

SUPREME COURT OF INDIA

Sunil Dattatraya Vaskar

Vs.

State of Maharashtra

Crl.A.Nos.896-897 of 2005

(Altamas Kabir and Harjit Singh Bedi JJ.)

17.09.2008

JUDGMENT

Altamas Kabir, J.

1. These appeals have been filed against the judgment and order dated 4.5.2005 passed by the Bombay High Court in Criminal Appeal No.921 of 1988, which was heard along with Criminal Revision Application No.316 of 1988, reversing the judgment and order of acquittal passed by the Sessions Judge, Raigad, Alibag, in Sessions Case No. 16 of 1987, under Sections 302 and 307/34 IPC and Section 25(1) (a) of the Arms Act, convicting and sentencing the appellants to life imprisonment.

2. Criminal Appeal No.921 of 1988 was filed by the State of Maharashtra against the appellants herein and two others, against the judgment of the Sessions Judge, Raigad, Alibag, acquitting all the four accused persons of the charges framed against them as indicated hereinabove.

3. The Criminal Revision Application NO.316 of 1988 was filed by the original complainant against the same judgment of acquittal and both were taken up by the Bombay High Court together and disposed of by a common judgment. Two of the accused persons, namely, Dattu alias Dattatraya Kana Vaskar and Ganesh Govind Patil, accused Nos. 1 and 4, respectively, died during the pendency of the appeal before the High Court and an order of abatement was recorded against them and the appeal was continued against Sunil Dattatraya Vaskar and Rohidas Dattatraya Vaskar, the accused Nos.2 and 3 who are the appellants before this Court.

4. According to the prosecution case, on 26.10.1986 the deceased Janu was standing in the courtyard of his house which is situated just opposite the house of the accused persons. The accused No.1 was the father of accused Nos. 2 and 3, the appellants herein, while the accused No.4 was a stranger to the family of the accused Nos. 1 to 3. According to the prosecution all the accused persons were standing in the gallery of their house opposite to the courtyard of the house of the deceased and at about

4 p.m. they started shooting from their fire-arms at the deceased. During the shooting, PW 3 Atmaram Patil, son of the deceased, was standing near the foot- step of his house and called his father when as a result of the firing Janu sustained pellet injuries and fell. Atmaram ran to help him, but he also suffered pellet injuries in the firing by all the accused persons. The other witnesses who were present in the courtyard at that time also suffered pellet injuries. PW 2 Keshav, the complainant in this case, was also present in the courtyard when the incident occurred and he was also injured. He was lifted and taken to his house. The complainant thereafter proceeded to Panvel Police Station from Pargaon village and lodged the complaint in the Police Station and being himself injured he was sent to the hospital for treatment. Pursuant to the complaint made by PW 2, the case was registered as CR No.575 of 1986 under Section 302, 307/34 IPC and Section 25(1)(a) of the Arms Act.

5. As indicated hereinbefore, charges were framed against all the accused persons that in furtherance of their common intention they had committed the murder of Janu Ganu Patil by firing gun shots at him when he was standing in the courtyard of his house and several other persons were also injured.

6. After considering the evidence led on behalf of the prosecution the Sessions Judge by his judgment dated 11.7.1988 acquitted all the accused persons upon holding that the prosecution had failed to establish the charges against the accused persons against all reasonable doubt and that since the probability of the defence version could not be totally ruled out, they were required to be given the benefit of doubt in the case.

7. The State of Maharashtra and the complainant filed the appeal and revision as mentioned hereinbefore and both were taken up for hearing by the High Court together and disposed of by a common judgment.

8. Upon re-examining the evidence the High Court held that the trial court had erroneously placed a good deal of emphasis on a statement made by the Medical Officer during cross examination that injury No.1 sustained by the deceased could be caused by ground level firing towards him, while in his examination- in-chief he had stated that such injuries were possible if the gunshots were fired at an angle of 45 degrees which would indicate that the shots had been fired from a higher level than if the deceased was standing on ground level which fitted in with the story of the prosecution that the guns had been fired from the gallery of the house of the accused Nos.1 to 3. The High Court disbelieved the defence suggestion that the deceased must have been lying down in the cattle-shed since a good deal of blood was found on the floor of the cattle-shed, which suggested that the deceased received injuries while he was in a sleeping position in the cattle-shed and not standing in the courtyard. According to the High Court the blood in the cattle-shed was on account of the fact that after he had sustained injuries, his family members carried the deceased Janu to the cattle-shed in a bleeding condition as a result of which there was a good deal of blood found in the cattle- shed.

9. The High Court also observed that the trial Judge had wrongly discarded the evidence of the eye-witnesses on the sole ground that they being related to the deceased were interested witnesses, while being family members, it was but natural that they should be on the spot and hence natural witnesses to the incident. In the aforesaid circumstances, the High Court allowed the appeal and the Revision filed by the State of Maharashtra and the complainant and reversed the judgment of acquittal passed by the trial Judge and convicted the appellants herein of the charges framed against them and sentenced them to life imprisonment.

10. It is the said judgment which is under challenge in these two appeals filed under the provisions of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

11. Mr. Sushil Kumar, learned Senior Advocate appearing for the appellants, submitted that the prosecution witnesses Nos.2,3,4 and 6 were closely related to the deceased. Mr. Kumar urged that their evidence should have been considered with a degree of caution by the High Court while reversing the judgment of acquittal into one of conviction under Sections 302, 307 read with Section 34 IPC and Section 25(1)(a) of the Arms Act, and sentencing them to life imprisonment and payment of fine of Rs.5,000/- each, in default to suffer R.I. for further period of two months, and their further conviction under Section 307 read with Section 34 IPC and sentencing them to suffer R.I. for 7 years and to pay a fine of Rs.5,000/- each, in default to undergo sentence of R.I. for one month.

12. It was also submitted that a supplementary complaint had been filed by PW 2, Kishor Janu Patil, the son of the deceased, by which the motive for the alleged murder was sought to be modified. It was submitted that while in the complaint the motive for the shooting was shown to be an incident involving one Walia Mahadya, who was a servant of the accused No.1 Dattu Kane Vaskar, and is alleged to have entered the house of one Pandhari and had tried to outrage the modesty of his wife, in the supplementary complaint it was attempted to be established that in actual fact the said Walia Mahadya had tried to outrage the modesty of a girl, Kamali (PW 12), who had gone to sleep in the said house and that the said matter had been taken up at a meeting of the Panchayat where the elder brother of PW 2 Atma Ram Patil, who was examined as PW 3, was one of the Panch Members. It was stated that since a decision had been given against Dattu Kanu Vaskar, he along with other accused, in order to extract revenge, participated in the incident which resulted in the death of the father of P.W.3 and the complainant and gunshot injuries being sustained by PW 3 Atma Ram Patil.

13. Mr. Sushil Kumar urged that by altering the motive for the alleged incident, the

prosecution tried to connect the accused persons with the incident of shooting which resulted in the death of Janu Ganu Patil.

14. Referring to the site plan of the place of occurrence and the nature of the injuries sustained by the deceased and P.Ws. 2, 3 and 6, Mr. Sushil Kumar urged that it was quite impossible for the incident to have occurred in the manner as was sought to be established by the prosecution. It was submitted that while according to the prosecution the accused persons had fired from the gallery of their house which was situated at a height above the courtyard of PW 3, the nature of injuries on the deceased and P.Ws. 2, 3 and 6 makes it clear that such firing could not have happened in the manner indicated by the prosecution. It was urged that having regard to the evidence of PW 11 Shri Ramrao, who at the relevant time was Medical Officer, Panvel, and had examined the injured persons and had also conducted the post mortem examination of the deceased, except for injury No.11 mentioned in the report, none of the other injuries could have been caused as a result of firing from the gallery of the opposite house. It was urged that in his cross examination PW 11 had mentioned that injury No.1 i.e. 'Punctured wound' on the right scrotum could have been caused by ground level firing at the deceased. It was urged that all the injuries apart from injury No.11, were possible by ground level firing, but as far as injury No.11 is concerned, the same could not have been caused by ground level firing and had been caused by firing from a higher level at an angle of 45 degrees. It was urged that the said evidence of the Medical Officer, was in itself sufficient to disprove the prosecution version of the manner in which the incident had occurred, since the firing which caused the injuries to the deceased as well as the other witnesses, could only have been possible if the firing had taken place at ground level and not from the gallery of the opposite house.

15. It was also submitted that the gun-shot injuries had tattoo marks around the edges which proved that the firing had been resorted to from close quarters and not from the gallery of the house opposite to the house of the deceased and that of his son Atmaram, which also fitted in with the defence version that the injuries could only have occurred if the firing had been done at ground level.

16. In this regard reference was also made to the evidence of the Investigating Officer of the case, Isram Pawar, who was examined as P.W.15, to show that eight empty cartridges had been seized from the house of the accused No.1 and that the gun alleged to have been used in the firing had been recovered from a well at his instance. It was also shown that in cross-examination P.W. 15 had admitted that he had also taken the gun of Gajanan Gopal Patil into his custody but had not sent the same to the ballistic expert for his opinion as to whether the shots which had been fired and the pellets which had been recovered from the victim's body, could have been fired from the said gun, raising doubts as to which gun had actually been used and the circumstances in which the shots had been fired.

17. Mr. Sushil Kumar submitted that even the motive for the commission of the offence, as projected by the prosecution was not established since Kamali, who had lodged the First Information Report of the alleged attempt to outrage her modesty, was not examined by the prosecution.

18. It was further submitted that the High Court had in reversing the judgment of acquittal by the trial Court and substituting it by an order of conviction under Section 302, 307/34 I.P.C. and Section 25(1)(a) of the Arms Act acted contrary to the well-established principles recently reiterated in *Chandrappa vs. State of Karnataka*¹. Reliance was placed on the fifth principle mentioned in the said decision to the effect that if two reasonable views are possible on the basis of the evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.

19. Defending the judgment and order of the High Court, Mr. Chinmoy Khaladkar, learned advocate, urged that the trial Court had not considered the evidence of the eye-witnesses, of whom three were independent witnesses, in holding that the prosecution had failed to prove that the accused were guilty of the charges framed against them and acquitting them.

20. The evidence of P.W.2, Kishore, one of the sons of the deceased and an eye-witness to the incident who has narrated the events clearly and without any ambiguity, was also relied upon by Mr. Khaladkar to demonstrate that the deceased after receiving the gun-shot injuries was lifted and carried to the cattle-shed from the courtyard. In the process, the witness, his mother, her sister and sister-in-law, Chhaya, were also injured and he too had to be hospitalized. Holding that the ocular evidence was not only credible but also trustworthy, the High Court was of the view that the trial Court had erred in discarding the evidence of the eye-witnesses, most of whom were related to the deceased, and accepting the defence theory that it was Kishor (P.W.2) who had taken the gun of accused No.1 and had resorted to firing which killed his father and injured the others who were present. It was contended on behalf of the State that no specific questions had been put to the witness in cross-examination as to the manner in which the firing had taken place.

21. Having considered the submissions made by counsel for the respective parties and the evidence addressed during trial, we are of the view that the impugned judgment of the High Court does not warrant interference.

22. The main point of Mr. Sushil Kumar's submission is that having regard to the nature of the injuries on the person of the deceased and the place from where his body was recovered, the incident had not occurred in the manner suggested by the

prosecution. Mr. Sushil Kumar relied heavily on the statement made by P.W.11 Ramrao, who had conducted the post-mortem examination that injury No.1 to the scrotum of the deceased was caused by ground level firing. According to Mr. Sushil Kumar, the said statement of how the injury had been caused to the deceased demolished the prosecution case that the guns had been fired from the gallery of the house of the accused, which was opposite to the court-yard of the house of the deceased and that of his elder son P.W.3 Atmaram.

23. Apart from the above, Mr. Sushil Kumar also placed a good deal of reliance on the fact that the body of the deceased was recovered from the cattle-shed, in support of his contention that the firing had not taken place in the manner indicated by the prosecution and that the deceased had been fired at, while he was sleeping inside the cattle-shed. 24. As indicated hereinabove, we are unable to accept both the submissions of Mr. Sushil Kumar. The evidence of P.W.11, the Doctor who conducted the post-mortem examination and who also examined the others who were injured in the firing clearly supports the prosecution story of the incident. According to P.W.11, the injuries on the person of P.W.3 Atmaram were possible if he was standing on the ground floor and the gun was fired from the gallery and that such types of injuries were also possible in respect of the other patients. In answer to a query of the Court as to whether the injuries to the deceased could be caused, if he was hit by the gun shot at an angle of 45 degrees fired from a gallery at a height at the deceased while walking on the road, his answer was positive. Furthermore, the Doctor has also said quite definitely that it was not possible to sustain the injuries as suffered by the deceased if he was sleeping on the ground. What is of interest is that according to the Doctor, it was injury No.1 which was caused by ground-level firing at the deceased.

25. The evidence of P.W.11, while generally corroborating the prosecution case, is at variance with the ocular evidence to the extent of injury No.1 on the deceased. The said aspect of the matter has been dealt with by the High Court by placing reliance on the decision of this Court in the case of *Ramakant Rai vs. Madan Rai*², reiterating the principle that where the eye-witness account is found to be credible and trustworthy, the medical opinion suggesting an alternate possibility is not accepted to be conclusive. When injuries to all the persons, including the deceased, were held to be on account of firing from a height, it has to be held that the High Court had correctly accepted the prosecution version of the incident resulting in the death of Janu Patil.

26. Even the second limb of Mr. Sushil Kumar's submission does not stand scrutiny having regard to the evidence of P.Ws. 2, 3, 4, 5, 6 and 7 who stated that after Janu Patil sustained injuries in the firing, he was removed by them to the cattle-shed where he was ultimately found.

27. Having regard to the above, we see no reason to interfere with the judgment of the High Court and the Appeal is accordingly dismissed.

¹2007 (4) SCC 415

²2004 CrL. Law Journal 36