

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 63 OF 2000

Shelkya Jhurkya Pawar.

Age: 27 yrs. Occ: Labourer.

R/o. Bhurli, Tal. Tasgaon,

Dist. Sangli.

... Appellant.

(Yerwada Central Prison)

v/s.

The State of Maharashtra

(At the instance of P.I. Pandharpur

Taluka Police Station)

... Respondent.

Mr. Veerdhawal Deshmukh, Court Appointed advocate for appellant.

Ms. S. V. Sonawane, APP for State.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : SEPTEMBER 23, 2021.

PRONOUNCED ON : OCTOBER 26, 2021.

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JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 The appellant herein is convicted for the offence punishable under section 302 and 392 read with 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs. 3,000/- I.d. to suffer one year rigorous

imprisonment vide Judgment and Order dated 25/11/1999 passed by II Addl. Sessions Judge, Pandharpur in Sessions Case No. 138 of 1998. Hence, this Appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

That on 29/7/1998 Ranjana Ankush Sidhwadkar lodged a report at the police station alleging therein that she lives in a joint family on the road between Mendhapur to Karkamb and the brothers of his father-in-law is their neighbour. That on 28/7/1998 at about 10 to 10.15 p.m. her neighbour i.e. wife of the brother of her father-in-law raised cries that there are “thieves”. They heard thunderous knock on their door threatening them to open the door or else the callers would set the house on fire. Upon hearing the threat, her father-in-law opened the door. Two unknown persons entered into the house. They had meagre clothes on their person i.e. banian and half pant. The unknown person had snatched the ornaments which were on the person of the complainant and her mother-in-law.

That the unknown persons had picked up an axe which was in the house of the complainant and had assaulted her father-in-law with the same. On the basis of her report, Crime No. 130 of 1998 was registered at Pandharpur Police Station for the offence punishable under section 394, 302 read with section 34 of the Indian Penal Code.

3 At the trial, the prosecution has examined as many as
4 witnesses to bring home the guilt of the accused.

4 P.W. 1 Ranjana Sidhwadkar is the complainant. According to her, on hearing the cries of her cousin mother-in-law, namely, Bhamabai to the effect that thieves had come, all her family members had got scared and her father-in-law locked the door from inside. They were constrained to open the door since there was a threat from outside by the thieves that if the door is not opened, the house would be set on fire. She gave description of two persons who had entered her house. Third person was standing outside. One of them was holding a torch.

Due to threats given by the thieves, they handed over their ornaments to them. That the thieves had asked her father-in-law to open big metal box(trunk). One of the two persons took the axe which was kept on the rear side of the door and mounted assault on her father-in-law with the same. The thieves then fled from the spot. Her substantive evidence is in consonance with the FIR which is marked at Exh. 10. On 30/7/1998, her father-in-law expired in the hospital.

5 P.W. 1 has categorically stated that she had seen the facial features of one of the accused in the light of a small lantern in her house and therefore, she had identified him at the police station. She identified the accused before Court. It is admitted in the cross-examination that after about a week of the incident, she was called to the police station by the police and she was informed that the accused were arrested. She has also admitted that the accused were identified by her at the police station.

6 P.W. 2 Maruti Chougule resides at the distance of one furlong from the farmhouse of Sidhwadkar. According to him, on the date of the incident at about 10 p.m., there was stone-pelting on the tin roof of his house. Three persons had been there. They started beating him and his wife and they assaulted him with an axe on his forehead and took away Rs. 200/- from his pocket and also snatched ornaments from the person of his wife. They were wearing banian and half pant. He had seen the faces of the thieves in the light of a small lantern in his farm house. Therefore, he would identify them at the police station. It is elicited in the cross-examination that one of the thieves was flashing battery on his face and therefore, he was unable to see anything. The fact that he had seen the face of one of the thieves in the light of the small lantern is an omission. He had identified the accused at the police station after 10 to 12 days of the incident.

7 P.W. 3 Ravindra Sadigale happens to be panch for the memorandum of recovery at the instance of the accused, who had

informed the police that he would lead them to the place where he had disposed of the ornaments. The memorandum is at Exh. 13. The accused had led them to a goldsmith shop at Jeure. The goldsmith Mr. Mahamuni was present in the shop. Upon enquiry, owner of the shop had informed that the said accused had sold 15 gm of gold and subsequently, he had pledged two ornaments with him. The goldsmith had produced the gold ingots and two ornaments before the police. The articles were seized under the panchanama at Exh. 14. The panch had identified two articles. The distance between Pandharpur to Jeur is about 60 kms. It is elicited in the cross-examination that when the police alongwith the accused and panchas reached the shop, it was closed and the constable was deputed to call the shop keeper.

8 There is no doubt that Dagadu Sidhwadkar had sustained injuries in the said incident and had succumbed to the said injuries on 30/7/1998. Column No. 17 of post mortem notes show that there were sutured wounds over left fronto parietal

region 6” in length Bur-hole done, on left frontal bone and on left parietal bone. Column No. 19 shows that -

- (i) Injuries under the scalp, ----
their nature:
- (ii) Skull-Vault and base-describe # Lt. Frontal bone.
fractures, their sites,
dimensions, directions etc. # Lt. Parietal bone.
- (iii) Brain-The appearance of its Heamatoma at Lt. Fronto
coverings, size, weight and parietal area. Brain matter
general condition of the destroyed over Lt. Parietal
organ itself and any region.
abnormality found in its
examination to be carefully
noted (Weight M. 3 gram F.
2.75 grams.)

The cause of death is “due to head injury c # Lt. Frontal bone,
Lt. Parietal bone c heamatoma over Lt. Fronto parietal area.”

9 P.W.4 Sanjay Tathe is the Investigating Officer of Crime No. 130 of 1998. He has deposed before the Court the steps taken by him in the course of investigation. P.W. 4 has proved the omission in his evidence. It is admitted that P.W. 1 and P.W. 2 had not stated before him that they had seen the faces of the accused in the light of small lantern in their house.

10 As far as recovery of the golden articles is concerned, there is variance in the evidence of P.W. 3 and P.W. 4. According to P.W. 3, the police and the panchas had left for Jeur at about 7 to 7.15 p.m. They required two hours for reaching at Jeur and the panchanama and had started at about 9.30 p.m. According to P.W. 4, the memorandum was recorded at about 5.45 a.m. They reach Jeur at about 8.30 a.m. and when they reached the shop, it was open. Panchanama is written in vernacular and we have verified the time of recording the memorandum. It is shown as 5.45 a.m. to 5.50 a.m. and the recovery of articles is shown between 5.50 a.m. to 9.40 a.m.

11 Learned Counsel for the appellant has vehemently submitted that the ability of the witnesses to have seen the accused in the small lantern light cannot be taken into consideration for simple reason that they are in the form of omissions, proved by the investigating officer. It is admitted by P.W. 1 and P.W. 2 that they had identified the accused in the

police station. This aspect of the case needs to be taken into consideration in view of the Judgment of this Court in the case of **Ramcharan Bhudiram Gupta v/s. State of Maharashtra**¹, wherein it is observed that -

“In order to make identification evidence beyond reproach, it is high time that an end is put to the practice of holding of identification at police station and identification parades instead are held in jail. This practice would not only enable the police to wash the stigma of showing suspects prior to their identification; a stigma which more than often is unfounded, but has manifold other advantages. Jails have a large population these days. It would be easy there to find persons similar to the suspects sought to be put for identification. Such similar persons have to be mixed with the suspects at the time of identification.

The identification in jail would not only actually be free from any taint or suspicion but equally importantly it would also appear to be so. It would instil a sense of confidence both in the minds of the suspects sought to be put for identification as well as the court. There are some other infirmities too in the evidence of identification, which render it unworthy of acceptance.”

1 1996(1) Bom C.R. 190

12 Reliance can also be placed on the Judgment of the Supreme Court in the case of **Ravindra @ Ravi Bansi Gohar v/s. State of Maharashtra & ors.**², wherein it is observed that -

“9. Another disturbing feature of the case is that the T.I. parade was held inside the lock-up of the C.I.D Department of the Bombay Police which was investigating into the case at the material time. In [Hasib v. State Of Bihar](#) AIR 1972 4 SC 283, this Court observed that a vital factor for determining the value of an identification parade is the effectiveness of the precautions taken by those responsible for holding them against the identifying witnesses having an opportunity of seeing the persons to be identified by them before they are paraded with other persons and also against the identifying witnesses being provided by the investigating authority with other unfair aids or assistance so as to facilitate the identification of the accused concerned.”

Although identification in the court is substantive piece of evidence in the facts of the present case, it is seen that no abundant caution was taken by the investigating agency to conceal identity of the accused when brought for trial before the court. Thirdly, the accused were not carrying any weapon. One of the

2 AIR 1998 SC 3031

accused had picked up the weapon from the house of the complainant and had mounted single blow on the head of the father-in-law of the complainant, to which he succumbed on the following day.

13 Learned Counsel submits that there are inherent discrepancies in the evidence of the witnesses as far as the time of recording of memorandum and recovery panchanama at Exh. 13 and Exh. 14 is concerned. The evidence of pancha i.e. P.W. 3 is not in consonance with the evidence of P.W. 4 Investigating officer and therefore, it appears that P.W. 3 was not present at the time of panchanama or that he is a got up witness. Lastly, it is submitted that the facts of the case would show that the father-in-law of the complainant had sustained injuries in the course of committing theft. That a charge under section 394 of the Indian Penal Code ought to have been framed.

14 That the trial Court has not framed any charge under section 394 of the Indian Penal Code. That the deceased was

about 65 years old. There appears to be a single injury on the left fronto parietal region which is 6” in length and which has caused fracture of the left frontal bone and left parietal bone. Be that as it may, the incident is undisputed. The death of father-in-law of the complainant in the course of incident is also undisputed. However, criminal trial is not a quest for ascertaining the truthfulness and genuineness of the incident, but it is a quest for the offender who has committed the said offence. The prosecution has to prove that the involvement and liability of the offender and in the said case, the prosecution has to stand on its own legs. What goes to the root of the matter is to ascertain as to whether the complainant had sufficient opportunity and time to observe the facial features of the thieves who had entered her house. There was no availability of light and even if the version of the complainant is accepted, it needs to be appreciated that it was a dim lantern. It is also a matter of record that the complainant had not informed the police that she had seen the faces of one of those person in the light of small lantern and the omissions are proved by the Investigating Officer.

15 On the basis of above discussion, it can be held that the prosecution has not established beyond reasonable doubt that it is the appellant who had caused death of Dagadu Sidhawadkar while committing theft in the house of the complainant. We are also of the opinion that the recovery under section 27 of the Indian Evidence Act is not proved. In view of this, the accused/appellant deserves to be acquitted of both the charges. Hence the appeal deserves to be allowed.

16 While parting with the Judgment, this Court appreciates the efforts taken by the learned Advocate Mr. Veerdhawal Deshmukh appointed to espouse the cause of the appellant. He is entitled to professional fees as per rules.

17 Hence, following order is passed :

ORDER

- (i) The appeal is allowed.
- (ii) The conviction and sentence imposed upon the

appellant vide Judgment and Order dated 25/11/1999 passed by II Addl. Sessions Judge, Pandharpur in Sessions Case No. 138 of 1998 is hereby quashed and set aside.

(iii) The appellant is acquitted of all the charges levelled against him. He be released forthwith if not required in any other offence.

(iv) The fine be refunded, if paid.

(v) The Criminal Appeal is disposed of accordingly.

18 The Registry shall inform the Appellant about the Judgment of acquittal.

(PRITHVIRAJ K. CHAVAN, J) (SMT. SADHANA S. JADHAV, J)