

SANTOSH @ SANTUKRAO
v.
STATE OF MAHARASHTRA

A

MAY 9, 2007

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

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Penal Code, 1860; Ss. 302 and 307:

Assault and murder—Accused attacking deceased with a sharp edged weapon causing his death and injuring PW 1—Trial Court found him guilty of offences u/ss. 302 and 307 IPC and sentencing him to undergo imprisonment for life—Affirmed by High Court—On appeal, Held: Purported discrepancy in respect of time of actual lodging of FIR is not such which would prove to be fatal to entire prosecution case particularly when ocular evidence is corroborated by the medical evidence—When prosecution case is proved by direct evidence, motive takes a back seat—However, in the facts and circumstances of the case, it cannot be said that the motive has not been proved—Weapons of assault and other articles recovered at the instance of the accused—Blood on the shirt recovered matched with the blood group of PW 1, the victim—Both the Courts below accepted the testimony of PW 1 as a natural witness—Under the facts and circumstances, there exists no reason to differ with the findings of the Courts below.

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E

Doctrines:

Doctrine of 'falsus in Uno, falsus in Omnibus'—Applicability of.

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According to the prosecution, on the fateful day, when PW 1 and the deceased were going to attend a weekly bazaar, accused-appellant came from the opposite direction and allegedly assaulted the deceased. While PW 1 made an attempt to prevent him from attacking, he was also attacked by the accused with a sharp edged weapon, as a result whereof he suffered an injury. The deceased was chased and assaulted again by the accused, the victim died on the spot. Trial Court found that accused guilty of committing offences u/s. 302 and 307 IPC and sentenced him accordingly. Aggrieved, the accused filed an appeal with was dismissed by the High Court. Hence the present appeal.

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A Accused-appellant contended that credibility of PW 1 as an eye-witness is in question as he had made an attempt to implicate on 'R' falsely; that the alleged motive for commission of the offence, namely, giving of a slap to the accused by the deceased on an earlier occasion having not been proved, the impugned judgment cannot be sustained; that there exists a discrepancy in regard to the time factor with regard to the holding of the First Information Report, as although according to PW 1, it was lodged at 9.00 p.m., the Investigating Officer, PW 7 stated that he had recorded the same at 11.45 p.m., and that seizure of the articles purported to be at the instance of the appellant had not been proved.

C Dismissing the appeal, the Court

D HELD: 1.1. There exists a discrepancy in regard to the time of lodging of the First Information Report. It is, however, not in dispute that PW 1 was admitted to hospital. He was being treated when his statement was recorded by PW 7, the Investigating Officer. According to the doctor treating him, the statement was recorded at about 11.00 p.m. The Investigating Officer, however, stated that FIR was lodged at about 11.45 p.m. The possibility of the injured's losing track of time by reason of sufferance of grave injuries cannot be ruled out. Similarly the time of the recording of the statement might have been made at 11.00 p.m., but the First Information Report might have been lodged at about 11.45 p.m. which would not mean that the recording of the statement of PW 1 had also started at that point of time. Purported discrepancy in respect of the time of actual lodging of FIR is not such which would prove to be fatal to the entire prosecution case particularly when the ocular evidence is corroborated by the medical evidence.

[Para 9 and 10] [203-D, E, F, G]

F 1.2. It is now well known that in India, the doctrine *falsus in uno, falsus in omnibus* has no application. So far as non-establishment of the motive on the part of the accused is concerned, suffice it to say that when the prosecution case is proved by direct evidence, motive takes a back seat. It is, however, not correct to contend that motive has not been proved.

G [Para 10] [203-G, H; 204-A]

H 1.3. Before the Courts below, a contention had been raised in regard to the identity of the accused. The Trial Court, in view of the fact that both parties were resident of the same village, rightly negated the said contention. Such a contention has not been even seriously raised before this Court. Identity of the appellant, therefore, is not in dispute. Both the Courts below have accepted

the testimony of PW 1 as a natural witnesses. No reason is found to take a different view. [Para 11] [204-A, B] A

2. The details of the incident was also initimated immediately to PW 3 by PW 1. There is no reason as to why PW 3 would sell tell a lie. Besides, the weapon of assault and other articles were recovered at the instance of accused. It contained human blood. The shrift of the accused was also recovered. It was also stained with blood. Group of the blood found on the said weapon as also of the accused being Group "B" matched with the blood group of PW 1. Thus, there is no reason to differ with the findings of the Courts below. [Para 13] [204-C, D, E] B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 704 of 2007. C

From the Final Judgment and Order dated 30.06.2004 of the High Court of Judicature of Bombay Bench at Aurangabad in Criminal Appeal No. 101 of 2001. D

K. Rajeev for the Appellant.

Sushil Karanjkar and Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by E

S.B. SINHA, J. 1. Leave granted.

2. Appellant is before us aggrieved by and dissatisfied with the judgment of the High Court of Judicature of Bombay, Aurangabad Bench at Aurangabad dated 30.6.2004 passed in Criminal Appeal No. 101 of 2001 whereby and whereunder the appeal preferred by the appellant herein from a judgment of conviction and sentence dated 3.2.2001 passed by the Second Additional Sessions Judge, Jalana finding the appellant guilty of commission of an offence under Section 302 and 307 of the Indian Penal Code and sentencing him to undergo imprisonment for life and to pay fine of Rs. 5,000/- and to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/- respectively, was affirmed. F G

3. The prosecution case is as under :-

A First Information Report lodged by Sandhu (P.W. 1) was recorded at about 11 p.m. on 7.8.1999 at a hospital in relation to an incident which had H

A taken place at a place known as Bhakardan. P.W. 1 and the deceased Janardhan Dalvi allegedly were going to attend a weekly bazaar which is held every Saturday. They were going on foot. Appellant Santosh crossed them from the opposite direction. He, however, although went ahead, but all of a sudden came back and from behind assaulted the deceased first. While P.W. 1 made an attempt to prevent him from doing so, he also attacked him with a sharp edged weapon as a result whereof he suffered an injury on his head. Janardhan tried to run away, but he was chased and assaulted by a sharp edged weapon. Appellant later on ran away. Janardhan died on the spot.

C 4. Before the learned Trial Judge, apart from P.W. 1 some other witnesses were also examined. Appellant, as noticed hereinbefore, was found guilty by the learned Trial Judge. His appeal has been dismissed by the High Court.

D 5. Mr. K. Rajeev, learned counsel appearing on behalf of the appellant in support of this appeal would submit that credibility of P.W. 1 as an eye witness is in question as he had made an attempt to implicate Radhakishan falsely. It was urged that the alleged motive for commission of the offence namely giving of a slap to the accused by the deceased on an earlier occasion having not been proved, the impugned judgment cannot be sustained. It was contended that there exists a discrepancy in regard to the time factor with regard to the lodging of the First Information Report, as although according to P.W. 1, it was lodged at 9 p.m. The Investigating Officer, P.W. 7 stated that he had recorded the same at 11.45 p.m. It was furthermore submitted that seizure of the articles purported to be at the instance of the appellant herein has not been proved.

F 6. Mr. Sushil Karanjkar, learned counsel appearing on behalf of the State, however, supported the impugned judgment.

G 7. Homicidal nature of death of the deceased and sufferance of injuries by P.W. 1 is not in dispute. Deceased had suffered two stab injuries, one on the middle of his back and other on his chest. As indicated hereinbefore, in the First Information Report itself, it has been alleged that the deceased was assaulted with a sharp edged weapon from the back first and later on he was chased and killed. Sufferance of a large number of injuries by P.W. 1 Sandhu is also not in dispute as would be evident from the medical report.

8. He suffered the following injuries:-

H (i) Incised injury on chest Rt. Side about 4 cm x 1/2cm x Muscle

- depth sharp regular margin. Elliptical in shape Red base. A
- (ii) Incised injury on Rt. Parital region about 4cm x ½ cm x muscle depth Red base, Regular sharp margine Eliptical shape. B
- (iii) Incised injury on back over Thorasic vertebra about 2cm x ½ cm on Eliptical shape, Regular sharp margin Red base. B
- (iv) Incised injury on Ltd. Shoulder Eliptical shape ½ cm Red base Regular sharp margin.
- (v) Incised injury on Rt. Side of neck about ½ cm x ½ cm, Red base Regular Sharp margin. C
- (vi) Incised injury at the base of Rt. Thumb about ½ cm x ½cm Red base Eliptical shape Regular sharp margin.
- (vii) Contusion on Lt. Knee anterior aspect about 2cm x 1cm Red base.” D

9. It is trite that there exists a discrepancy in regard to the time of lodging of the First Information Report. It is, however, not in dispute that P.W. 1 was admitted to hospital. He was being treated when his statement was recorded by P.W. 7. According to the doctor treating him, the statement was recorded at about 11 p.m. The Investigating Officer P.W. 7, however, stated that it was lodged at about 11.45 p.m. The possibility of the injured's losing track of time by reason of sufferance of grave injuries cannot be ruled out. Similarly the time of the recording of the statement might have been made at 11 p.m., but the First Information Report might have been lodged at about 11.45 p.m., which would not mean that the recording of the statement of P.W. 1 had also started at that point of time. E

10. The number of injuries received by Sandhu being not in dispute and appellant herein having been named in the First Information Report, in our opinion, purported discrepancy in respect of the time of actual lodging of F.I.R. is not such which would prove to be fatal to the entire prosecution case particularly when the ocular evidence is corroborated by the medical evidence. P.W. 1 might have taken the name of Radhakishan also, but he had even not been prosecuted. It is now well known that in India, the doctrine of falsus in uno, falsus in omnibus has no application. So far as non-establishment of the motive on the part of the accused is concerned, suffice it to say that when the prosecution case is proved by direct evidence, motive takes a back seat. It is, however, not correct to contend that motive has not H

A been proved.

11. Before the courts below, a contention had been raised in regard to the identity of the accused. The learned Trial Judge in view of the fact that both the parties were resident of the same village rightly negated the said contention. Such a contention has not been even seriously raised before us.

B Identity of the appellant, therefore, is not in dispute. Both the courts below have accepted the testimony of P.W. 1 as a natural witness. We also do not find any reason to take a different view.

C 12. We may notice that P.W. 1 went to Fakirba Mhatarji, P.W. 3 to his village at the first instance. He found him in an injured condition having suffered injuries on his head, forehead and chest. Thereafter, the other villagers gathered. This fact is supported by P.W. 4, Sanjay and P.W. 12, Pralhad Bhikaji Dalvi.

D 13. We may furthermore notice that the details of the incident was also intimated immediately to P.W. 3, Fakirba Mhatarji, by P.W. 1. There is no reason as to why P.W. 3 would tell a lie. So far as the recovery of some articles at the instance of the accused is concerned, we may notice that the weapon of assault and other articles were recovered at his instance. It contained human blood. The shirt of the appellant was also recovered. It was also stained with blood. Group of the blood found on the said weapon as also of E the appellant being Group "B" matched with the blood group of P.W. 1 Sandhu. We, therefore, see no reason to differ with the findings of the courts below.

F 14. For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly.

S.K.S.

Appeal dismissed.