

Pravin Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Jul-01-2016

Judge : B.R. Gavai & V.M. Deshpande

Appeal No. : Criminal Appeal No. 604 of 2013

Appellant : Pravin

Respondent : State of Maharashtra

Judgement :

Oral Judgment: (B.R. Gavai, J.)

1. The appellant has approached this Court being aggrieved by the Judgment and Order passed by the Additional Sessions Judge, Washim in Sessions Trial No.97 of 2010, dt.27.8.2013 thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/-; in default, to suffer simple imprisonment for three months and also convicting the appellant for the offence punishable under Section 307 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for three years and to pay a fine of Rs.2000/-; in default, to suffer simple imprisonment for six months.

2. The prosecution case, as could be gathered from the material placed on record, is thus :

The field of deceased Sudhakar Banarase was adjacent to the field of original accused Nos.1 and 2 within the jurisdiction of Police Station, Karanja. On 11.9.2010, on the day of Ganesh Chaturthi, the cow belonging to deceased Sudhakar had entered into the field of the accused. Therefore, both the accused, who are father and son, beat Sudhakar by fist and kick blows during day time. The nephew of Sudhakar namely Rahul @ Ankush Bandopant Gulhane (PW-1) was taking education at Karanja and due to holiday, he had been to the house of his maternal uncle Sudhakar. At around 5.30 p.m. Madhukar, who is grandfather of Rahul, disclosed the incident of assault on Sudhakar by accused persons in the field. As Sudhakar did not return home from the field, Madhukar asked Rahul to go to the field to know the whereabouts of Sudhakar. As such, Rahul proceeded on bicycle. After crossing some distance, he kept his bicycle on the highway and further proceeded on foot. However, while he was going to the field, he saw his maternal uncle Sudhakar coming in a bullockcart. As such, Rahul came up to the highway along with deceased Sudhakar. His grandfather, maternal aunt Sheela, younger maternal uncle Gajanan and Shubham had also come upto the highway to see Sudhakar. Gajanan Vitthalrao Banarase (PW-2) asked Madhukar and Sudhakar regarding the incident. Madhukar disclosed the incident of beating to Sudhakar by accused persons. Therefore, they decided to lodge report.

3. When Rahul, Gajanan and Sudhakar were proceeding towards Karanja on motorcycle, after crossing some distance, they saw accused Ajit Dhurve and Pravin Dhurve standing by the side of road. Accused Pravin asked as to where they were going. Gajanan replied that they were going to lodge report to Police Station. Accused Pravin abused Sudhakar and told that he himself grazed his cattle in their field and is going to lodge report against them. Pravin manhandled Sudhakar and dealt a sickle blow on his neck. In order to save Sudhakar, Gajanan intervened into the quarrel but accused Ajit beat Sudhakar by means of fist and kick blows. He also caught hold of Gajanan and told accused Pravin that let the duo be killed. Thereafter, Pravin assaulted Gajanan with sickle on his head. Gajanan and Sudhakar had sustained bleeding injuries. Said Rahul tried to convince accused but Pravin gave 2-4 slaps and also threatened to kill him if he intervened into the quarrel. Rahul then rushed to village Kherda on the same motor cycle. He narrated the above incident to the family members, who brought

Gajanan and Sudhakar to Government Hospital, Karanja in an autorickshaw.

4. On examination, Sudhakar was found to be dead. The condition of Gajanan was critical and as per advice of Medical Officer, Gajanan was shifted to Government Hospital, Akola. Rahul then rushed to Police Station, Karanja and on the basis of his oral report below Exh.55, Crime No.127 of 2010 came to be registered vide F.I.R. below Exh.56. At the conclusion of investigation, a charge sheet came to be filed in the Court of Judicial Magistrate, Karanja. However, since the case was exclusively triable by the learned Sessions Judge, the same came to be committed to the learned Sessions Judge.

5. The learned trial Judge framed charge below Exh.22 against both the accused. They pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned trial Judge acquitted accused no.2, however, passed the order of conviction as aforesaid against the present appellant. Being aggrieved thereby, the present appeal.

6. Mr.Mir Nagman Ali, learned Counsel for the appellant submits that the order of conviction is based on the testimonies of relatives who are interested witnesses. He submits that the conviction which is solely on the basis of testimonies of interested witnesses would not be sustainable. He further submits that perusal of testimonies of Rahul Gulhane (PW-1) and Gajanan Banarase (PW-2) would reveal that there are inconsistencies in their testimonies. It is submitted that the injuries sustained by Gajanan Banarase (PW-2) are not corresponding to the weapon sickle alleged to have been used in the crime. It is, therefore, submitted that the order of conviction is not sustainable and the appellant is entitled to be acquitted of the charges charged with.

7. As against this, the learned A.P.P. submits that the evidence of both the witnesses is cogent, reliable and trustworthy and warrants no interference.

8. With the assistance of the learned A.P.P. and the learned Counsel for the appellant, we have scrutinized the evidence on record.

9. In view of the evidence of Dr. Yashwant Tekade (PW-7) and the post mortem report below Exh.89, we do not find that any interference is warranted with the finding that the death of deceased is homicidal.

10. Nodoubt that the order of conviction in the present case primarily rests on the evidence of Rahul Gulhane (PW-1) and Gajanan Banarase (PW-2), who are undisputedly interested witnesses being related to the deceased. However, merely because the witnesses are interested witnesses, cannot be a ground to discard their testimonies. The only requirement would be that the evidence of such witnesses should be scrutinized with greater caution and conviction can be based only if the evidence is found to be trustworthy, cogent and reliable.

11. In the light of this principle, we will examine the evidence of Rahul @ Ankush Bandopant Gulhane (PW-1) and Gajanan Vitthalrao Banarase (PW-2). Rahul Gulhane (PW-1) is the nephew of deceased. He narrates about the earlier incident regarding his grand father telling him about the accused assaulting the deceased with fist and kick blows. He further narrates about his grandfather telephoning his maternal uncle and asking this witness to verify the fact by going to the field. He further stated regarding going to the field on bicycle and keeping the bicycle by the side of highway and proceeding further. At that time, he saw the deceased returning in a bullockcart. He further stated regarding his coming upto the highway in the bullockcart. Till that time, his grandfather Madhukar, maternal aunt Sheela, younger maternal uncle Gajanan and Shubham had reached upto the highway to see the deceased. He further states regarding Gajanan asking deceased and Madhukar regarding the incident. He further states that, after Madhukar narrated the incident, Gajanan suggested to lodge report. As such, Shubham, Sheela and Madhukar went home along with bullockcart as advised by Gajanan.

12. Perusal of the evidence of Rahul (PW-1) further reveals that three of them i.e. deceased, Rahul (PW-1) and Gajanan (PW-2) proceeded towards Karanja on a motorcycle. After crossing some distance, this witness saw accused Ajit Dhurve and Pravin Dhurve standing by the side of road, who asked them to stop. Gajanan stopped the bike and got down from the bike. Accused Pravin asked them as to where they were going? Gajanan replied that they were going to lodge report in

the Police Station. Accused Pravin abused Sudhakar and told him that he was allowing the cattle to enter into his field and going to lodge report against him. After saying so, accused Pravin man-handled Sudhakar and dealt a sickle blow on his neck. In order to save Sudhakar, Gajanan intervened. At that time, accused Ajit Dhurve beat Sudhakar by means of fist and kick blows. Accused Ajit caught hold Gajanan and told accused Pravin let duo be killed. Thereafter, accused Pravin dealt a blow of sickle on the head of Gajanan. This witness told them not to beat his maternal uncle. They warned if he intervenes into the quarrel, they would kill him. Subsequently, accused Pravin gave him 2-4 slaps. In the wake of fear, he ran away for some distance. Thereafter, both the accused left. He then went to the spot where his both maternal uncles were lying on the ground. Blood was oozing from the neck of Sudhakar and from the head of Gajanan. He went to village Kherda by the same motorcycle and narrated the incident to his mother, grandmother and grandfather. He then brought the auto of Amol Bijwe. The members of the family boarded the said auto whereas he himself and Madhukar ride on motorcycle and reached the spot. Both Gajanan and Sudhakar were taken to the hospital at Karanja. Sudhakar was declared dead. Condition of Gajanan was critical. As such, he was shifted to Government Hospital, Akola. He went to Police Station and lodged a report below Exh.55. Printed F.I.R. was lodged below Exh.56.

13. This witness has been thoroughly cross-examined. A suggestion is given to him that since he was studying at Karanja, he could not be in the village. A suggestion was also given to him that since the incident had taken place in twilight, he could not have noticed the same. However, he has withstood the rigorous cross-examination and no damage has been done to his testimony insofar as the material aspect of assault on the deceased is concerned.

14. The evidence of this witness Rahul (PW-1) is duly corroborated by the F.I.R. wherein he has clearly implicated the present appellant. The F.I.R. is lodged immediately after the incident has taken place.

15. The evidence of Gajanan Banarse (PW-2), who is injured witness, is on the similar lines. This witness has also been thoroughly cross-examined. However,

nothing damaging insofar as actual incident of assault has come on record. Witness Gajanan Banarse (PW-2) has been examined by Dr. Nathuram Salunke (PW-9) and he found the following two injuries:

- 1) CLW over right temporal region, 8 x 6 x 4 cms. incise, bleeding was there, and
- 2) CLW over right side of neck, 3 x 2 x 1 cms.

In that view of the matter, we find that there is no reason to disbelieve the testimony of this witness.

16. In that view of the matter, we are of the considered view that though Rahul (PW-1) and Gajanan (PW-2) are interested witnesses, their evidence is such which can be said to be truthful, cogent and reliable and the one which inspires confidence in the mind of Court.

17. We are, therefore, of the considered view that the prosecution has proved beyond reasonable doubt that it is the present appellant who is the author of assault on the deceased which led to his death and on Gajanan (PW-2) which resulted in causing grievous injuries to him.

18. That leaves us with the question as to whether the conviction under Section 302 of the Indian Penal Code would be sustainable or is liable to be converted in the lesser crime.

19. From the evidence of prosecution witnesses, it also reveals that there was enmity between the deceased and his family on one hand and the family of the accused on the other hand. The evidence of prosecution witnesses itself would reveal that, when they were going towards Karanja for recording the F.I.R. with regard to the incident in the morning, they saw the appellant and they stopped there. It could further be seen that, from the evidence of prosecution witnesses itself it would reveal that there was a quarrel between deceased and Gajanan (PW-2) on one hand and the accused persons on the other hand. It is further to be revealed that Investigating Officer Pradip Shankarrao Bijwe (PW-8) has himself admitted in the cross-examination that :

"When I arrested accused Pravin, I found minor injuries on his right side of neck and hand. He was referred to the hospital for medical check up, but no medical certificate is produced alongwith the charge sheet. It was not learnt from complainant and Gajanan as to how Pravin had sustained injuries. It is not true that in fact Pravin had sustained severe injuries hence I did not produce his medical certificate along with the charge sheet."

20. It would thus clearly be seen that the incident is outcome of quarrel between the accused and his father on one hand and the deceased and his brother on the other hand. It is not the case of the prosecution that the accused with preparation had gone to commit murder of the deceased. It appears that there was a quarrel between the two parties and in the said quarrel, the appellant has assaulted the deceased. As discussed hereinabove, the Investigating Officer himself has admitted that the appellant sustained injuries. However, his Medical Certificate was not placed on record. We find that the real genesis of the incident has not been brought on record by prosecution. Though we have believed the evidence of Rahul (PW-1) and Gajanan (PW-2) for coming to the conclusion that it is the present appellant who has assaulted the deceased, we find that insofar as real genesis of incident is concerned, the said witnesses have not brought the same on record. As it is a settled principle that "falsus in uno falsus in omnibus" is not applicable in India. As such, we find that the possibility of quarrel taking place between the two parties and in the heat of passion, the accused assaulting the deceased cannot be ruled out. As already discussed hereinabove, there is no material placed on record that there was premeditation. From the nature of injuries sustained by deceased, it can be seen that there is only one injury. It, therefore, cannot be said that the appellant had taken undue advantage or acted in a cruel or unusual manner. It could further be seen that the weapon which has been used in the crime is 'sickle' which is commonly used by the agriculturists for their agricultural purposes. We are, therefore, of the considered view that the appellant is entitled to the benefit of exception 4 of Section 300 of the Indian Penal Code and the case would not fall within the ambit of Section 302 of the Indian Penal Code, but rather it would fall under part I of Section 304 of the Indian Penal Code. Hence, the Order.

ORDER

Criminal Appeal No.604 of 2013 is partly allowed.

The order of conviction of the appellant Pravin Ajit Dhurve for an offence punishable under Section 302 of the Indian Penal Code is altered to the one under Section 304 Part I of the Indian Penal Code.

The appellant is directed to suffer rigorous imprisonment for ten years for the said offence.

Rest of the order including conviction and sentence for the offence punishable under Section 307 of the Indian Penal Code and imposition of the fine, is maintained.

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