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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 791 OF 2002

The State of Maharashtra	}	...Appellant (Complainant)
Versus		
1. Kailas Jijaba Hilal, Age : about 30 yrs., Occ : Nil.	}	...Respondents (Orig. Accused)
2. Prabhu Sonba Hilal, Age : about 40 yrs., Occ : Nil.		
Both R/a. Kavthe, Munjalvgaati, Tal.: Shirur, Dist. Pune.		

Mrs. M.M. Deshmukh, APP for Appellant – State.

Mr. Pankaj Dinesh Purway for Respondents.

CORAM : PRASANNA B. VARALE &
SURENDRA P. TAVADE, JJ.

DATED : JULY 01, 2021

JUDGMENT (PER PRASANNA B. VARALE, J)

1. The present Appeal is filed at the instance of present Appellant – The State of Maharashtra challenging the judgment and order passed by the learned VIth Additional Sessions Judge, Pune, dated 28th March, 2002, in Sessions Case No. 274/2000, whereby present Respondents – Original Accused were acquitted for the offences punishable under Sections 307, 504 read with Section 34 of the Indian Penal Code (for short “IPC”).

2. Learned APP appearing for the Appellant – State of Maharashtra vehemently submitted before this Court that in spite of strong evidence brought on record by the prosecution in the form of version of the injured person himself, ocular version of eye witnesses, the medical certificates proved through respective medical officers, the learned Trial Judge failed to appreciate the entire evidence in its proper perspective and arrived at an erroneous conclusion. It is also the submission of learned APP that both the medical certificates placed on record indicated that the complainant suffered more than five stab injuries but the learned Trial Judge only on the ground of difference of opinion of the medical officers brushed aside the important medical evidence and recorded the judgment and order of acquittal. Thus, learned APP prayed for allowing the appeal by setting aside the judgment and order of acquittal.

3. *Per contra*, learned Counsel appearing for the Respondents firstly submitted that the learned Trial Judge committed no error in appreciating the evidence. It is also submitted by learned Counsel for Respondents that though the prosecution placed a strong reliance on the version of the complainant and eye witnesses on the backdrop of quarrel took place between the complainant and the accused 15 days prior to the incident but, it was an admitted fact that the parties were on cross terms to each other. Learned Counsel for the

Respondents further submitted that the fact that the accused had warned the complainant on account of keeping an evil eye over the wife of the accused and a dispute also arose between the complainant and accused on this counts and it was the complainant who was carrying the grudge against the accused no. 1 and the complainant with an ill-motive falsely implicated the accused. Second limb of submission of learned Counsel for Respondents is, accused submitted that the incident in question took place in the year 2000, the judgment and order of the learned Trial Court was recorded on 28.03.2000 and the present Appeal is filed by the State was admitted on 17.03.2003 and was pending for hearing / disposal before this Court. Learned Counsel for Respondents then submitted that during pendency of the appeal there was an intervention of elderly persons. Learned Counsel for Respondents further submitted that the accused persons as well as complainant are the daily wage earners and the financial condition of the families is weak. It is then submitted by learned Counsel for Respondents that as the original dispute between the parties arose two decades ago and during a passage of time the parties have decided to give an end to the dispute. It is further submitted by learned Counsel for Respondents that original complainant had filed an notarized affidavit dated 30.06.2021 under the caption of "Consent Affidavit".

4. With the assistance of both the learned Counsel appearing for the respective parties, we have gone through the material and evidence brought on record.

5. Though, complainant himself filed an consent affidavit stating therein that they have amicably settled the matter but, we are deciding this appeal on its own merit.

6. The prosecution in support of its case examined as many as 11 witnesses and the material witnesses are : Savkar Munjal (PW 3), Dilip Munjal (PW 4) brother of Savkar, medical officers i.e. Dr. Subhash Doshi (PW 6) and Dr. Subodh Kamble (PW 11).

7. As the investigating agency was set in motion on lodgment of the report at the instance of Savkar Munjal (PW 3) – Complainant, we may refer to the testimony of this witness, firstly.

Perusal of evidence of Savkar (PW 3) show that in his testimony before the Court he stated that the incident took place on 13.04.2000. He further stated that 15 days prior to incident both the accused quarreled with him under the influence of liquor. Then he stated that on the day of incident at about 03.00 p.m. while he was proceeding towards Bazar and on his return at about 07.00 p.m. when he reached nearby house of accused Kailas both the

accused abused and beat him with hands on account of earlier quarrel which took place 15 days prior to the incident. He further stated that accused Prabhu caught him from behind by holding his both hands backwards and accused Kailash gave him seven blows of knife on the vital parts of body such as, chest and stomach. Due to the knife blows, he sustained injuries. His clothes were blood stained. Blood also dropped on the ground. He further stated that hearing cries his brother Dilip, Bhivsen and Mirabai reached to spot and they separated him from the accused. Accused then left the place by giving abuses. Then he was taken to his house by Dilip and Mirabai. He narrated the incident to his parents. Then he was taken in the jeep to Shirur Government Hospital. The primary medical aid was provided to him and then he was referred to Sassoon hospital, Pune. While he was under treatment police had reached Shirur Hospital and made inquiry with him. Savkar (PW 3) narrated the incident to the police officers, same was reduced in writing. Thumb impression was obtained on the said complaint Exhibit 24. He was under treatment at Sassoon Hospital for 4-5 days. Then he stated that certain details about the clothes worned by him on the day of incident. Identified those clothes. Weapon knife was shown to him and he identified the same. He also identified the blood stained clothes of the accused person.

In his cross-examination, complainant admits that his house is

400-500 ft. away from the house of accused Kailas. He further admits in the cross-examination that the relations between himself and accused Kailas were strained due to the earlier incident which took place 15 days prior to the incident in question. He further stated in the cross-examination that both the accused started abusing him under the influence of liquor demanding money from him for consuming liquor. Then he admits that Baban and Dilip are his brothers and his brothers and father are staying adjacent to his house. An omission in respect of number of blows (7 blows) was brought on record in the cross-examination.

8. On perusal of testimony of complainant it clearly reveals that the complainant failed to provide any detail of the abuses allegedly hurled against him by the accused persons. As the complainant maintained silence about the specific words and abuses uttered by the accused persons as well as the other so called eye witnesses i.e. brothers of the complainant failed to provide any details of the abuses, the learned Trial Judge was justified in observing that the prosecution failed to prove the offence against the accused persons under Section 504 of the IPC as there was no material to prove that accused have intentionally insulted the complainant which was requirement for proving an offence under Section 504.

9. It is useful to note here itself that though the complainant specifically stated in his testimony that on hearing the cries of the complainant some persons rushed to the spot and though he names these persons who were the residents or neighbours and who could have been the independent witnesses but for the reasons best known to the prosecution, these witnesses were not examined before the Court. This is certainly a serious *lacunae* in the case of prosecution.

10. Now we may turn to the other important eye witness i.e. brother of complainant Dilip Munjal (PW 4). Dilip Munjal (PW 4) deposed before the Court that on hearing cries as his brother rushed to the place of incident. In his examination-in-chief he stated that he saw that nearby the house of way of accused Kailas accused Prabhu had caught hold his brother and accused Kailas gave knife blow to his brother. He further stated that due to knife blow his brother sustained bleeding injury. The clothes of his brother were stained with bloods. Then he himself and his wife and one Bhivsen separated his brother from the clutches of the accused. Then his brother took his brother to his house and accused left the spot by giving abuses and threats. On inquiry his brother told to him that prior to 15 days there was a quarrel between accused and his brother. Then by arranging a jeep his brother was initially shifted to Shirur Government Hospital. When his brother was under

treatment police reached Shirur Hospital. Complaint of his brother was recorded by police. Then doctor of Shirur Hospital referred his brother for further treatment to Sassoon Hospital and accordingly, his brother was admitted in Sassoon Hospital and was under treatment there for 4-5 days.

11. It is very interesting to note that Savkar (PW 3) – the complainant stated that he was assaulted by accused Prabhu and then accused Kailas gave knife blow to him and due to which he sustained bleeding injury. He raised he and cry and on hearing hue and cry made by him his brother and other persons reached on the spot.

Now in contrast to this, Dilip Munjal (PW 4) stated that on hearing cries he reached to the spot and had seen that the accused Prabhu caught hold his brother and other accused Kailas gave him knife blow and due to which his brother sustained bleeding injury. It is also admitted by Savkar (PW 3) that distance between the place of incident which was near house of accused Kailas and the house of his brother is 400-500 ft. Taking into consideration this aspect of the matter, the learned Trial Judge rightly observed that it was not possible for Dilip (PW 4) to witness the incident from his house at a place which was nearly 400-500 ft away from his house firstly and secondly in view of the testimony of Savkar (PW 3) the version of Dilip (PW 4) becomes suspicious and unreliable. Learned Trial Judge has dealt with

the evidence of both these witnesses in detail, it may not be necessary for us to reproduce the same. Suffice it to say that, the learned Trial Judge committed no error in appreciating the evidence of Savkar (PW 3) and Dilip (PW 4) and arriving at the conclusion that the evidence of Dilip (PW 4) is liable to be discarded.

12. As the learned APP vehemently submitted that the learned Trial Court erred in appreciating the strong material evidence i.e. medical evidence, now we may refer to the medical evidence reflected through Dr. Doshi (PW 6) and Dr. Kamble (PW 11).

13. Dr. Doshi (PW 6) was attached to Shirur Rural Hospital as medical superintendent at the relevant time. He stated before the Court that on 13.04.2000 while he was on his duty at about 09.00 p.m. he had examined Savkar Munjal (PW 3) and he found following seven incise cut injuries:

1. Incise cut injury – 1.5 x 0.4 bone deep vertical.
2. Incised cut injury – 1 x 0.3”
3. Incised cut injury 1.5 x 0.5” muscle deep – horizontal
4. Incised cut injury 1.3 x 0.4” muscle deep – horizontal
5. Incised cut injury 2 x 0.4” muscle deep – horizontal
6. Incised cut injury 1.5 x 0.5” muscle deep – oblique.
7. Incised cut injury 1 x 0.3” lung deep – right pleura is cut that is covering of lung – breathing taking place from wound no. 7.

14. Then he deposed before the Court that on inquiry made to the patient, the patient told him the alleged history of assault by knife by Kailas Hilal and Prabhu Hilal. Then he stitched all the injuries of the patient by giving few injections. Then he referred the patient to Sassoon Hospital, Pune for further treatment. Then he stated that in his opinion injury nos. 1 to 7 could be caused due to sharp and cutting object. The age of injuries is between 1 hour to 3 hours prior to his examination. Injury nos. 1 to 6 were grievous in nature and injury no. 7 was dangerous to life.

In the cross-examination, Dr. Doshi admitted that on 13.04.2000 he did not took the blood samples of the patient. He also admitted that there was some overwriting on the document Exhibit 31. He had also admitted in the cross-examination that he had not mentioned the history of assault in Exhibit 31. He further stated in the cross-examination that he did not find it necessary to mention the history of assault in the medical certificate i.e. Exhibit 31. Then he admitted in the cross-examination that before stitching the injuries he had given local anesthesia for the duration of one hour to the patient.

15. Now, it would be necessary for us to refer to the another medical opinion on record and proved through Dr. Subodh Kamble (PW 11).

16. Dr. Subodh Kamble (PW 11) deposed before the Court that he was attached as a resident doctor to Sassoon Hospital since February, 1999. He further stated that on 14.04.2000 injured Savkar was admitted in Sassoon Hospital and on that day he examined Savkar at 12.45 a.m. Then he had issued the MLC No. 8232 wherein there is a mention of stab injury in the history. Then this witness found following injuries on the person of Savkar (PW 3):

1. Stab injury on the back 2x1x2 cm.
2. Stab injury on the 5th intercostal space mid axillary, 2x1x1 ½ cm.
3. Stab injury on left forearm 2x1x1 ½ cms.
4. Stab injury on left chest 8th intercostal space 2x1x3 cm.
5. Stab injury on Xiphisternum 3x1x2 cm.
6. Stab injury on right chest on 9th intercostal space 2x1x2 cm.
7. Stab injury semusms 2x1x1 cm.
8. Stab injury left second intercostal space 2x1x2 cm.
9. Stab injury left 6th intercostal space anterior axillary line 3x1x2 cm.

17. Dr. Kamble (PW 11) then stated that injuries could be caused by the sharp weapon like knife. Now it is very interesting to note that Dr. Kamble (PW 11) in clear and unambiguous words stated before the Court that injuries found on the person of injured were not sufficient to cause death in ordinary course of nature. He further stated that if the patient was not given immediate treatment the injuries in Exhibit 49 were not sufficient to cause death. In the cross-examination he further stated that when he examined the injured all the

injuries were not stitched and he stitched the injuries of the patient. He further stated in the cross-examination that he had not mentioned about the stitching of the injuries of the patient in the case papers Exhibit 48 and also in the medical certificate Exhibit 49. Dr. Kamble (PW 11) further admitted in the cross-examination that the patient did not gave the name of the assailants while narrating history of assault.

18. Now on the backdrop of these two opinion expressed by the medical officers, considering the fact that the preliminary medical aid was provided to Savkar (PW 3) at Shirur Hospital and then Savkar (PW 3) was under treatment of Dr. Kamble (PW 11) for some days at Sassoon Hospital who had opined that the injuries were not sufficient to cause death in ordinary course of nature, the learned Trial Judge was justified in observing that the opinion of Dr. Kamble (PW 11) prevails over the opinion of Dr. Doshi (PW). As it was stated by Dr. Kamble (PW 11) that all the injuries of patient were not stitched when he examined the patient and certain injuries were stitched when the complainant was shifted to Sassoon Hospital, Pune. The admission of Dr. Kamble (PW 11) in the cross-examination that the patient i.e. complainant Savkar (PW 3) did not gave the name of assailants while narrating the history of assault assumes importance.

19. On the backdrop of a quarrel between the Savkar (PW 3) and accused 15 days prior to the incident, the failure of Savkar (PW 3) to give the name of the assailants while recording the history at Sassoon Hospital and non-examination of the independent witnesses though they were referred to by the prosecution creates suspicion over the testimony of Savkar (PW 3). At the cost of repetition, we may state that the version of Dilip (PW 4) also suffers from infirmities and no implicit reliance can be placed on version of Dilip (PW 4) for more than one reason including the fact that being brother of Savkar (PW 3) he is an interested witness.

20. Now we may refer to the other evidence is in the form of panch witnesses and the Investigating officer.

21. Vithal Wagdare (PW 1) is the panch witness to the spot panchnama. This witness deposed before the Court that on 14.04.2000 he was called by the police to village Munjalwadi. Another panch Pandurang Wagdare was also present. Meerabai Munjal was present there and she showed the place to the western side of the house of the accused Kailas and this road is known as Pandicha Rasta Yamni Road. He further stated that dried blood in earth was found there with trampling marks.

In the cross-examination, this witness stated that his residence is

1 to 1 ½ kms away from the scene of offence. Village Munjalwadi is situated with the population most of the persons belong to Dhangar community. The persons belonging to Dhangar community generally possess goats, sheeps etc. He further stated that he was called by the police when he was going towards the temple of goddess Yamaidevi for darshan.

22. Nana Kandalkar (PW 2) is the another panch witness to the seizure of clothes. In his examination-in-chief he deposed before the Court that on 14.04.2000 at about 08.00 he was called by the police for panchnama in Shirur Police Station. Another panch Chimaji Khade was also present. Accused Prabhu was also present in the police station. The accused was having blood stained Nehru Shirt of white colour on his persons. The said shirt was seized under the panchnama.

It is interesting to note that, in the cross-examination, this witness stated that it is wrong to say that on 14.04.2000 we i.e. he, panch witnesses and accused Prabhu went to police station. He further admitted in the cross-examination that on 14.04.2000 he himself, Chimaji Khade and another panch and Dilip Munjal (PW 4) had been to Pune to see the complainant in the hospital. He further admitted in the cross-examination that Dilip Munjal called him to come to the police station, Shirur. Thereafter they went from Sassoon Hospital, Pune to Shirur Police Station. Then Dilip Munjal (PW 4)

asked him to sing on the panchnama. He further admitted that he cannot tell whether accused Prabhu produced the Nehru shirt Article no. 3 before the police or not.

23. Chimaji Khade (PW 5) is the another panch witness. In the examination-in-chief deposed before the Court that on 15.02.2000 he was called by the police in Shirur Police Station at 10.00 a.m. Another panch Pandurang Khade was also present. He further stated that Dilip (PW 4) produced the clothes of Savkar (PW 3) and accordingly the panchnama of the seizure of the clothes was drawn. He further stated that on 17.04.2000 he was called by the police in Shirur Police Station. Another panch by name Baban Hilal was also present. Accused Kailas was also present in the police station. Police said him to hear what the accused Kailas has to say. Then accused Kailas gave statement that he would produce his clothes and knife which he concealed under the heap of stone. Accordingly the memorandum panchnama was drawn. Thereafter they went in a government jeep as per the road shown by the accused near the kaccha road of village Kauthe the accused asked to stop the jeep. He further stated that accused Kailas got down from the jeep and went towards the heap of stones and produced clothes and knife from the heap of stone. Those clothes and knife were seized under the panchnama.

In the cross-examination, this witness stated that Pandurang

Khade another panch witness is his cousin brother. He further stated that on 15.04.2000 Dilip (PW 4) produced articles 5 and 8 i.e. the clothes only before the police. He did not read out the panchnama. This witness did not saw the page nos. 1 and 2 of the panchnama. The panchnama Exh. 26 was blank when this witness signed on it.

24. Subhash Shetye (PW 7) is the person in whose jeep injured was carried to hospital. In examination-in-chief this witness stated that at about 08.00 p.m. Dilip (PW 4) came to his house and reported the incident and requested him to give his jeep for carrying the injured to the hospital. Accordingly, he went with his jeep to the house of injured at about 08.30 p.m. He saw Savkar in the injured condition and his clothes were blood stained. He carried him in jeep. He saw injuries on his stomach. This witness admitted in the examination-in-chief itself that he recorded the complaint of Savkar (PW 3) as per the narration of Savkar. After recording the complaint this witness came to the Shirur Police Station and registered the crime.

In the cross-examination, this witness stated that he recorded the complaint Exhibit 24 after giving medical treatment to the injured complainant.

25. Now the last witness is, Sampat Bhosale (PW 10) is the

Investigating Officer. In his examination-in-chief he stated that since 04.11.1998 to 02.05.2000 he was working as PSI with Shirur Police Station. On 01.04.2000 he received investigation of the Crime No. 52/2000. He further stated about the steps taken by him in the process of investigation such as, recording the statement of witnesses, effecting the arrest of accused persons, seizure of blood stained clothes of victim, drawing the spot and seizure panchnama, drawing the memorandum panchnama etc.

In the cross-examination, this witness stated that he cannot tell as to who produced the medical certificate of the injuries on 14.04.2000.

26. Thus, the conclusion drawn by the learned Trial Judge that the prosecution could only establish the case of that the complainant – Savkar (PW 3) received grievous injuries i.e. stab injuries but the prosecution failed to establish that the accused are the authors of the crime, is based on just and proper appreciation of the evidence. We are unable to see any reason to cause interference in the judgment and order of acquittal. Appeal, thus, being meritless deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(SURENDRA P. TAVADE, J.)

(PRASANNA B. VARALE, J.)