 he was attached to Cooper Hospital as Surgical Registrar. He passed his M.S. in 1984. He performed number of operations while he was attached to Cooper Hospital. At present he is having his own hospital.

He further stated that, the condition of patient was stable for 5 to 6 days. Thereafter patient started developing complications regarding septicemia. He was given best possible medicine including antibiotic and blood transfusion. The patient was given 32 bottles of blood, till his death. Patient was in I.C.U. through out.

On 12.04.1984 patient was again operated as the injury to collon was leaking i.e. there was a discharge coming out from the said injury. The operation was performed to save the patient. Second operation was performed by Dr.Dastoor. He has retired from Cooper Hospital. At the relevant time, Dr. Dastoor was head of the

department of surgery. He was present at the time of operation. Second operation notes are in his handwriting. After second operation the condition of patient Suresh did not improve. Ultimately he succumbed to the injury on 15.04.1984.

8. During his cross-examination he stated that, on 03rd April, 1984 he came to know that, patient is developing septicemia. On 03rd April, 1984 they did not re operate the patient as there was no indication of re operation on that day. On same day he noted colon injuries leaking. He admitted that they did not operate it as a operation was not medically indicated. It appears that, it is only on 12th April, 1984 they came to the decision that second operation is required. The second operation was done on 12th April, 1984 as patient was not responding to the medical treatment. It appears that, weapon (Article 13) was shown to him and he stated that, the said weapon is not having any sharp edge. The depth of the injury is not mentioned in the case papers but there was through and through tear of colon. The injuries sustained by the victim was occurred by sharpened edged weapon. When Dr. Bharat (PW 5) was confronted with Exh. 17 wherein the question marks is made about depth of the injury, he stated that, he cannot opine whether the injuries are deep or not. It appears that, suggestion was given to him, whether the second operation was immediately necessary as patient had

developed septicemia on 03rd or 04th April, 1984. However, the said suggestion is denied by Dr. Bharat (PW 5). He stated that, it is not correct to say that, patient died because second operation was delayed by 9 days. He further stated that, in column of cause of death it is mentioned that, the patient died due to complication because of abdominal operation, it mean that he may have died on account of complication of operation.

Therefore, it is abundantly clear from the aforesaid admission's of Dr. Bharat (PW 5) in his cross-examination that, no clear finding of homicidal death of Suresh has been recorded.

9. In order to find out, whether the findings of acquittal recorded by the Trial Court are in consonance with the evidence on record or said findings are perverse, we would like to discuss evidence of alleged eye witnesses, namely, Dilip (PW 2) and Anup (PW 3).

10. Dilip (PW 2) deposed that, he had two brothers by name Suresh and Sham. Suresh and Sham both were his elder brothers. They were running a factory known as M/s. Bharat Leather and Rubber Industries' situated at Churi Wadi, Goregaon (E). Mumbai and he was assisting them in their business. He also deposed that, he knew the accused persons. He also stated about incident in the month of August, 1983 when he along with Deepak Shah had gone for a walk

at about 10.30 p.m. when one Uttam Lad who used to move about in the same road demanded Rs. 50/- from his friend Deepak Shah. Since Deepak had no money, he gave Rs. 50/- to Deepak Shah, who in turn paid it to Uttam Lad i.e. one of the accused, in his presence. He was in need of the said money as he wanted to release one person, who was arrested by Goregaon Police Station on the bail. He was knowing Uttam Lad since two years prior to the alleged incident.

He further deposed that, Rachana Snak Bar is situated in Jaykar Smruti Building. On 25th March, 1984 at about 9.00 p.m. he returned to home. His friend by name Ashok and Anup came to his house at about 9.45 p.m. He took them to Rachana Snack Bar for having cup of tea. While they were taking tea, they went to Rachana Snack Bar and he ordered tea and they were standing near the counter, when they noticed two Bhayya's fighting in front of Rachana Snack Bar near Stylex tailor. Rachana Bar and Stylex tailor are adjacent to each other. Bhayya's were fighting with each other. Since he knew those Bhayya's by face he went forward to separate them. He also noticed that one of the Bhayya's had sustained injuries on his head. At that juncture, Uttam Lad and Sunil i.e. accused appeared and they enquired with him as to why he intervened. In spite of his explanation that he knows those Bhayya's and therefore, he intervened to pacify the quarrel, accused Uttam Lad threatened him

with the dire consequences, as those Bhayya's were their people. Thereafter, they went towards the lane besides the Jain Mandir and came back in Rachana Snacks bar to have a tea. He further deposed that, after hearing the commotion, his elder brother Suresh had come down near the Rachana Snack bar. He enquired with him regarding commotion. When he was explaining his brother, at that very juncture Sunil and Uttam Lad came from the lane besides the Jain Mandir. At that time, Uttam had a knife in his hand and Sunil had a Gupti in his hand. They enquired with him again as to why he had intervened with the Bhayya's while he was explaining them again, at that time Uttam gave him a blow of knife on his left thigh. He sustained the injury on his left thigh. His brother came to his rescue. At that time, Sunil gave a blow of Gupti in abdomen of his brother Suresh on left of his abdomen. At that time he went to rescue Suresh, when Sunil raised hand to assault him with Gupti which he received on his left palm. At that time, Prakash Samant, Bharat Shah, Vilas Save came on the spot. Thereafter accused persons ran away in the direction of the lane near Jain Mandir. Then, aforementioned persons took his brother Suresh in the taxi to go to the hospital. Dilip (PW 2) went back to his resident, as he was afraid of Uttam and Sunil. Thereafter, Ashok and Anoop followed him and, all three went to his residence.

He further deposed that, he was in his house for about 20 to 30 minutes. He went to the Cooper Hospital for treatment along with Ashok and Anup, as he had sustained injury. He was treated for injuries at Cooper Hospital and was sent back. His statement was recorded at the Cooper Hospital. He came to know that his brother Suresh is also admitted in the said hospital. He stated that, he along with police, they went to the spot of the incident and carried out the panchanama. He stated that, his brother was in the hospital for 21 days and ultimately while under medical treatment died on 15.04.1984. One emergency operation was conducted on the same day.

11. In his cross-examination, he stated that, the incident of stabbing took place at the spur of moment. He stated that, he was never called at police station to identify the weapons i.e. Gupti and Knife. He did not realize that the description of the weapons was not mentioned in his police statement. He specifically stated that, when he was taken to the hospital for the treatment of his injury, he came to know that in the hospital itself that his brother Suresh is also admitted in the said hospital i.e. Cooper Hospital. He cannot give exact time when he reached to the hospital after incident. He went to the hospital by taxi. He further stated that, it took 15 to 20 minutes for him to reach to the Cooper Hospital. He might have reached

hospital at 10.45 to 11.00 p.m. He showed both the injuries to the doctor. He exactly do not remember whether the injuries sustained on thigh was bleeding in the hospital.

It is surprising to note that, when he was sitting in the casualty in Cooper Hospital that time he came to know that his brother Suresh was admitted in ICU. It is surprising that, he was not aware before arriving at Cooper Hospital about his brother Suresh, who was admitted in ICU in the said hospital. He was not able to tell exact spot of the incident. He stated that, he does not recollect whether it was 50 ft. away from the line of shop or on the road. Suggestion was given to this witness that, he was assaulted at different place by different assailants, however, he denied the said suggestion. If the evidence of Dilip (PW 2) is read in its entirety it is difficult to believe that when accused Sunil gave blow of Gupti on the left side abdomen of Suresh and he was lying on the spot and was seriously injured. In such situation, he being real brother of Suresh, instated of taking Suresh to the hospital, this witness Dilip (PW 2) went to house with his two friends, namely, Ashok and Anoop. It is difficult to understand why he himself or his other two friends did not take Suresh to the hospital or immediately informed the police about the said incident. He has stated in his evidence that, after the said incident he went to his house and he was there for about 20 to 30

minutes and thereafter he went to the Cooper Hospital along with Ashok and Anoop who accompanied him from the time of incident. As already observed, it is surprising to note that Dilip (PW 2), who is real brother of Suresh (deceased), was not knowing in which hospital his brother Suresh was taken for treatment. In his evidence he stated that, when the incident had taken place at that time Prakash Samant, Bharat Shah, Vilas Save came on the spot and they took Suresh to the hospital by taxi and (PW 2) came back to his residence since he was afraid of Uttam and Sunil. It is important to note that the prosecution has not examined Prakash Samant, Bharat Shah and Vilas Save, the independent witnesses, who arrived at the spot at the time of incident. It appears from reading of the evidence of Dilip (PW 2) that, his conduct was suspicious and therefore, his evidence has been rightly discarded by the Trial Court.

12. The another star witness of the prosecution is Mr. Anup Menon (PW 3). He deposed about the actual incident in tune with Dilip (PW 2). From reading his evidence it does not appear that he tried to rescue Suresh brother of Dilip (PW 2), being good friend of Dilip (PW 2). It is also surprising to note that he did not accompany Suresh to the hospital. In fact it was possible for him to accompany Suresh to the hospital since the another common friend Anup (PW 3) was with PW 2. It appears that his statement was recorded on the

next day of the incident by police. No explanation has been offered by the prosecution for delay in recording his statement. He went to the police station when his brother and himself were called at the police station for recording their statements.

In his cross-examination, he stated that he cannot recollect exactly whether he reached Cooper Hospital, after midnight. He further stated that he did not and he could not notice any weapons in the hands of any of the Bhayyas on account of the crowd. He did not go ahead along with Dilip to separate the Bhayya's. In fact, Dilip (PW 2) has not deposed that Suresh tried to intervene to pacify the quarrel between two Bhayyas. In his cross, he deposed that road in front of Rachana Bar is the main road having heavy pedestrian and vehicles. He stated that the incident of assault took place outside the bar at a short distance from the counter. However, he did not go ahead to intervene or to see what is happening. He realized that both the persons had sustained injuries after the assailants ran away. Keeping in view the conduct of this witness, the Trial Court has rightly disbelieved his evidence. The prosecution heavily relied upon the evidence of two alleged eye witnesses i.e. Dilip (PW 2) and Anup (PW 3). However, their evidence does not inspire confidence so as to reverse the findings of acquittal passed by the Trial Court.

13. The prosecution examined Pandurang Satam (PW 11) who was the investigating officer. In his cross-examination he admitted that, there is no entry made in any register regarding the arrival of Suresh along with three other persons in injured condition in taxi to the police station. He stated that he directed them to go to the Cooper Hospital. It is surprising to note that when injured along with three other persons came to the police station, why the Pandurang (PW 11) immediately did not register the first information report. It is also relevant to note that the statement of Suresh was not recorded as it is in Hindi. Pandurang (PW 11) recorded the said statement in English language. An alleged dying declaration of Suresh is a simple piece of paper without having necessary endorsement of the medical officer that Suresh was in a fit mental condition, oriented and conscious to give such alleged statement. Therefore, such alleged dying declaration is rightly disbelieved by the Trial Court.

14. The medical evidence suggests that Suresh died due to septicemia. It is admitted position that second operation was immediately necessary as patient had developed septicemia on 03rd April, 1984. However, second operation was performed 04th April, 1984.

15. The trial Court has rightly noted the abnormal conduct of the Dilip (PW 2) and Anup (PW 3) in as much as when Suresh was

assaulted and seriously injured, instead of rescuing Suresh and taking him to the hospital, Dilip (PW 2) and his two friends went to the residence of Dilip (PW 2). The Trial Court has also observed that, the prosecution has fairly admitted that, the memorandum panchanama and recovery of Gupti and Knife do not directly connect the accused with the crime and therefore, the entire case rests upon the evidence of Dilip (PW 2), Anup (PW 3) and dying declaration. The Trial Court observed that the conduct of Dilip (PW 2) in not accompanying his brother Suresh caused serious doubt about his presence at the time of assault. The Trial Court has drawn the inference that somebody must have informed Dilip (PW 2) that Suresh was assaulted and his friend had taken him to Cooper Hospital and thereafter, Dilip (PW 2) might have left house to go to the Cooper Hospital to see brother and came to know that he is admitted in ICU. The Trial Court has also observed that the persons who accompanied Suresh (deceased) are not cited as eye witnesses mainly Prakash Samant, Bharat Shah and Vilas Save are not examined by the prosecution. The medical evidence is also not fully consistent with the ocular evidence and therefore, the Trial Court has acquitted the Respondents.

16. On an independent scrutiny of the evidence on record, we are of the considered opinion that findings recorded by the Trial Court

are in consonance with the evidence on record. There is no perversity as such in the said findings and view taken by the Trial Court is plausible. No case is made out to cause interference in the order of acquittal passed by the learned Trial Court. Hence, Criminal Appeal stand dismissed. Bail bonds of the Respondents – Orig. Accused, if any, shall stand cancelled.

(V.G. BISHT, J.)

(S. S. SHINDE, J.)