

SUPREME COURT OF INDIA

Sunil

Vs.

State of Maharashtra

SLP (CrI.) No. 5496 of 2007

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

16.10.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court, Aurangabad Bench dismissing the appeals filed by several accused persons. The present appeal is by original accused No. 6 (hereinafter referred to as the A6). He was convicted for various offences punishable under the *Indian Penal Code, 1860* (in short the 'IPC') and sentenced to undergo custodial imprisonment and fine with default stipulation. The High Court dismissed the appeal so far as the present appellant is concerned; we are not concerned with the other appeals.

3. Prosecution version in a nutshell is as follows:

“A.S.I. Yadav Satpute (P.W. 11) who was attached to police station, Pathardi and was on duty as a Police Station officer on 7.3.1998 received a phone call at about 2230 hrs. Informing him that there was stone pelting at Rangar Galli and, therefore, he sent the necessary police force. He made an entry at sr. no. 30 in the station diary and at about 10.45 p.m. sent a message to the Control Room and the other police stations. An entry in this behalf was recorded in the station diary at sr. no. 32. Sanjay Shahane (P.W. 4) came to the police station and A.S.I. Satpute (P.W. 11) recorded the report of Sanjay (P.W. 4) at Exh. 125. An entry in this behalf was accordingly made in the station diary at sr. no.33. Sanjay Shahane (P.W. 4) immediately left the police station on receiving message that his uncle Jaikumar (P.W. 2) had become unconscious. Thereafter at about 2355 hrs. original accused No.13 Pratibha came to the police station and gave a report in respect of a non-cognizable offence. An entry in respect thereof was made in the station diary at sr. no. 34. Original accused No.10 Amol and juvenile offender Rama were referred to the hospital as they had sustained minor injuries. The Xerox copy of the entries in the station diary are Exh. 156. A.P.I. Shinde

(P.W. 12) who was also attached to Police Station, Pathardi took over the investigation of Crime No.33 of 1998 from A.S.I. P.W. 11 Satpute as the crime had been registered on the basis of the first information report of Sanjay Shahane (P.W.4). A.P.I. Shinde (P.W. 12) received a copy of the statement of Digambar (P.W. 1). On 8.3.1998, A.P.I. Shinde accordingly visited the mortuary and drew the inquest panchnama of the dead bodies of Dhananjay and Santosh vide inquest panchnamas at Exhs. 116 and 117 in the presence of witnesses. Thereafter on the same day he visited the scene of the offence at about 9.30 A.M. and drew the scene of the offence panchnama at Exh. 111 in the presence of P.W. 1 Digambar. The scene of the offence was pointed out by P.W. 4 Sanjay Shahane and the spot is a narrow lane to the south of the main road of Pathardi. The narrow lane which is the scene of the offence is known as Rangar Galli. Deceased Dhananjay had been killed in front of the house of one Pandurang Kasar while deceased Sanjay had been killed in front of the house of one Bhagirath Bajaj. The lane was of a width of about 4 ft. with stone flooring. Dried bloodstains were noticed in front of the house of Bhagirath Bajaj as well as in front of the house of Pandurang Kasar. The distance between the two spots where the murder of deceased Sanjay and deceased Dhananjay had been committed is at about 10 ft. The spot panchnama further records that at a distance of 25 ft. house of one Vilas Rodi is situated and an electric bulb is affixed on the door of his house. At a distance of 30 ft. towards the southern side, there is an electric pole with tube light. A Ganpati temple is at a distance of 300 ft. and adjacent to the said Ganpati temple is the house of complainant. On the same day, accused Mukund, accused Rajendra, accused Santosh, accused Satish, accused Manoj, accused Rakesh and accused Sunil came to be arrested vide arrest panchnama at Exh. 152. On the same day at about 12.30 p.m., accused Sandip, accused Sharad, accused Rama, accused Amol, accused Sanjay, accused Sunil, accused Nitin and accused Pratibha came to be arrested vide arrest panchnama at Exh. 153. The accused who were found to have sustained injuries were referred to Rural Hospital. On 8.3.1998, statements of 12 witnesses came to be recorded. The clothes of deceased Dhananjay and Santosh were seized vide seizure memo at Exh. 142 in the presence of P.W. 9 Gulab.

The trial court relied on the evidence of some of the witnesses who were stated to be eye witnesses and found the appellant guilty as noted below:

S.NO	Offence under Section	Punishable	Sentence	Fine
1.	Sec.302, r/w Sec. 149 IPC	life	Imprisonment for one month	Fine of Rs.1000/-IDRI
2.	Sec. 143 of IPC		R.I. for 1 month	Fine of Rs.100/- IDRI for 5 days
3.	Sec. 144 of IPC		R.I. for 6 month	Fine of Rs.100/- IDRI for 5 days
4.	Sec. 147 of IPC		R.I. for 6 month	Fine of Rs.100/- IDRI for 5 days

5. Sec. 148 of IPC R.I. for 6 month Fine of Rs.100/- IDRI for 5 days
6. Sec.506 r/w 149 of IPC R.I. for 6 month Fine of Rs.100/- IDRI for 5 days

In appeal the High Court confirmed the conviction and the sentence qua the appellant.

4. In support of the appeal learned counsel for the appellant submitted that only role attributed to the appellant is that he caught hold of the deceased while facilitating the assault by others.

5. Learned counsel for the State supported the judgment of the trial court and the High Court so far as the present appellant is concerned.

6. It is to be seen from the evidence of PWs 2&6 that the presence of the present appellant has not been established. PW 2 is the father of the deceased and PW 6 is the person in front of whose house the occurrence took place. PW 2 in his cross examination has clearly stated that he had not stated before police that the appellant had caught hold of the deceased. Similarly, PW 6 on whose evidence great emphasis was laid by the courts below, referred to the presence of several others. He categorically described the presence of the various accused persons, weapons held by them and individual overt acts. He, however, categorically admitted that he had not seen the present appellant at the scene of occurrence. It is of some significance that the appellant took the positive stand that he was not in the village at the relevant point of time and was at the distance of nearly 200 km from the place of occurrence. The trial court and the High Court referred to this aspect but came to conclusions based on surmises that he could have come back by changing one vehicle to another for travelling the distance from the place where he had gone to the place of occurrence.

7. In view of the aforesaid infirmities the inevitable conclusion is that the prosecution has failed to establish the accusations so far as the present appellant is concerned. He is acquitted of the charges and his conviction is set aside. The bail bonds executed by him for giving effect to the order of bail passed by this Court's order dated 25.1.2008 shall stand discharged.

8. Appeal is allowed.