

UMESH  
v.  
STATE OF MAHARASHTRA

FEBRUARY 7, 2007

[C.K. THAKKER AND LOKESHWAR SINGH PANTA, JJ.]

*Penal Code, 1860—s. 302—Murder—Incident seen by two eyewitnesses—Recovery and seizure of weapon and blood stained clothes at the instance of the accused—Non-examination of informant—Evidence of eye-witnesses corroborated by medical evidence and Report of Chemical Analyst—Conviction by courts below—On appeal, held: Conviction justified—Evidence of eye-witnesses is cogent, reliable and convincing—Offence is proved beyond reasonable doubt.*

Appellant-accused was prosecuted for having committed murder of one person. As per prosecution the informant was told by a person that the dead body of deceased was lying near a shop. He went there and lodged FIR. The weapon used for the occurrence and the blood stained clothes were recovered and seized at the instance of the appellant-accused. PWs 1 and 2 were examined as eye-witnesses. However the informant and the owner of the shop where the body of the deceased were lying, were not examined. Trial Court convicted the accused under section 302 IPC. The conviction was upheld by High Court.

Hence the present appeal.

Dismissing the appeal, the Court

**HELD: 1.** In the teeth of the reliable and convincing evidence, which has come on record, there is no other option but to accept the finding recorded and the conclusion arrived at by the High Court on reappraisal of the entire evidence on record to hold that it was the appellant and none else who has committed the murder of the deceased. The prosecution has been able to establish the offence against the appellant beyond reasonable doubt. [Para 14]  
[326-F-G]

**2.** The eyewitnesses PWs-1 and 2 are natural and truthful witnesses. Their evidence is cogent, reliable and convincing and there is no good reason

A to disbelieve and discard their consistent and truthful version. It is well-settled that every person who witnesses a murder reacts in his own way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate the evidence in a wholly unrealistic and unimaginative way. The evidence of the eye-witnesses finds corroboration from the medical evidence. It also cannot be said that the evidence needs to be discarded on the simple ground that they are interested witnesses. [Para 11 and 12] [325-E-G]

3. The version of the eye-witnesses was further corroborated by the presence of blood of 'B' group on the shirt of the appellant, which was recovered at his instance from his house in the presence of the *panch* witness (PW-3) in whose presence the disclosure statement (Exh. 39) was made by the appellant to the investigating officer. The report of the Chemical Analyst would reveal that the shirt of the appellant was stained with blood of 'B' group matching with the blood group of the deceased. The appellant has cross-examined PW-3 at length, but he could not shatter the evidence of the *panch* witness to dislodge his evidence in regard to the recovery of blood-stained shirt at the instance of the appellant from his house pursuant to disclosure statement (Ex. 39) made by the appellant. [Para 14] [326-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 744 of 2006.

From the Judgment and Final Order dated 23.8.2005 of the High Court of Judicature at Bombay in Criminal Appeal No. 196/2001.

Arvind Kumar, Laxmi Arvind, Poonam Prasad and Anuj Kumar for the Appellant.

Sushil Karanjkar and V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. 1. Umesh, the accused in Sessions Case No. 15 of 1998 on the file of the Sessions Judge, Amravati, is the appellant before us.

2. The appellant was charged under Section 302 of the Indian Penal Code (for Short 'IPC') for committing the murder of Dilip Ganpatrao Shirbhate on 26.11.1997.

3. The broad facts giving rise to this appeal may be set out briefly. A

4. The prosecution case is that on 26.11.1997 in the midnight Vasant Shankarrao Bijwe, resident of Vivekanand Colony, Warud, lodged a report (Ext. 32) at Warud Police Station, Sub-division Morshi, District Amravati, alleging that when he was sleeping in his house, one Anil Ramrao Gulhane, resident of Warud, came there and told him that Dilip Ganpatrao Shirbhate resident of Warud was found lying in injured condition near the shop of Patel situated near Bombay Lodged. Vasant Shankarrao Bijwe immediately went to the spot of occurrence and found Dilip Ganpatrao Shirbhate, his brother-in-law (wife's brother) lying dead. He noticed injury on the chest of Dilip-the deceased. The clothes of the deceased were smeared with blood. Vasant Shankarrao Bijwe-informant along with one Baba *alias* Purushottam Marotrao Ingle went to the Police Station to lodged the report. Head Constable B. No. 25 of Police Station Warud, Sub-division Morshi, District Amravati recorded First Information Report at 23:30 hrs. on 26.11.1997 against an unknown person under Section 302 of the IPC. B  
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5. The Investigating Officer API Ashok PW-7 conducted the investigation or the crime. PW-7 had inspected the spot and prepared *Panchnama*. He sent the dead-body for autopsy. Statements of several witnesses were recorded at the spot. The appellatant was arrested on 27.11.1997. During the interrogation of the appellatant, he made statement under Section 27 of the Evidence Act in the presence of Keshav (PW-4) and Suresh (PW-5) about the concealment of knife in his house, which allegedly was used in the commission of the offence. On the basis of the said statement, knife was recovered. The appellatant made another statement (Ext. 47) under Section 27 of the Evidence Act in the presence of Amiruddin (PW-3), on the basis of which blood stained clothes worn by him at the time of the incident were seized from the house of the appellatant. The seized articles were sent for chemical analysis. E  
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6. After completion of the investigation, charge-sheet under Section 302 IPC was filed against the appellatant. In order to prove its accusations against the appellatant, the prosecution examined in all seven witnesses, out of whom Anand Katole (PW-1) and Waman Nerkar (PW-2) were the eye-witnesses. The documents prepared during the investigation were also filed in support of the case. The appellatant in his statement recorded under Section 313 of the Code of Criminal Procedure denied his involvement in the crime. His plea was that a false case has been registered against him. However, he lead no defence. G  
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A evidence. Placing reliance on the evidence of the eye-witnesses and other evidence adduced on record, the appellant as noted above was found guilty. The appeal of the appellant against his conviction came to be dismissed by the High Court.

B 7. Mr. Arvind Kumar, learned counsel appearing on behalf of the appellant, submitted that the High Court committed a serious error in appreciating the evidence of the alleged eye-witnesses and undue importance to the recovery of the weapon of offence (Knife) has been given. It was urged that the High Court has failed to take cognizance of the fact that no motive has been attributed to the appellant for commission of the offence therefore, C the appellant could not have been found guilty of the charge levelled against him. Learned counsel next submitted that non-examination of Vasant Shankarrao, Bijwe. Who allegedly lodged the First Information Report of the crime in the Police Station and owner of Sandeep Pan Shop, is fatal to the prosecution case and both these witnesses were intentionally withheld by the prosecution with a view to conceal the true facts of the case. Thus, according D to the learned counsel, the prosecution has failed to establish the charge of murder against the appellant beyond reasonable doubt.

E 8. *Per contra*, Mr. Sushil Karanjkar, learned counsel appearing on behalf of the State, supported the judgments of the courts below. Mr. Karanjkar submitted that the evidence of the eye-witnesses supported by other ocular and documentary evidence has been rightly examined and appreciated by the Trial Court as well as by the High Court. He submitted that no adverse inference can be drawn against the prosecution for non-examination of the informant and other witness because the prosecution has fully established the charge against the appellant beyond reasonable doubt by leading reliable F and convincing evidence. Learned counsel further submitted that in the presence of direct evidence, motive recedes to the background and therefore, it is not necessary for the prosecution to prove the motive of the appellant to commit the murder of the deceased.

G 9. We have carefully considered the respective contentions of the learned counsel for the parties and perused the entire material on records.

H 10. The learned Sessions Judge as well as the High Court have accepted the testimony of eye-witnesses PW-1 and PW-2 to the incident. It has come in the deposition of PW-1 that on the day of occurrence, i.e. 26.11.1997, at about 9:30 p.m. Dilip came to his house and then both of them went to Hotel

Rupa Liquors where they consumed liquor. Thereafter, they went to Sandeep Pan Shop and smoked cigarettes there. Umesh (the appellant) was also present in the pan shop. The appellant asked Dilip to give him liquor, but Dilip could not oblige the appellant, because he had no money in his pocket for buying liquor. The appellant entered into verbal altercation with Dilip. PW-1 and Dilip went to the liquor shop of Shankar Lala and they had again consumed country-made liquor there. Thereafter, they went to the Bombay Lodge where the appellant suddenly appeared and dealt a blow of knife on the back of Dilip raised cries in pain. PW-1 got frightened and tried to run away. He saw the appellant giving second blow of knife on the chest of Dilip. On the next day, he went to the Police Station and informed the Police about the incident. PW-2 deposed that the deceased Dilip was working with him. On 26.11.1997 at about 9:15 p.m., he went to the pan shop of Sandeep where he noticed PW-1 and Dilip (deceased) coming from the opposite direction towards the shop. The appellant was also present there. The appellant asked Dilip to give him money for buying liquor. He has corroborated the testimony of PW-1 in its entirety in regard to the injuries inflicted by the appellant on the person of Dilip with knife, the weapon of offence.

11. We are unable to accept the contention of the learned counsel for the appellant that the conduct of the eye-witnesses is unnatural as they had not disclosed the genesis of the incident to the members of the family of the deceased on the same day or they had immediately reported the matter to the police. On scrutiny of the evidence of the eye-witnesses, we have no hesitation to hold that PWs-1 and 2 are natural and truthful witnesses. Their evidence is cogent, reliable and convincing and there is no good reason to disbelieve and discard their consistent and truthful version. It is well-settled that every person who witnesses a murder reacts in his own way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate the evidence in a wholly unrealistic and unimaginative way. Therefore, the High Court has rightly re-appreciated the evidence of the eye-witnesses and we find no fault in the reasoning recorded by it. The evidence of the eye-witnesses finds corroboration from the medical evidence.

12. We do not find any substance in the submission of the learned counsel for the appellant that the evidence of the eye-witnesses needs to be discarded on the simple ground that they are interested witnesses.

13. Dr Ambadas Sadapure (PW-6) conducted autopsy on the dead-body

A of Dilip on 27.11.1997. He noticed two stab wounds on back below left scapular region 4 cm. away from vertebral column obliquely upwards 5 cm. x 1 cm. x 8 cm. and one stab wound on chest below left middle part of clavicle obliquely downwards, 5 cm. x 1 cm. x 5 cm., besides three abrasion marks on right hand of the deceased. Doctor deposed that upon internal examination of the body of the deceased, one stab wound on left lung 3 cm. x 1<sup>1/2</sup> cm. x 2 cm. obliquely downwards and one stab wound posteriors upwards oblique 3 cm. x 1<sup>1/2</sup> cm. x 3 cm. were also noticed. All these injuries were *ante mortem* and sufficient in the sufficient in the ordinary course of nature to cause death. As per the opinion of the doctor, the cause of death was due to shock due to injuries to vital organ, i.e. lung and extensive haemorrhage and the injuries could have been caused by knife (Article 8).

14. The version of the eye-witnesses was further corroborated by the presence of blood of 'B' group on the shirt of the appellant, which was recovered at his instance on 27.11.1997 from his house in the presence of the *panch* witness Amiruddin Kazi (PW-3) in whose presence the disclosure statement (Exh. 39) was made by the appellant to the investigating officer. The bloodstained shirt was sent to the Chemical Analyst for analysis. The report of the Chemical Analyst would reveal that the shirt of the appellant was stained with blood of 'B' group matching with the blood group of the deceased. The appellant has cross-examined PW-3 at length, but he could not shatter the evidence of the *panch* witness dislodge his evidence in regard to the recovery of blood-stained shirt at the instance of the appellant from his house pursuant to disclosure statement (Ex. 39) made by the appellant. The next contention of the learned counsel for the appellant that adverse inference should be drawn against the prosecution for non-examination of the informant and other material witnesses does not merit acceptance. In the teeth of the reliable and convincing evidence, which has come on record, he have no other option but to accept the finding recorded and the conclusion arrived at by the High Court on reappraisal of the entire evidence on record to hold that it was the appellant and none else who has committed the murder of Dilip. The prosecution has been able to establish the offence against the appellant beyond reasonable doubt. None of the contentions raised by the learned counsel on behalf of the appellant can be accepted.

15. As a result of the aforementioned discussion, this appeal is dismissed and the conviction and sentence imposed upon the appellant is maintained.

H K.K.T.

Appeal dismissed.