(2004) 06 BOM CK 0126

Bombay High Court

Case No: Criminal Appeal No. 181 of 1992

The State of Maharashtra		APPELLANT
	Vs	
Nitin Sopan Gothe, Pritam Tukaram Barathe, Sunil Shrikant Dethe and Shekhar Gangaram Barathe		RESPONDENT

Date of Decision: June 11, 2004

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 323, 324, 34

Citation: (2004) 06 BOM CK 0126

Hon'ble Judges: R.S. Mohite, J; R.M.S. Khandeparkar, J

Bench: Division Bench

Advocate: P.H. Kantharia, app, for the Appellant; S.G. Surana, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Mohite, J.
This is an appeal filed by the State against the Judgment and order passed by the 7th Additional Sessions Judge, Pune on 26.12.1991 in Sessions Case No. 556 of 1990 acquitting the accused of the charges u/s 307, 324, 323 read with 34 of the Indian Penal Code.

2. The brief prosecution case was as under:

(a) That, there was a love affair between injured Dattatraya Sopan and a girl by name Maya. Accused No. 1 Nitin Sopan was also fond of the said girl and he disliked the said love affair between injured and Maya. The said incident said to have taken place because of this reason.

(b) The incident in question said to have taken place on 7.9.1990 at 3.15.p.m. At that time, eyewitness P.W.No.1-Machindra Makar alongwith injured Dattatraya were sitting on the steps of the house of one Chavan. Accused Nos. 1 to 4 were said to have came there in a rickshaw armed with knife, dagger, Chopper and wire. They got down from the rickshaw and called injured Dattatraya to the place where they were standing. Dattatraya did not respond and therefore, the accused came to the spot. Accused No.4-Shekhar gave knife blow on the stomach of Dattatraya, Accused No.3-Sunil gave a knife blow on the back of Dattatraya, Accused No.1-Nitin beat Dattatraya by means of a wire and accused No. 2 Pritam beat the Dattatraya by a chain. After the beating was over, accused sped away.

(c) The Medical Certificate of the injured which is placed on record at Exh.27 indicates that the injured Dattatraya suffered two wounds as under:

(i) Incised wound 3"x2" just above the right costal margin. Gas with watery contents coming out of the wound.

(ii) Incised would 5"x2" over the left scapular region, bone deep.

The Medical Officer opined in the certificate as well as in the substantial evidence that the wounds were caused by a sharp cutting object.

(d) P.W.No.7-Fransis John Adhav was incharge of Audh Police Chowky on 7.9.1990. At about 6.00p.m. he was told by Head constable Phadtare that the injured Dattatraya had been admitted in Makan Hospital at Sangvi as he was beaten by some persons. P.S.I. Fransis then went there and found that Dattatraya was not in a position to speak. He made some enquiries and was told by P.W.No.1-Machindra that Dattatraya was beaten by accused by means of wire and that the wire blows had been given by accused No. 1 Nitin. This statement of P.W.No.1 was recorded by P.W.No.7 Fransis. On the basis of the same an offence was registered by the police. In the course of the investigation. Investigation Officer had recorded other statements, arrested the accused and seized auto rickshaw which had been used by the accused for arriving and to flee from the scene after the incident. Accused Nos. 3 and 4 produced a knife and sattur respectively. On 10.9.1990 a chain was also recovered from the accused No. 2 Pritam and the clothes of the injured were seized. On10.11.1990 a dying declaration of Dattatraya was recorded by the Magistrate. After recording some other statements and sending articles to the Chemical Analyser, charge-sheet was filed after report was received from the Chemical Analyser.

3. At the trial, the prosecution examined in all seven witnesses to prove its case against the accused. The defence of the accused was one of total denial. The Trial Court after considering the evidence on record was pleased to acquit the accused for reasons stated in the Judgment. We have perused the evidence ourselves and we find that there are material infirmities in the evidence which may be summarized as under:

a) As far as eye witness P.W.No.1 Machindra is concerned, in his F.I.R. he did not name the accused Nos. 2 to 4 but made an improvement during the evidence by specifically naming them.

b) That, according to P.W.No.1-Machindra he was not knowing the accused Nos. 2, 3 and 4. The prosecution has not held any identification parade and therefore, identification for the first time of such unknown persons, in court, becomes doubtful.

c) That, P.W.No.1-Machindra has talked about the accused No. 1 Nitin beating Dattatraya by a wire and accused No.2-Pritam, whom he has not named, beating Dattatraya with a chain. However, no such injuries were found on the person of the injured Dattatraya and the doctor had opined that the injuries found on the injured were only possible by sharp cutting instrument.

d) That, in so far as injured witness P.W.No.2-Dattatraya is concerned, the version given by him is slightly different, in so far as he states that accused No. 1 beat him by a chain and accused No.2-Pritam beat him by a wire. The weapons said to have been carried by accused Nos. 1 and 2 are different from those deposed by P.W.No.1 Machindra. In any case as discussed above, there is no injury found either by chain or wire.

e) Though, it is correct that P.W.No.2 Dattatraya has talked about giving of blow by accused No. 1 Sunil by a dagger, yet, in his cross examination P.W.No.1 Machindra had admitted that it was true to suggest that he did not know whether accused Sumachen blow to him on his back either by knife, by means of sattur or by means of dagger. He has also admitted that all the blows on his to Machindra, arms and back were given to him from the backside. He further admitted that he came to know the names of Sunil and Shekhar on 11.9.1990 i.e. four days after the incident but could not say as to who had disclosed their names.

f) Though the knife and dagger were sent to Chemical Analyser, blood group could not be determined.

4. For these and other reasons, the Trial Court had acquitted the accused. In our view, it cannot be said that the view taken is so perverse that it requires interference in an appeal against the acquittal. Appeal therefore, stands dismissed.

5. All concerned to act on the copy of this order duly authenticated by the C.S./Sheristedar of this court.