BABASAHEB APPARAO PATIL

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 1264 of 2005)

NOVEMBER 28, 2008

[D.K. JAIN AND V.S. SIRPURKAR, JJ.]

Penal Code, 1860:

s.302 r.w. s.34 – Conviction under, by trial Court – High Court ignoring minor contradictions in testimony of witnesses and affirming conviction – Justification of – Held: Courts below justified in not rejecting evidence of witness merely on account of some contradictions – The contradictions were not directly related to the incident – Omissions of not mentioning exact portion of the body of deceased where shot was fired not significant as there was no omission as regards the fire by accused on the deceased – Evidence of two eye witnesses corroborated by medical evidence – Conduct of witness in going to the house of his uncle instead of reporting incident to police not unnatural, and would not impair creditworthiness of his evidence.

Evidence:

Discrepancies/contradictions in the testimony of witness – Effect on prosecution case – Held: Not fatal unless contradictions are material – Only when discrepancies in evidence are materially incompatible with the credibility of witness, same should be discarded.

Conduct of witness – Post event conduct – Held: Varies from person to person – Different persons would react differently on seeing any serious crime.

According to prosecution, father of accused 2 was

A leader of one party and the deceased was leader of another party. Accused 1 and 3 were cousins of accused 2 and the accused 4 was known to them. There was grudge between the two rival parties. On the fateful day, deceased along with PW-10, the Sarpanch of village, PW-
B 26 and PW-11, the driver of the jeep was travelling in a jeep. On the way deceased stopped the jeep. He got down and started talking to wife of PW-26. Another jeep came there. All the four accused got down from the jeep. Accused 1 was armed with a pistol. Accused 2 was
C holding dagger. Accused 3 grabbed the deceased from behind and accused 2 gave a dagger blow on his stomach. When the deceased fell down accused 1 fired a bullet shot at his chest. On seeing the assault, PW-10 ran away out of fear. PW-11, the driver of the jeep also fled
D from the scene and went to the house of his uncle and narrated the entire incident to him. The police officer received a phone call from an unknown person about the murder of deceased.

The Trial Court convicted all the four accused under
E s.302 IPC read with s.34. The conviction of accused 1-appellant and accused 2 was confirmed by the High Court. Hence the instant appeal.

Dismissing the appeal, the Court

F HELD: 1.1. Some discrepancies in the ocular account of a witness, unless those are vital, cannot *per se* affect the credibility of the evidence of the witness. Unless the contradictions are material, the same cannot be used to jettison the evidence in its entirety. Trivial discrepancies
G ought not to obliterate an otherwise acceptable evidence. Merely because there is inconsistency in evidence, it is not sufficient to impair the credibility of the witness. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the
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court would be justified in discarding his evidence. [Para 12] [777-B-D]

1.2. Both the courts below found that the evidence of eye-witnesses, PW-10 and PW-11 was creditworthy and held that the minor contradictions in their testimony were not sufficient to affect the credibility of their evidence. In the light of the evidence of PW-10 and PW-11, High Court was right in holding that the contradictions were not directly relating to the incident and could not be said to be material contradictions affecting the credibility of the evidence of both the eye witnesses. Similarly, the so-called omission of not mentioning the exact portion of the body of the deceased where the shot was fired cannot be said to be a significant omission because there was no omission as regards the firing by the appellant on the deceased. In his testimony, PW-10 gave graphic details of the occurrence. Similarly, PW-11, the driver of the jeep, in his evidence, narrated the incident which corroborated with the version of PW-10. The evidence of these two witnesses stood corroborated by the medical evidence, which clearly showed that several blows were given to the deceased by jamiya (dagger) and a fire arm injury was also found over the abdomen of the deceased. The conduct of PW-11 in going to the house of his uncle instead of reporting the incident to the police was not unnatural, impairing the creditworthiness of his evidence. The post-event conduct of a witness varies from person to person. It cannot be a cast iron reaction to be followed as a model by every one witnessing such event. Different persons would react differently on seeing any serious crime and their behaviour and conduct would, therefore, be different. Therefore, having witnessed a dastardly murder, it was not unnatural for the said witness to go to his uncle. The courts below were justified in not rejecting his evidence merely on that score. [Paras 10, 11 and 15] [776-D; 778-F-H; 779-A-D]

A *State of U.P. v. M.K. Anthony* **(1985) 1 SCC 505; *Appabhai & Anr. v. State of Gujarat* (1988) Supp. SCC 241 and *Rammi @ Rameshwar v. State of M.P.* (1999) 8 SCC 649, relied on.**

B **Case Law Reference:**

(1985) 1 SCC 505	**relied on**	**Para 13**
(1988) Supp. SCC 241	**relied on**	**Para 14**
(1999) 8 SCC 649	**relied on**	**Para 15**

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1264 of 2005.

From the Judgment and final Order dated 26-27.8.2004 of the High Court of Judicature at Bombay in Criminal Appeal D No. 686 of 1988.

Ashok K. Srivastava, B.P. Suryawanshi, Sushil Karanjkar and Venkateswara Rao Anumolu for the Appellant.

E Anjani Kumar Mishra and Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by

D.K. JAIN, J. 1. This appeal arises out of the judgment F rendered by the High Court of Judicature at Bombay, in Criminal Appeal No. 686 of 1988, confirming the conviction of the appellant for offence under Section 302 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC').

2. As many as four accused came to be tried by the Addl. G Sessions Judge, Solapur in Sessions Case No. 198 of 1987. These persons were Babasaheb Apparao Patil - Accused No. 1, Tanaji Manikrao Patil - Accused No. 2, Appasha Dharmarao Patil - Accused No. 3 and Prakash Limbanna Koli - Accused No. 4. The Trial Court convicted all the accused for the said H

offence and sentenced them to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/- each, with default stipulation. All the convicts preferred an appeal to the High Court. Although accused No. 2 and 4 expired during the pendency of the appeal, yet the High Court dealt with their appeals as well. The High Court confirmed the conviction of the appellant herein and accused No. 2 but acquitted the remaining two accused, giving them the benefit of doubt.

3. According to the prosecution in village Boramani, District Solapur, there are two rival parties. Manikrao Patil was the leader of one party and the deceased - Baburao Vibhute was the leader of the other party. Tanaji Manikrao Patil - Accused No. 2 is the son of Manikrao Patil. Babasaheb Apparao Patil-Accused No. 1 and Appasha Dharmarao Patil - Accused No. 3 are cousin brothers of Tanaji. Prakash Limbanna Koli-Accused No. 4 is not related to other three accused but was known to them. On 7th June, 1989, one Abhimanyu Rama Bhagare had assaulted the said Manikrao Patil, father of Accused No. 2 by using a Sattur. Abhimanyu was a good friend of the deceased Baburao Vibhute. Manikrao suspected that assault on him by Abhimanyu had been instigated by the deceased Baburao and therefore, he held a grudge against him.

4. On 19th June, 1986, the deceased - Baburao Vibhute, Sidram Birajdar (PW-10) Sarpanch of village Boramani, Prakash Rajguri (PW-11), driver of the deceased and one Suresh Rokade left for Solapur by jeep because the deceased had some work there. On completion of the work, at around 3.00 p.m. they started the return journey. On their way, they stopped at hotel Khansaheb to take some snacks. But since vegetarian snacks were not available, they procured beer from outside and had it in the hotel. At the hotel, Prakash (PW-11) saw Shivaji Rajguru (PW-26), who was in the service of the deceased and had owed some money to him. He, accordingly informed the deceased, who demanded money from Shivaji but

A on his failure to oblige him, he belaboured him and made him sit in the jeep to take him to his village. When the jeep came near the village of Shivaji, his wife (PW-19) stopped it. The deceased got down from the jeep and was talking with the wife of Shivaji. While the conversation was going on, another jeep B came from the side of Solapur. All the four accused got down from the jeep. Accused No. 1 was armed with a pistol; Accused No. 2 got down wielding an instrument like jamiya (dagger); Accused No. 3 came to the rear side of the jeep of the deceased and grabbed him from behind; Accused A-2 gave C a dagger blow on his stomach. When the deceased fell down on the ground, Accused No. 1 fired a bullet shot at his chest. On seeing the assault, Sidram (PW-10) ran away out of fear. At a nearby petrol pump, he boarded a truck and reached Hyderabad. Prakash (PW-11) the driver of the jeep, also fled from the scene and on reaching Solapur, he went to the house D of his uncle (PW-18) and narrated the entire incident to him.

5. On 19th June, 1986 itself, at about 9.10 p.m., a phone call was received by CPI Bhaskar Patil (PW-28) from an unknown person informing him about the murder of Baburao E Vibhute. The said informant is stated to have disclosed that the murder had been committed by Babasaheb Patil - Accused No. 1 and Tanaji Patil - Accused No. 2. PW-28, after making the entry in the station diary regarding the telephonic message, conveyed the information to PSI Annasaheb Patil (PW-33), F attached to the Taluka police station within whose jurisdiction the murder had been committed. On receiving the information, the police sprung into action. At the place of occurrence, Panchnama of the scene of occurrence was prepared, the jeep and some articles alongwith the dead body were seized. The G body of Baburao was sent for post mortem. At the civil hospital, Dr. Kanki (PW-20) performed the post mortem and found as many as 15 injuries on the person of the deceased. The injuries included a fire arm injury over abdomen near left postal margin, four deep incised wounds over abdomen, four stab wounds over H chest, one incised wound over left side at lumber region and

exit wounds of pellets. Lungs, kidneys, liver, spleen were also injured. Doctor opined that these injuries were sufficient to cause death and the death was caused on account of shock and haemorrhage and due to injuries sustained by the deceased over abdomen, chest and to visceral organs. On completion of investigations, which included recording of confessional statements of Accused No. 2 and Accused No. 4, who also produced the weapons of offence (2 daggers and one country made pistol), chargesheet was filed against all the accused.

6. The accused abjured their guilt and accordingly, the trial was held. The prosecution examined as many as 33 witnesses to support its case. No evidence was produced in defence. Upon consideration of the evidence, as noted above, the trial court convicted all the four accused for offence punishable under Section 302 read with Section 34 of the IPC. Appellant's (Accused No. 1) conviction having been confirmed by the High Court, he has come up before us in this appeal. The other convict - Accused No. 2 expired during the pendency of his appeal in the High Court.

7. Learned counsel for the appellant contended that the trial court as also the High Court committed serious error in relying on the wholly unreliable testimony of PW-10 and PW-11, examined by the prosecution as eye-witnesses, inasmuch as there are contradictions and discrepancies in their evidence. It was argued that the story of PW-10 going to Hyderabad is inherently improbable and was a make up to cover the delay of three days in recording of his statement by police on 23rd June, 1986. It was also submitted that it was very improbable that Prakash (PW-11), an employee of the deceased, stated to have seen the entire incident did not disclose the name of the accused to his uncle Kisan Ingale (PW-18) when he met him immediately thereafter and furthermore instead of reporting the occurrence to the police he went to his uncle's house and narrated the incident to him. It was pleaded that all the accused

had been falsely implicated on account of rivalry between the two factions in the village.

8. Learned counsel appearing on behalf of the State, on the other hand, supported the judgment of the High Court and submitted that the evidence of the two eyewitnesses, coupled with the medical evidence and the recovery of weapons of offence clearly prove the case against the appellant.

9. Having carefully gone through the judgments of the courts below, we feel that in the light of the evidence on record, the view taken by the High Court is correct.

10. As noted earlier, the mainstay of the prosecution is the testimony of Sidram (PW-10) and Prakash (PW-11) who claimed to be eye witnesses of the occurrence. Both the courts below have found their evidence creditworthy and have held that the minor contradictions in their testimony were not sufficient to affect the credibility of their evidence. The discrepancies in the evidence of PW-10 highlighted before the High Court on behalf of the appellants were: (i) his non-mentioning of non-availability of vegetarian food in the hotel and drinking of beer as recorded in his statement by police (ii) belabouring of Shivaji by Baburao after returning to the hotel. Similarly, the alleged omissions on which emphasis was laid were : (i) non-mentioning of the deceased falling on his back after receiving the first jamiya blow and (ii) the firing of bullets at the chest of the deceased. As regards PW-11, the alleged contradictions were again with regard to his going to the market to purchase beer and the deceased, Sidram and Suresh having beer at the hotel. The stated omission was again about the bullet being fired at the chest of the deceased.

11. As already noted, the High Court has come to the conclusion, and in our opinion, rightly, that the contradictions brought on record pertaining to the bringing and drinking of beer are not directly related to the incident and cannot be said to be material contradictions. Similarly, the alleged omission

relating to the firing being on the chest of the deceased has also been held to be not a material omission because there is no omission in the statement as regards the firing by the appellant on the deceased.

12. It is to be borne in mind that some discrepancies in the ocular account of a witness, unless these are vital, cannot per se affect the credibility of the evidence of the witness. Unless the contradictions are material, the same cannot be used to jettison the evidence in its entirety. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. Merely because there is inconsistency in evidence, it is not sufficient to impair the credibility of the witness. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court would be justified in discarding his evidence.

13. In State of *U.P. Vs. M.K. Anthony*[1], this Court indicated the proper approach which needs to be adopted while appreciating the evidence of a witness. It was observed as under:

> "While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed

1. (1985) 1 SCC 505.

A by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the B appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter C of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

14. In *Appabhai & Anr. Vs. State of Gujarat*[2], this Court D had again emphasized that while appreciating the evidence, the court should not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. Similarly, the discrepancies which are due to normal errors of perception E or observation should not be given importance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record as a whole and should not disbelieve the evidence of a witness altogether, if it is otherwise trustworthy.

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15. Having gone through the evidence of PW-10 and PW-11, we are in complete agreement with the High Court that the aforenoted contradictions are not directly relating to the incident and cannot be said to be material contradictions affecting the G credibility of the evidence of both the eye witnesses viz. PW-10 and PW-11. Similarly, the so-called omission of not mentioning the exact portion of the body of the deceased where the shot had been fired cannot be said to be a significant omission because there was no omission as regards the firing

H 2. 1988 (Supp) SCC 241.

by the appellant on the deceased. In his testimony, PW-10 has given graphic details of the occurrence. Similarly, PW-11, the driver of the jeep, in his evidence, has narrated the incidence which corroborates with the version of PW-10. The evidence of these two witnesses stands corroborated by the medical evidence, which clearly shows that several blows were given to the deceased by jamiya (dagger) and a fire arm injury was also found over the abdomen of the deceased. The conduct of PW-11 in going to the house of his uncle instead of reporting the incident to the police cannot be said to be unnatural, impairing the creditworthiness of his evidence. The post-event conduct of a witness varies from person to person. It cannot be a cast iron reaction to be followed as a model by every one witnessing such event. Different persons would react differently on seeing any serious crime and their behaviour and conduct would, therefore, be different. (See: *Rammi @ Rameshwar Vs. State of M.P.*[3]). Therefore, having witnessed a dastardly murder, it was not unnatural for the said witness to go to his uncle and, therefore, the courts below were justified in not rejecting his evidence merely on that score.

16. Thus, we are unable to agree with learned counsel for the appellant that the trial court as well as the High Court have failed to appreciate properly the evidence on record. We are convinced that the conclusions of the courts below, that the appellant had committed the offence of murder of Baburao Vibhute, are supported by acceptable evidence. We do not find any legal or factual infirmity in the impugned judgment warranting interference. The appeal is dismissed accordingly.

D.G. Appeal dismissed.

3. (1999) 8 SCC 649.