

Sachin
R. Patil

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 551 OF 2002

The State of Maharashtra)
...Appellant
(Orig. Complainant)

VERSUS

1. Janardan Bhiva Pagade,)
Age 36 years,)
2. Maruti Bhiva Pagade,)
Age 22 years,)
...Respondents
(Orig Accused)

Mr A R Patil, APP for the Appellant – State.

Mr V D Upadhya for Respondent No. 1.

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

DATE : OCTOBER 27, 2020.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the Learned Sessions Judge, Raigad, Alibag, dated 11th February, 2002 in Sessions Case No. 147/98 whereby the Respondents (Orig. Accused) were acquitted of offences punishable under Section 302 read with Section 34 of Indian Penal Code (for short “IPC”) the present Criminal

Appeal is preferred by the Appellant – State of Maharashtra.

2. Heard learned APP, Mr A R Patil for the Appellant – State and Mr V D Upadhya for the Respondent(s) (Orig. Accused).

3. By order dated 11.02.2002, the Criminal Appeal was admitted and the Appeal was dismissed as against the Respondent No. 2 herein (Orig. Accused No. 2) by order dated 04.02.2003, as there is no evidence of assault found against him.

4. The case of the prosecution unfolds through the complaint lodged at the instance of complainant i.e. Dashrath Kongya Kadke (PW 1) and which can be summarized as under:

A. On 13.11.1996 PW 1 – Dashrath resident of village Roadpali, Tq. Panvel, was standing in front of his house after finishing dinner along with one Bama Gautam Patil. Family of Dashrath is united and consisting of his sister, brother and parents and family runs business of selling fish. Brother of PW – 1 Parshuram is a driver having his own vehicle i.e. lorry/truck. Janardan (Accused no. 1) and Maruti (Accused no. 2) residing opposite to house of complainant.

B. While PW 1 - Dashrath and Bama were chitchatting after his dinner Maruti (A 2) spit on Bama and when Bama asked the question as to why he has done this act, Maruti standing on the slab came down abusing PW 1 – Dashrath i.e. complainant. Janardan (A 1) brother of Maruti (A 2) joined Maruti in abusing Janardan and was carrying an iron pipe with him. Both the accused started pushing the PW 1 - Dashrath and Bama. Brother of PW 1 Parshuram made an intervention in quarrel and also made an attempt to pacify the accused persons. Instead of attempt of Parshuram, Janardan who was carrying an iron pipe inflicted a blow on the right side of Parshuram's face.

C. Due to the bleeding injury caused on person of Parshuram, Parshuram fell down on the spot. The people in the locality gathered there and they started hue and cry. Injured Parshuram was shifted to MGM Hospital, Kalamboli and while he was under treatment report was lodged at Kalamboli Police Station. Initially, offence under Section 324 read with Section 34 of IPC was registered. Parshuram was then shifted to Sion Hospital for further treatment.

D. On 14.11.1996 Parshuram died. An information to this effect

by way of statement was submitted to the police station authority at Kalamboli on 18.11.1996. Accordingly, section 302 of IPC was added. The investigation agency was set in motion. Investigating Officer Patil took over the investigation and proceeded with the investigation formalities and in that process the accused persons were arrested. The iron pipe was recovered and seized at the instance of accused Janardan. Statement of witnesses were recorded. Necessary panchanamas were drawn. Seized articles were forwarded for CA report. After concluding the investigation the charge-sheet was filed in the Court of JMFC, Panvel. As the offence under Section 302 of IPC was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court.

Accused persons were subjected to statement under Section 313 of the Code of Criminal Procedure. Accused persons pleaded not guilty and their defence was of total denial and false implication.

5. The prosecution in support of its case against the accused persons examined as many as 9 witnesses. Apart from this, prosecution also relied on the oral evidence and evidence in the form of medical certificate, CA report etc. On assessment of the evidence the learned Trial Court though recorded the positive findings in so far as the death of

Parshuram being a homicidal death, further recorded negative finding in so far as the authorship of the crime committed by the accused.

6. Learned APP submitted before this Court that there are ample oral evidence as well as documentary evidence against the accused persons. Learned APP also submitted that the medical certificates fully support the case of prosecution. Learned APP then submitted that the learned Trial Court committed serious error in appreciating the evidence on record and arrived at erroneous conclusion and prayed for Appeal may be allowed.

7. Per contra, learned Counsel appearing for the Respondent No.1 (Orig. Accused) supported the judgment and order passed by the learned Trial Court. Learned Counsel for Respondent No. 1 submitted that the learned Trial Court thoroughly and minutely assessed the evidence brought before the Court and had observed that the prosecution has suppressed the genesis of incident and certain facts which were part of the record are not brought before the Court by the prosecution. He further submitted that learned Trial Court found that the evidence brought before the Court was not cogent, trustworthy and

reliable. Learned Counsel appearing for Respondent No. 1 thus submitted that no error was committed by the learned Trial Court and prayed for dismissal of the Appeal.

8. With the able assistance of both the Counsel appearing for the respective parties, we have gone through the material placed on record.

9. On perusal of the record and assessment and scrutiny of the evidence brought before the Court below, we are of the opinion that the learned Trial Court committed no error in recording the findings of acquittal against the accused persons.

10. In so far as the case of prosecution is concerned, there cannot be any dispute that the prosecution was successful in proving that the death of Parshuram was a homicidal death. As stated above, Parshuram who was subjected to an alleged assault was initially shifted to MGM Hospital, Kalamboli and it would be useful for our purposes to refer to the evidence of PW 9 – Dr. Narshetty at Exh. 55 who was attached to MGM Medical College, Kalamboli at the relevant time.

11. PW 9 – Dr. Narshetty stated before the Court that on 13.11.1996 patient by name Parshuram was brought for treatment at about 09.45 pm with the alleged history of assault. He was admitted in the hospital for observation and PW 9 – Dr. Narshetty found following injuries:

- 1) C.L.W. Over the right side of the forehead, 4 x 3 x 1 c.m. deep to bone and there was fracture bone on orbital margin.
- 2) Bleeding from nose.
- 3) Abrasion on right parietal region with edima.
- 4) Patient was having black eye right side.

He further stated that injury nos. 1 and 2 were grievous and might have been caused by any hard and blunt object like iron pipe. The medical certificate issued by PW 9 at Exh. 56 was proved. PW 9 – Dr. Narshetty further stated that injury no.1 skull fracture was sufficient in the ordinary course of nature to cause death. PW 9 – Dr. Narshetty then stated that patient was then transferred to Sion Hospital for further treatment. Nothing is brought in cross-examination so as to discredit the version of this witness i.e. PW – 9.

12. It would be useful for our purposes to refer to the testimony of PW 6 – Dr. Vasant Dhakane who is the autopsy surgeon. Dr. Dhakane stated before Court that at the relevant time i.e. in the year 1996 he was serving as a lecturer at Sion LTMG Hospital. On 14.11.1996 at about 1.30 pm one Parshuram was admitted in the Hospital and expired on 15.11.1996 at about 12.30 am. Dr. Dhakane then performed the postmortem on 15.11.1996 and found following injuries on person of Parshuram:

- 1) Sutured wound CLW measuring 3 cms x ½ cms. over lateral side of right eyebrow.
- 2) Right black eye.

He found following internal injuries:

1. Scalp, minimal haematome over right frontal region.
2. Skull – fractures seen over right side of vault and base.
3. Brain – minimal difference subarachnoid hemorrhage mainly over right side. Laceration of right frontal lobe vessel aspect, cerebral edema present on cut section.
4. Lungs – weight right 490 gms left 390 gms on

congestion.

5. Heart – N.A.D.
6. Stomach – 60 cc of brown shin colour. No specific smell, Mucous normal.
7. Liver – Normal in size and shape on cut section normal.
8. Spleen – on cut section congestion.
9. Kidney – Right and left both are cut section congested.

According to Dr. Dhakane cause of death is fractures on skull with intrafractural injuries. Postmortem notes at Exh. 42 are proved by Dr. Dhakane. Nothing was elicited from this witness in the cross-examination and suggestions, namely, iron pipe article 10 can be said a light pipe and the person would have survived if an immediate medical treatment was provided to the patient, are flatly denied by Dr. Dhakane.

Considering this medical evidence, in our opinion, learned Trial Court rightly observed that aspect about the homicidal death has been duly established and proved by the prosecution.

13. Now the next important question for consideration is, as to

whether the prosecution proved the complicity or the authorship of the accused in the offence charge against him.

So as to record our findings, we may now refer to the evidence brought before the Court at the instance of the prosecution.

14. The first and important witness is PW 1 – Dashrath i.e. complainant. In the examination-in-chief PW 1 – Dashrath stated about the act of Maruti of spitting on the person of Bama from slab followed by questioning of Bama then abuses by Maruti. Joining of Janardan armed with the iron pipe. Giving blow of iron pipe to Parshuram. Parshuram initially being shifted to MGM Hospital, lodging of report. Then Parshuram shifted to Sion Hospital and his death on 14.11.1996.

It would be important to note that in cross-examination PW 1 – Dashrath denied the suggestion of strained relations between family of accused persons and family members of PW 1. Then he admits about quarrel between those two families 2 to 3 years prior to the incident. Then in the cross-examination he admits that one Babibai and the accused filed a case against him and his family and in that case one Manisha made certain allegations against PW 1. PW 1 also admits that in the complaint lodged against him it is alleged that when Maruti

approached PW 1 making an inquiry as to why he gave push to Manisha, it was alleged that PW 1 gave a stick blow to Maruti.

15. PW 5 – Bama Patil though mostly supports the version of PW 1 – Dashrath, the cross-examination shows ignorance in respect of earlier quarrel between PW 1 – Dashrath and accused Maruti. Maruti who was subjected to an assault by Dashrath had filed a criminal case against Dashrath and this fact of filing counter case and pending trial of the said case was established before the Trial Court. It also came in the evidence before the Trial Court that in the earlier incident wherein PW 1 – Dashrath was the assaulter and Maruti was subjected to assault and Maruti had received some injuries on his person. Now this material fact was neither brought before trial Court by prosecution nor any explanation was provided.

At the cost of repetition, we may state that PW 1 – Dashrath in his cross-examination admitted questioning of Maruti on allegations that PW 1 – Dashrath pushed Manisha and she was teased by PW 1. It is also admitted by PW 1 in cross-examination that in the scuffle between PW 1 – Dashrath and Maruti, Maruti fell on the ground and sustained injury on his head.

Considering this material facts, learned Trial Court rightly observed that the prosecution had suppressed the genesis of the occurrence. It would not be out of place to state that the prosecution submitted only one sided material before the Court and the prosecution was expected to be impartial and not selective.

16. Learned Trial Court also committed no error in observing that the oral evidence brought before the Court by the prosecution is not inspiring the confidence and the conclusion could not have been arrived at that the prosecution brought before the Court true version of the incident.

17. The prosecution also relied on the evidence in the form of recovery of the iron pipe at the instance of Janardan (A 1). On perusal of evidence it further reveals that PW 2 – Mangal Kadke a panch witness on the aspect of seizure of blood stained clothes of the accused specifically refers to an injury to accused Maruti. The prosecution nowhere explained about the injury caused to accused. This fact only supports the observation of the Trial Court that the prosecution had suppressed the material facts and genesis of the incident.

18. Now coming to the aspect of the alleged recovery of iron pipe is concerned, the perusal of evidence of panch witness and the investigating officer show that the recovery of iron pipe took place on 29.11.1996 whereas the alleged incident occurred on 13.11.1996. There is no whisper about this delay in recovery of iron pipe. The perusal of evidence also shows that the said recovery of iron pipe is from an open place which is accessible to anybody and everybody. The CA report also fails to support the case of prosecution.

19. Considering all these aspects, learned Trial Court arrived at a finding that the prosecution has failed to establish and prove that the accused is the author of the crime.

20. We see no error in the findings recorded by the learned Trial Court and we are of the opinion that learned Trial Court appreciated the evidence in its proper perspective and this is not a case of either a illegality or perversity in the judgment and order of the Trial Court, as such, Appeal thus being merit-less, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

21. This judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)