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RAMKRUSHNA
v.
STATE OF MAHARASHTRA

APRIL 27, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Evidence Act, 1872:

C

s.27—Discovery of handle of knife on confession of accused—Held : Admissible under S.27—Knife found in the pitch of manure at village—Hence, it is not correct to contend that knife was recovered from open space—Penal Code, 1860—ss. 302/34.

D

s.8—Motive—When presence of accused with knife at the place of occurrence is established, motive takes back seat.

Testimony—Part of testimony of witness—Held: Can be relied on.

E

Prosecution case was that there was property dispute between the deceased and accused no. 1. Appellant-accused no.2 is brother-in-law of accused no. 1. They went to the house of deceased armed with a knife and a large stick known as 'Ubhari' and shut the door of the room where P.W. 8, the son of deceased was sleeping. The door of the room where wife of the deceased was sleeping was open. On hearing cry of her husband P.W. 3 came out. Appellant threatened her at the point of knife asking her not to shout. Both the accused assaulted the deceased with knife and ubhari. P.W.8 heard cries of his father. He broke open the door and saw the accused coming out of his father's room. Deceased succumbed injuries.

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During investigation, Appellant made a confession leading to recovery of the handle of the knife. Before trial Judge, P.W.3 turned hostile. Two other witnesses turned hostile. Trial Court however relying upon the statements of P.W.8, and to some extent, the deposition of P.W.3, held the appellant guilty for offence under ss.302/34 I.P.C. High Court upheld conviction. Hence the present appeal.

H

Dismissing the appeal, the Court

HELD: 1. The First Information Report was lodged at the earliest possible time. P.W.1 was approached by the first informant P.W. 8 soon after the incident. He categorically stated that the appellant and the accused no.1 were named as the assailants of deceased by P.W. 8. Disclosure of the names of the assailants of the deceased by P.W. 8 at the earliest possible opportunity, being not in dispute, the court below did not commit any error whatsoever in believing the prosecution case. [Para 8 and 9] [822-G-H; 823-A]

2. The evidence of P.W.8 fully supported the prosecution case. He was the first person to arrive at the place of occurrence on hearing the cries of his further. He had to break open the door. He found the accused coming out of the room. He had asked them to wait but they ran away. The fact that his doors were bolted from outside to prevent any male member from assaulting the accused and his arriving at the scene of occurrence immediately after he assault took place is beyond any shadow of doubt. He found the deceased with bleeding injuries at several places on his person. He also found the butt of the knife embedded in the stomach of the deceased. His step mother P.W. 3 categorically stated that it was the accused who had assaulted the deceased. She might have turned hostile but she had seen two persons in the room. Accused No.1 was one of them. She in her examination-in-chief although stated that she could not identify the other person, but in her cross-examination by the prosecution, she categorically stated that a person other than accused no.1 threatened her on the point of knife preventing her from shouting. P.W. 3 identified the appellant in the court. She categorically stated that the accused before the Court was the same person who had been preventing her from shouting at the point of knife. [Para 12] [823-C, D, E, F]

3.1. From the post-mortem report it appears that the deceased had suffered as many as seven ante-mortem injuries. In the opinion of surgeon, the probable cause of death was shock and hemorrhage because of multiple external injuries and injuries to internal organs like heart and intestine. P.W. 6 proved that the appellant had hired a cycle from him. He also identified him the court as the person who had hired the cycle.

[Para 14 and 15] [823-G, H; 824-A-B]

3.2. The Chemical Analyst's Report (Ext. 38) establishes that human blood was found on the knife and also on the butt of the knife having been recovered at the instance of the appellant, is also of some significance. Discovery of the said fact is admissible under s.27 of the Indian Evidence Act. It is also not correct to contend that the butt of the knife was recovered from an open place. According to P.W. 4, the knife was found in the pitch of manure

A at Village of which the appellant was the resident. He categorically stated that the butt of the knife could not have been seen by a person passing through the road. Clothes of the appellant were also recovered at his instance.

[Paras 16 and 17] [824-C, D]

B 4.1. The High Court might not have dealt with the question of motive elaborately but when the presence of the appellant with accused no.1 has been established, motive takes a back seat. Appellant must have come to the place of occurrence. He came with a knife. The knife injuries were found. Even if the prosecution has not been able to establish as to the exact role played by each of the accused, the fact that both the accused had common intention to commit the crime stood established. The Trial Judge cannot be said to have committed any error in relying upon the testimony of P.W. 3 in part. It is permissible in law. [Para 18] [824-E, F]

D *Sema Bhai v. State of Gujarat*, AIR [1975] SC 1453; *State of U.P. v. Ramesh Prasad Misra and Anr.*, [1996] 10 SCC 360; *Gurpreet Singh v. State of Haryana*, [2002] 8 SCC 18 and *Gagan Kanojia & Anr. State of Punjab*, (2006) 12 Scale 479, relied on.

E 4.2. It is well-settled that the courts are entitled to rely upon a part of the testimony of a witness who has been permitted to be cross-examined by the prosecution. [Para 19] [824-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1157 of 2006.

F From the Final Judgment and Order dated 16.06.2006. of the High Court of Bombay, Bench at Nagpur in Crl. Appeal No. 31 of 1991.

Dr. Rajiv Masudkar and Satyajit Desai (for Venkateshwara Rao Anumolu) for the Appellant.

Ravindra Keshavrao Adsure for the Respondent.

G The Judgment of the Court was delivered by

H S.B. SINHA, J. 1. Appellant who was accused No. 2 before the trial judge is before us, aggrieved by and dissatisfied with the judgment dated 16.6.2006 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 31 of 1991 whereby and whereunder appeal

preferred by him from a judgment dated 22.1.1991 passed by the Additional Sessions Judge, Chandrapur convicting him for commission of an offence under Section 302/34 of the Indian Penal Code was dismissed. The parties are closely related. The deceased was one Kannu Shende. Accused No. 1 (since deceased) was Baliram. Appellant being the accused No. 2 before the Ld. Trial Judge was the brother in law of said Baliram. There were two eye witnesses to the occurrence in question. P.W. 3 Shobha was his wife and P.W. 8 Dnyaneshwar was his son. At this stage, we may notice that Dnyaneshwar later on killed Baliram. He was sentenced to undergo rigorous imprisonment for life. When the trial in this matter was going on, he was undergoing his sentence.

2. Prosecution case is that there had been a dispute by and between the deceased and the said Baliram with regard to the partition of the joint family properties. Deceased Baliram also had asked for the motor cycle belonging to the deceased which was denied. In the midnight at about 2 a.m. on 21.9.1986 both the accused came to the house of the deceased. Accused No. 1 was armed with a large stick known as "Ubhari". Appellant was armed with a knife. They had shut the door of the room where Dnyaneshwar was sleeping. The door between the room of the deceased and his wife Shobha was, however, open. On hearing a cry of her husband, Shobha came out. Appellant threatened her at the point of a knife asking her not to shout. Both the accused then assaulted deceased Kannu Shende with Ubhari (stick) and knife.

3. P.W. 8 heard the cries of his father. He tried to come out but found the doors closed. He could not break open the door. He came out of the room and went to that of his father and saw both the accused coming out of the room. They ran away through the courtyard. He found his father in an injured condition. He also saw bleeding injuries on his person. He shouted for help whereupon 20-25 persons from the locality arrived. Shobha, P.W. 3 disclosed to him that the accused had assaulted the deceased. P.W. 8 went to the Police Patil, Vishwanath, P.W. 1 immediately. He wrote down a Report. P.W. 1 came to the house and thereafter went with P.W. 8 to Sindewahi Police Station where First Information Report was lodged. The Police Station is situated at about 9 kilometers from the Village. The report was recorded at about 6.45 a.m.

4. During investigation, Appellant herein made a confession leading to recovery of the handle of the knife which is said to have been used for causing the murder of the deceased.

A 5. Before the learned trial judge, *inter alia* the wife of the deceased was examined. She turned hostile. Two other witnesses P.W. 5, Nilesh and P.W. 7 Uttam who had made statements before the Police that they alongwith Baliram and Ramkrushna came to the village on cycle were also declared hostile. The learned trial judge, however, relied upon the statements of Dnyaneshwar (P.W. 8) and to some extent the deposition of P.W. 3, Shobha.

B The appellant was found to be guilty of commission of the said offence. Appeal preferred by the appellant thereagainst as noticed hereinbefore has been dismissed.

C 6. Dr. Rajiv Masudkar, learned counsel appearing on behalf of the appellant in support of this appeal *inter alia* would submit:-

- (i) As the sole eye-witness P.W. 3 had turned hostile, a judgment of conviction cannot be sustained.
- (ii) The High Court committed a serious irregularity in not scrutinizing deeply the statements of P.W. 8 as he was not an eye-witness and furthermore contradicted himself in material particulars.
- (iii) The butt of the knife having been recovered from an open place, no reliance could have been placed on the recovery thereof.
- (iv) The High Court did not deal with the question of motive for commission of the crime elaborately.

E 7. Mr. Ravindra Keshavrao Adsure, learned counsel appearing on behalf of the respondent on the other hand, in support of the judgment would submit;

- (i) The courts below did not commit any mistake in relying upon the evidence of P.W. 3 which clearly supports the prosecution case.
- (ii) P.W. 4 having proved the recovery of the handle of the knife, the involvement of the appellant stands proved.
- (iii) The Serologist Report clearly establishes that samples of human blood found in the butt of the knife and that of the deceased were of the same group.

H 8. Indisputably, the First Information Report was lodged at the earliest possible time. The Police Patil, P.W. 1 was approached by the first informant P.W. 8 soon after the incident. He categorically stated that the appellant and the deceased Baliram were named as the assailants of his deceased by P.W. 8.

9. Disclosure of the names of the assailants of the deceased by P.W. 8 at the earliest possible opportunity, being not in dispute, the courts below in our opinion did not commit any error whatsoever in believing the prosecution case. A

10. P.W. 8 was the son of the deceased, he accepted that he had killed Baliram and had been undergoing the sentence of life imprisonment for commission of the said offence. B

11. The description of the house has not been disputed. Evidence of the Investigating Officer Ganpatrao Darwadkar, P.W. 9 clearly shows that one cane containing kerosene oil and other articles were found near the place of occurrence. C

12. Dyaneshwar's evidence fully supported the prosecution case. He was the first person to arrive at the place of occurrence on hearing the cries of his father. He had to break open the door. He found the accused coming out of the room. He had asked them to wait but they ran away. The fact that his doors were bolted from outside to prevent any male member from assaulting the accused and his arriving at the scene of occurrence immediately after the assault took place is beyond any shadow of doubt. He found the deceased with bleeding injuries at several places on his person. He also found the butt of the knife embedded in the stomach of the deceased. His step mother P.W. 3 categorically stated that it was the accused who had assaulted the deceased. She might have turned hostile but she had seen two persons in the room. Accused No. 1 was one of them. She in her examination-in-chief although stated that she could not identify the other person, but in her cross examination by the prosecution, she categorically stated that a person other than Baliram threatened her on the point of knife preventing her from shouting. Baliram uttered the words, according to her "Ramya Kai Pahates". There are materials on records to show that Appellant was having a knife. D E F

13. P.W. 3 identified the appellant in the court. She categorically stated that the accused before the Court was the same person who had been preventing her from shouting at the point of knife. G

14. From the post-mortem report it appears that the deceased had suffered as many as seven ante-mortem injuries. On examination of the dead body of the deceased the Autopsy Surgeon in his report observed:

"This wound along with the same hand weapon which was a knife, H

A which was 5 to 6 inches in length blackish colour made up of iron with into handle, one side of which was sharp and Narrowing toward the to its (sic).”

B 15. In his opinion, the probable cause of death was shock and hemorrhage because of multiple external injuries and injuries to internal organs like heart and intestine. P.W. 6, Keshav Laman Gamdar proved that the appellant had hired a cycle from him. He also identified him in the court as the person who had hired the cycle.

C 16. The Chemical Analyst’s Report (Ext. 38) establishes that human blood was found on the knife and also on the butt of the knife having been recovered at the instance of the appellant, is also of some significance. Discovery of the said fact is admissible under Section 27 of the Indian Evidence Act.

D 17. It is also not correct to contend that the butt of the knife was recovered from an open place. According to P.W. 4, the knife was found in the pitch of manure at Village Chikhalgaon of which the appellant was the resident. He categorically stated that the butt of the knife could not have been seen by a person passing through the road. Clothes of the appellant were also recovered at his instance.

E 18. The High Court might not have dealt with the question of motive elaborately but when the presence of the appellant with Balram has been established, motive takes a back seat. Appellant must have come to the place of occurrence. He came with a knife. The knife injuries were found. Even if the prosecution has not been able to establish as to the exact role played by each of the accused, the fact that both the accused had common intention to commit the crime stood established. Submissions of the learned counsel for the State in this behalf are of some significance. The learned Trial Judge as also the Trial Court cannot be said to have committed any error in relying upon the testimony of the P.W. 3 in part. It is in our opinion permissible in law. [See *Soma Bhai v. State of Gujarat*, AIR (1975) SC 1453]

G 19. It is well-settled that the courts are entitled to rely upon a part of the testimony of a witness who has been permitted to be cross-examined by the prosecution.

H 20. In *State of U.P. v. Ramesh Prasad Misra and Anr.*, [1996] 10 SCC

360, this Court opined:

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“7....It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted...”

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[See also *Gurpreet Singh v. State of Haryana*, [2002] 8 SCC 18 and *Gagan Kanojia & Anr. v. State of Punjab*, (2006) 12 SCALE 479]

21. For the reasons aforementioned, there is no merit in this appeal, which is dismissed accordingly.

C

D.G.

Appeal dismissed.