

A

STATE OF MAHARASHTRA

v.

RAJU BHASKAR POTPHODE

JULY 18, 2007

B

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Penal Code, 1860; s. 302:

C

Murder—Accused allegedly committed murder of the deceased in the presence of prosecution witnesses, close relatives of the deceased—FIR—Charge sheet—Trial Court relying on evidence of PW2 convicted the accused for committing the offence punishable u/s. 302 IPC and sentenced him to life imprisonment—Doubting the veracity of evidence of PW2, High Court acquitted him—On appeal, Held: Injured was not taken to Hospital by PW2

D

but by others—PW2 did not inform the police about the incident but left for his home—High Court rightly observed such conduct on the part of PW2 quite unnatural—Though Investigating Officer claiming to have recorded the statement of PW2 on the date of occurrence but PW2 himself stated that it was not recorded on that date—In the circumstances, High Court rightly found his presence at the time of occurrence highly doubtful and discarded

E

his testimony—Reasons given by the High Court while discarding the testimony of PW2 and consequently directing acquittal of the accused do not suffer from any infirmity to warrant interference—Evidence—Eye witnesses—Testimony of.

F

In a cricket competition, boys of a locality of Jogeshwari (E) in Mumbai participated. On a trivial issue there started a quarrel between two boys, one was the brother of the accused and the other was the deceased. The altercation was allegedly witnessed by another participant, the respondent, who intervened and started taking the side of his brother. Other members of the Cricket Club also intervened to pacify the situation and asked the respondent-accused to

G

leave to playground. It is further alleged that respondent left the field but returned back with a knife and stabbed the deceased on his abdomen. The deceased collapsed on the ground. The respondent threatened others for dire consequences and ran away. The deceased was taken to a Hospital, where he was declared brought dead. Later, the first informant, PW 1 went to the Police

H

Station and lodged an FIR. The dead body was sent for post-mortem examination. The investigating officer recorded statements of witnesses and on the next day, the accused was arrested from his residence. His clothes were attached under the seizure panchanama in the presence of two panchas, PW 8 and PW 9. The blood stains were found on the clothes of the accused. The accused was interrogated in presence of the panchas and weapon of crime was recovered at his instance. After completion of investigation, the accused was charge-sheeted for the offence punishable u/s. 302 IPC in the court of the Metropolitan Magistrate. Trial Court examined 12 witnesses. However, expect PW-2 others resiled from the statements made during investigation. PW-1 partially supported the prosecution version but claimed that he had not seen the occurrence. The trial Court placing reliance on the evidence of PW-2 recorded conviction of the accused for committing the offence punishable u/s. 302 IPC and sentenced him to life imprisonment. The High Court analysed the evidence of PW-2 in detail considering the fact that he was a close relative of the deceased. However, it found that evidence of PW-2 to be unreliable and not worthy of credence and accordingly directed the acquittal of the accused. Hence the present appeal.

Appellant-State contended that there is no reason for PW-2 to falsely implicate the accused; and that his presence was but natural and the aspects highlighted by the High Court about the credibility of his evidence are not founded on any rational basis.

Dismissing the appeal, the Court

HELD : 1.1. None of the relatives came near the spot. The injured was taken to the hospital by others. High Court found it unnatural that PW-2 did not bother to provide medical assistance. He also did not inform the police. He claimed to have left for his home. Whether he came back or not is another doubtful question because he himself admitted in cross-examination that he stayed at home. As rightly observed by the High Court it is quite unnatural conduct on the part of a close relative that he would leave the relative in a pool of blood not bothering to take him to the hospital and nor to return after having left the spot. Further his conduct in not informing the police is another relevant factor. [Para 7] [401-D, E]

1.2. The Trial Court placed reliance on the so-called discovery of alleged weapon of crime pursuant to the disclosure by the accused. The High Court has rightly noticed that the knife was found in an open space and was clearly

A visible. Investigating Officer admitted that anybody could have seen the knife even without much effort. [Para 8] [401-F]

B 1.3. The Investigating Officer claimed to have recorded the statement of PW2 on the date of occurrence. But the witness himself stated that it was not recorded on that date. The High Court found that his presence at the time of occurrence was highly doubtful and also his conduct does not appear to be natural and trustworthy, and, therefore, allowed the appeal. Several important aspects were noted by the High Court to discard the testimony of PW-2. The reasons do not suffer from any infirmity to warrant interference. The cumulative effect of the infirmities as noticed by the High Court goes to the root of the matter. In the circumstances, no reason is found to interfere with the conclusions arrived at by the High Court. [Para 9] [401-G; 402-A]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 339 of 2002.

D From the Judgment & Order dated 25.09.2000 of the High Court of Judicature At Bombay in Criminal Appeal No. 373 of 1996.

Ravindra Keshvarao Adsure for the Appellant.

U.U. Lalit, and Aparna Bhat (for Manik Karanjawala) for the Respondent.

E The Judgment of the Court was delivered by

F **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Bombay High Court directing acquittal of respondent-Raju Bhaskar Potphode (hereinafter referred to as the 'accused'). Accused was found guilty of the offence punishable under Sections 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo imprisonment for life by learned Additional Sessions Judge, Greater Bombay, in Sessions Case No. 355 of 1993. Accusations which led to the trial of the accused was that he had on 7.2.1993 at about 4.30 p.m. committed the murder of one Sunil Gore (hereinafter referred to as the 'deceased') by stabbing with a knife.

G 2. Prosecution case in a nutshell is as follow:

On 7th February, 1993, the Sai Krupa Cricket Club had organized Single

H

Wicket Cricket Competition on an open playground near Sai Mandir, Samarth Nagar, Majaswadi, Jogeshwari (E). In the said competition boys of Majaswadi locality 44 boys including the first informant-Ravindranath Damle, (PW 1), Uday Gore PW 2), Arun Raghunath Paranjape (PW 3), Santosh Lad (Pw 4), Girish Modak, had participated. At about 9.00 a.m. after drawing of the lots, as regards which player was to play with whom, the competition started. Vijay Potphode the brother of the respondent, and one Mr. Troy had allegedly taken part in the said competition. At about 4 p.m., out of 44 competitors, 6 participants emerged out as winners and as a further step Vijay and Troy were to play with each other. As both belong to one and the same club, they refused to play against each other and requested for a change of draw. Deceased-Sunil Gore who was responsible for the draw, however, was not ready and willing to change the draw. Deceased-Sunil Gore asked Vijay to withdraw from the competition and to take back subscription if he did not want to play against Troy. This led to exchange of hot words. The said altercation was allegedly being witnessed by the respondent who intervened and started taking the side of his brother Vijay. The members of the Sai Krupa Cricket Club intervened in the said altercation and pacified the situation and asked the respondent to leave the playground. It is further alleged that the respondent left and returned back with a knife and stabbed Sunil Gore on his abdomen. Due to this, Sunil Gore received stab injuries and collapsed on the ground. The respondent allegedly threatened all not to come near him and ran away with the knife. Sunil Gore was removed to Cooper Hospital, however, he was declared dead before admission. At about 5.25 p.m. on 7th February 1993 the first informant Ravindranath (PW 1) went to Jogeshwari Police Station and lodged the FIR which was reduced into writing vide Exhibit-6 by Uday Bhanu Sharma (PW 12). An offence was registered against the accused at CR No. 47 of 1993 at Jogeshwari Police Station on the basis of the FIR. Shri Sharma (PW 12) took up the investigation. He visited the hospital. He held the inquest on the dead body and a panchanama to that effect was drawn at Exhibit-11. The dead body was sent for post-mortem examination. He visited the spot and drew the panchanama of the scene of offence at Exhibit-10 in presence of two panchas. After recording the panchanama of the scene of offence. the investigating officer recorded statements of witnesses. On 8th February, 1993 accused Raju Bhaskar Potphode was arrested from his residence. He was brought to the police station. His clothes were attached under the seizure panchanama at Exhibit-34 in presence of the two panchas, viz. George Anthony D'Souze (PW 8) and Pradeep Shankar Hazale (PW 9). There were blood stains on the clothes of the accused. Clothes were packed, labelled and

A

B

C

D

E

F

G

H

A sealed under the signatures of panchas. The accused was interrogated in presence of the panchas. On 11th February 1993 the accused made a statement that he would show the knife. His statement was recorded at Exhibit-16. In pursuance of the said statement, the accused led the investigating officer and the panchas to the spot at Shivtakdi, Satbawadi. The accused pointed out the place where a search with the help of torch was carried out and a knife hidden in the grass was found. It was seized under a panchanama Exhibit 16-A. Knife (Article-6) was produced in the trial Court. In the meanwhile, the post-mortem examination of the deceased was conducted by Dr. Baban Shripati Shinde (PW 7). The clothes of the deceased were also attached. The post-mortem notes are at Exhibit-19. The blood stained clothes of the accused, the knife (Article No. 6), sample of blood of deceased and the clothes of the deceased were sent to the Chemical Analyser. After completion of investigation, the accused was charge-sheeted for the aforesaid offence in the court of the Metropolitan Magistrate, Mumbai.

3. Accused pleaded innocence and false implication. Therefore, trial was conducted. In order to establish the accusations 12 witnesses were examined. It was claimed that PWs 1 to 4, namely, Uday Gore, Arun Raghunath Paranjape, Santosh Lad and Girish Modak were the eye-witnesses of the occurrence. During trial, however, except PW-2 others resiled from the statements made during investigation. PW-1 Ravindranath Damle partially supported the prosecution version but claimed that he had not seen the occurrence. PWs 3 and 4 totally denied to have witnessed the incident. The Trial Court placing reliance on the evidence of PW-2 recorded conviction and imposed sentence as aforesaid.

4. Accused-respondent preferred an appeal before the High Court. It was submitted essentially that the evidence of PW-2 lacks credence and he is not a reliable witness. Stand of the State on the other hand was that PW-2 was a close relative of the deceased and there is no reason as to why he will falsely implicate the accused. The High Court analysed the evidence of PW-2 in great detail considering the fact that he was a relative of the deceased. However, it found that evidence of PW-2 to be unreliable and not worthy of credence and accordingly directed the acquittal.

5. Learned counsel for the appellant-State submitted that there is no reason for PW-2 to falsely implicate the accused. His presence was but natural and the aspects highlighted by the High Court about the credibility of the evidence of PW-2 are not founded on any rational basis. Learned

counsel for the respondent-accused on the other hand supported the order of the High Court. A

6. Several factors have been highlighted by the High Court to cast doubt on the veracity of PW-2's evidence. Firstly, it noted that his name was not indicated in the FIR. Furthermore, his conduct at the time of incident about what he did at that time corrodes the credibility of his version. He admitted that he did not inform the deceased that the accused was coming with a knife loudly proclaiming that he wanted to harm the deceased. Additionally, his conduct was quite unnatural because he did not take the deceased either to the hospital or police station and stated to have been gone his home directly. Neither did he take him to the hospital which was nearby nor inform the police at the police station which was also situated close-by. The statement was also discrepant as to whether he returned from home after he had left the deceased in an injured condition. At one stage he stated to have come after about 10 minutes, but in his cross-examination he admitted that he did not return. B C

7. Learned counsel for the appellant submitted that he may have gone to inform the relatives. Interestingly, none of the relatives came near the spot. The injured was taken to the hospital by other. High Court found it unnatural that the PW-2 did not bother to provide medical assistance. He also did not inform the police. He claimed to have left for his home. Whether he came back or not is another doubtful question because as noted above he himself admitted in cross-examination that he stayed at home. As rightly observed by the High Court it is quite unnatural conduct on the part of a close relative that he would leave the relative in a pool of blood not bothering to take him to the hospital and not to return after having left the spot. Further his conduct in not informing the police is another relevant factor. D E F

8. It will be noticed that the Trial Court placed reliance on the so-called discovery of alleged weapon pursuant to the disclosure by the accused. The High Court has rightly noticed that the knife was found in an open space and was clearly visible. Investigating Officer admitted that anybody could have seen the knife even without much effort. G

9. The Investigating Officer claimed to have recorded the statement of this witness on the date of occurrence. But the witness himself stated that it was not recorded on that date. The High Court found that his presence at the time of occurrence was highly doubtful. The High Court observed that H

- A** his conduct does not appear to be natural and trustworthy, and, therefore, allowed the appeal. Several important aspects were noted by the High Court to discard the testimony of PW-2. The reasons do not suffer from any infirmity to warrant interference. The cumulative effect of the infirmities as noticed by the High Court goes to the root of the matter. In the circumstances, we do not find any reason to interfere with the conclusions arrived at by the High Court. The appeal is without merit and is dismissed.
- B**

S.K.S.

Appeal dismissed.