

State Vs. Manoj Pednekar and Others

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Court : Mumbai Goa

Decided On : Aug-20-2013

Judge : R.C. Chavan

Appeal No. : Criminal Appeal No.5 of 2013

Appellant : State

Respondent : Manoj Pednekar and Others

Judgement :

Oral Judgment:

This appeal by the State questions acquittal of the respondents by the learned JMFC, 'B' Court, Mapusa for offence punishable under Sections 326 and 504 read with Section 34 of the Penal Code.

2. Facts which are material for deciding this appeal are as under:

Victim Yeshwant Pednekar and respondent no.1 Manoj Pednekar are twins. The other three respondents i.e. Manisha Pednekar, Reshma Chodankar and Ramesh Chodankar are respectively wife of Manoj, sister and brother-in-law of Manisha. It is not in dispute that the brothers are goldsmiths and, therefore, use nitric acid in their work as goldsmiths. They reside in the same house and their relations are extremely strained. On 25/03/2007 at about 5.30 p.m. while the other three respondents i.e. Manisha, Reshma and Ramesh were holding Yeshwant

Pednekar, Manoj Pednekar is alleged to have hit Yeshwant with the bottle of acid on head. Yeshwant suffered several acid burn injuries on his face, neck, chest and back. Respondent no.1-Manoj also had acid burns on left forearm, right forearm and right hand. Yeshwant was taken to hospital and on a report of his wife an offence was registered. Police performed panchanama of spot, obtained medico legal certificate of Yeshwant as also of respondent no.1-Manoj. The other three accused persons had obtained anticipatory bail and, therefore, they do not appear to have been sent for any medical examination. On completion of investigation, a charge sheet was sent to the Court of learned JMFC, Mapusa. The learned Magistrate framed charge for offences punishable under Section 504 and 326 read with Section 34 of the Penal Code against all the four respondents. Since they pleaded not guilty, they were put on trial on which the prosecution examined in all seven witnesses in its attempt to bring home guilt of the accused persons. Though in their statement under Section 313 of the Criminal Procedure Code, the respondents had branded the prosecution case as entirely false, the cross-examination of prosecution witnesses reveals that it was the defence of the accused that it was in fact victim Yeshwant, who charged at Manoj with a bottle of acid in his hand. Yeshwant was holding the bottle possibly above his head. It hit the door frame, broke and the acid spilled on the person of Yeshwant causing the burns. The learned Magistrate found that the defence was probabalised and therefore proceeded to acquit the respondents. Aggrieved thereby, the State filed leave to appeal which was granted and this is how this appeal is being heard.

3. I have heard both the learned Additional Public Prosecutor for the State and the learned Counsel for the respondents. I have also gone through the evidence on record. Victim's wife Seema was examined as PW1. She stated that respondent no.1-Manoj and his wife Manisha started abusing them on the incidental evening. Manoj and Manisha are alleged to have abused Seema and her family members alleging that they deliberately broke or caused damage to water supply pipe. Manoj then lifted nitric acid bottle and ran after Seema. Seema ran inside a room and when Yeshwant tried to stop Manoj, Manoj allegedly assaulted Yeshwant with the acid bottle which broke on the head of Yeshwant causing severe burn injuries. She stated that her husband was taken to hospital. She gave a report to the police which is at exhibit 11. In course of cross-examination she accepted the suggestion

that the relations of Manoj and Manisha with her family were not good and that every day there used to be fight amongst the brothers. She stated that the three other accused persons had held Yeshwant's hands to prevent Yeshwant from moving. She denied the suggestion that it was in fact Yeshwant, who was carrying the bottle of acid to hit Manoj and that in the process of assaulting Manoj, it possibly hit the upper frame of the door, broke and the acid spilled on the person of Yeshwant.

4. PW2/Vaibhav Kutavnekar is brother of PW1/Seema Pednekar, who came to the spot after the incident. Same is the case with PW5/Ritesh Karekar. The learned Counsel for the respondents wondered as to how Vaibhav or Ritesh were not immediately told as to what had happened rather than being informed that some bad incident had taken place. He also submitted that the evidence of Vaibhav would show that one Vishakha was also present at the time of the incident and submitted that the Investigating Officer PW7/Mohan Naik admitted that he did not make any inquiries about Vishakha. He submitted that Vishakha would have been the best witness about the incident and that she was kept away from the Court by the prosecution. Cross-examination of PW2/Vaibhav itself shows that Vishakha was the daughter of brother of accused Manoj who may be about 10 years in age. The evidence of Vaibhav or Ritesh does not show that they learnt or stated that Vishakha was in fact present at the time of the incident. Vishakha seems to have only admitted them to the house when they reached after the incident.

5. PW3/Vaman Pednekar is the pancha at the panchanama of spot which is at exhibit 17. This panchanama shows that the broken acid bottle was lying on the floor. There were spots on the wall on the right side of the door indicative of acid spilling on that wall. The learned Counsel submitted that this observation in the panchanama of spot would clearly show that the defence taken by the respondents was probable and that acid could have spilled when the bottle hit upper side of the door frame.

6. PW4/Dr. Prashant Lawande had treated the victim and stated that the victim had about 40% acid burns. His medico legal certificate is at exhibit 19. He had however, not examined the victim upon being referred by the police. Medico legal

certificates in respect of the victim as well as respondent no.1-Manoj were admitted by the defence upon a notice being given under section 294 of the Criminal Procedure Code. These are at exhibit 30. The certificate in respect of the victim shows that he had 40% of the burns on face, neck, chest and back and the certificate in respect of respondent no.1-Manoj shows that he had burns on left forearm, right forearm and right hand caused within 6 hours of the examination which took place on 25/03/2007 at 7.00 p.m.

7. PW6/Yeshwant is the victim himself. The learned Magistrate seems to have gone to the victim's house to examine him as the victim was not in a position to come to a Court. He stated that on 25/03/2007 respondent no.1-Manoj abused his wife Seema. He states that when he went to prevent Manoj from assaulting his wife the other three respondents caught hold of his hands, Manoj took a bottle of nitric acid, broke the bottle on his head and ran away. He states that Manoj went to the police station and lodged a complaint. He then states that he was taken to a hospital where he was given requisite treatment and then shifted to Mumbai for further treatment. In cross-examination he denied the suggestion that the acid bottle belonged to him. He stated that the other three respondents were standing by his side and respondents Reshma and Ramesh had kept their feet on his feet to prevent him from moving. He denied the suggestion that he was carrying the acid bottle in order to hit Manoj and when he was rushing towards Manoj the acid bottle hit the upper frame of the door, broke and spilled.

8. PW7/Mohan Naik carried out the investigation and sent the seized property to the Central Forensic Laboratory at Hyderabad, whose reports are not of much help in ascertaining the complicity of the respondents.

9. It would thus be seen that presence of respondent no.1-Manoj at the spot is not disputed. It is also not disputed that the brothers were on enemical terms. It cannot be disputed that victim Yeshwant as well as respondent no.1-Manoj had suffered acid burns in course of the incident though the medico legal certificate at exhibit 30 in respect of respondent no.1-Manoj was not put up to Manoj in course of his statement under Section 313 of the Criminal Procedure Code. That omission is insignificant since this certificate was admitted in evidence after the accused

admitted it on a notice under Section 294 of the Criminal Procedure Code.

10. The learned Additional Public Prosecutor submitted that in view of admission of enmity between the parties, the entire story as given by the prosecution witnesses should have been believed by the learned Magistrate and he should have held that the acid attack was proved. The learned Counsel for the respondents, on the other hand, submitted that the story given by the prosecution witnesses is improbable and the learned Magistrate was justified in rejecting the evidence. He pointed out that PW1/Seema had obviously no opportunity to see actually the manner in which Yeshwant suffered injuries. He pointed out that Seema had stated that she had gone inside her room and came out only after the incident was over. As for the evidence of PW6/Yeshwant, the learned Counsel submitted that Yeshwant gave an incredible story that the three other respondents held Yeshwant closely by his hands when Manoj allegedly hit Yeshwant with acid bottle. He submitted that if the bottle of acid was broken on the head of Yeshwant when the three other persons were close to Yeshwant, some acid would have spilled on others also. He further submitted that no husband will indulge in an act which will result in injury to his wife. Respondent no.2 wife of Manoj was allegedly holding Yeshwant closely at the time of the incident. Absence of any injury on the person of other three respondents and improbability of Manoj hitting the victim with an acid bottle when his own wife was standing close by Yeshwant has been rightly dealt with by the learned Magistrate. It appears from the prosecution story that the first informant and the victim tried to implicate three other accused persons in the acid attack. This is an exaggerative attempt to rope in as many persons from the adversary's camp as possible. Therefore, to that extent, it cannot be held that the learned Magistrate erred in holding the story to be improbable.

11. In this case, the victim had suffered sever acid burns may be on the right front side and back of his body. Respondent no.1-Manoj himself had suffered acid burns on his left forearm, right forearm and right hand. The learned Counsel for the respondents submitted that had a bottle of acid been broken on the head of the victim there would be some injury to the head, by glass being broken on the head. He submitted that there was no such injury found and therefore wondered as to whether the story of bottle being broken on the head of the victim could at all

be believed. He submitted that the defence version that the bottle hit the upper part of the door frame and the acid spilled from the bottle is the only plausible manner in which the incident could have taken place. The victim had suffered acid burns. Acid corroded the entire upper part of the skin and, therefore, if no marks of the victim being hit by the glass bottle on the head were seen, it cannot be said that the victim could not have been hit with the glass bottle. It is possible that the injury by the glass would have also melted down because of the impact of acid on the skin. Therefore, absence of injury identifiable with an assault by a bottle, in itself may not be enough to respect the story given by PW6/Yeshwant. The learned Counsel for the respondents submitted that the acid bottle could not have been broken on the head of the victim. In this case, the injuries certificate at exhibit 19 shows that front right side of the victim had injuries. The respondent no.1 had injuries on his right hand and right fore arm as also left fore arm. If respondent no.1-Manoj is supposed to have held the bottle in his right hand, while facing the victim, ordinarily the impact would be on the left hand side of the victim. The learned Additional Public Prosecutor submitted that the victim need not be still and if the victim moved the impact of the bottle could be on any side of the body. The evidence thus shows that there is a possibility of respondent no.1-Manoj having hit the victim on the victim's forehead with the acid bottle. As rightly submitted by the learned Counsel for the respondents a possibility would not be enough to brand the judgment of the trial Court as improbable or perverse. The learned Counsel for the respondent relied on observations of the Supreme Court in **Chandrappa and Ors. V/s. State of Karnataka** reported at **2007 (4) SCC 415** where in para 42 the Court observed as under :

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before

it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

These principles regarding powers of the Appellate Court while dealing with appeals against acquittal had been noted subsequently by the Supreme Court in judgment in **Murugesan V/s. State** reported at **2012 (10) SCC 383**. Examining the manner in which the incident could have caused, on the basis of these principles, it would be difficult to hold that the conclusions drawn by the learned Magistrate were improbable or perverse. The learned Additional Public Prosecutor sought to place reliance on the judgments of Supreme Court in **State of U.P. V/s. Anil Singh** reported at **AIR 1988 SCC 1998** where in para 15 the Court had observed that the Judges are also required to see that no guilty man escapes punishment. In **Chikkarangaiah and Ors. V/s. State of Karnataka** reported at **2009 (17) SCC 497** in para 46 the Court held that ordinarily an injured witness would name the real assailants and would not implicate falsely those who are not the assailants. In **BrahmSwaroop and Anr. V/s. State of Uttar Pradesh** reported at **2011 (6) SCC**

288 on which the learned Additional Public Prosecutor placed reliance, the Supreme Court had observed the testimony of an injured eye witness has to be considered to be reliable and merely because witnesses are closely related to the deceased their testimonies could not be discarded. There can be no doubt that testimony of PW6/Yeshwant, who is an injured victim would have to be given due weight. But, in this case, first there is enmity between the brothers and though enmity is a double weighed matter, it cannot be overlooked that even Yeshwant could have tried to launch the assault in the manner in which the defence suggested. Further, the fact that Yeshwant stated about the complicity that three other respondents alleging that they held him closely, when the other respondents have not suffered any acid burns, and which would rule out their complicity, would also cast shadow on the veracity of his evidence. Lastly, had the injury on the person of Yeshwant being on the left side of his head, it would have been consistent that an assault by Manoj holding a bottle of acid in his right hand and standing in front of the victim. Though what Yeshwant stated may be probable, the prosecution does not seem to have travelled the distance between probability and certainty. As the view taken by the learned Magistrate is shown to be probable this Court may not be justified in substituting its own view with that of the trial Magistrate, who had an opportunity to see the witness in person.

12. In view of this the appeal is dismissed.

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