

# **Panda Nana Kare vs State Of Maharashtra on 30 November, 1978**

**Equivalent citations: AIR1979SC697, 1979CRILJ640, (1980)1SCC131, AIR 1979 SUPREME COURT 697, 1980 (1) SCC 131**

**Author: P.S. Kailasam**

**Bench: O. Chinnappa Reddy, P.S. Kailasam**

## **JUDGMENT**

P.S. Kailasam, J.

1. This appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, is directed against the conviction and sentence imposed by the Bombay High Court reversing the order of acquittal by the Trial Court. The deceased Pandurang was the resident of village Khadiki. P.W. 15 Kerappa is his elder brother. P.W. 7 Gajaram who is the only witness in this case, was a friend of deceased Pandurang. Gajaram had two brothers Sandipan and Shrimant, P.W. 10. They had three sisters Anjubai, wife of the accused and Yamunabai (P.W. 6) and another.

2. The case of the prosecution is that after the death of the Yamunabai's husband, intimacy developed between Yamunabai and the deceased Pandurang. Yamunabai was also friendly with accused. It is stated that the accused told Yamunabai to cut off her relations with the deceased Pandurang and to remain in his exclusive keeping. But Yamunabai turned down this proposal. Hence the accused developed enmity against the deceased.

3. The deceased Pandurang had gone to village Mangalwedha on Wednesday morning. P.W. 6 Yamunabai, her two children and the deceased came to Khomnal to attend a marriage. The accused also came to the place. After the marriage ceremony was over, there was a procession which started at 11.00 O'clock and returned at about 3 A.M. The procession was attended by Gajaram, P.W. 7, the deceased Pandurang, the accused, Shrimant P.W. 10 and Kondiba. P.W. 12. the brother of the bridegroom.

4. Regarding the actual incident, P.W. 1 would state that he and the deceased Pandurang went to sleep at the court-yard of Kondiba, P.W. 12 where they had tethered their bullocks and as P.W. 7 had no sleep on the previous two days, he was fast asleep immediately after lying down. The deceased was sleeping by his side. A little later, P.W. 7 heard the shriek of Pandurang and got up. P.W. 7 would say that he saw the accused running away at a distance 10 to 15 feet from him. He called the accused by his name and the accused turned back which enabled P.W. 7 to identify the accused as it

was a moonlit night. P.W. 7 found that the deceased had sustained an injury on his head and was bleeding. A big stone was thrown on his head causing the injury. P.W. 7 then raised a hue and cry, lifted the head of deceased and rested it in his left hand. On hearing cries, raised by P.W. 7, P.W. 10, P.W. 13 and Kondiba P.W. 12 came running. P.W. 7 would state that he told the assembled persons that the accused had thrown a stone and ran away. Pandurang was complaining of pain and was removed to Mangalwedha to the dispensary of Dr. Gokhale (P.W. 9). Dr. Gokhale examined Pandurang and advised that the injured may be taken to Pandharpur. Gajaram was present but he did not mention anything about the assailant. Pandurang was then taken to the bus stand and from there to Pandharpur and admitted in Dr. Benare's hospital. Dr. Benare, P.W. 11, examined Pandurang and found that he was completely unconscious. He found serious head injuries. Pandurang succumbed to his injuries at 3-40 p.m. But the Doctor was under the impression that it was a case of accident.

5. Kherappa P.W. 15, brother of deceased rushed to Pandharpur and learnt of the death of Pandurang. He brought the dead body to the village on the next day i.e. 2-5-1969. Kherappa lodged the F.I.R. in the Police Station Khadki. Kherappa informed the Police that his brother who had gone to Khomnal to attend a marriage was injured by the fall of a stone while he was asleep and was thereafter taken to Mangalwedha at the advice of the Doctor and latter to Pandharpur.

6. The only evidence that is relied on by the prosecution is that of P.W. 7. The testimony of P.W. 7 was considered at great length and the Sessions Judge found that it cannot be accepted. P.W. 7 was sleeping along with the deceased. As he did not sleep on the previous two nights, he was fast asleep and woke up on the hearing of the shrieks of the deceased. He found the accused running away and called him by name. When he turned back, P.W. 7 stated that he could identify the accused as it was moonlit night. So far as this aspect of the testimony of P.W. 7 is concerned, the trial court has pointed out that in his statement to the Police under Section 162, he did not mention that the accused turned his back and that he was able to identify him then. In the earlier statement, P.W. 7 did not mention about the moon light but according to the Almanac, the moon set at 5 a.m. and it is quite likely that the incident took place when there was moon light. But it is very difficult to identify a person who is running and showing only his back. Apart from the difficulty in identification, P.W. 7 who accompanied the injured Pandurang, did not mention the name of the assailant to the Doctor who saw the injured Pandurang. Dr. Gokhale P.W. 9 who saw the deceased, advised that the injured may be taken to Pandharpur. In Pandharpur, Dr. Banare P.W. 11 attended to the injuries of Pandurang. Even to P.W. 11, the name of the assailant was not mentioned. Pandurang died and he was removed to the village by his brother P.W. 15, Kherappa. P.W. 7 says that Kherappa lodged the F.I. R, when the Police came next day. According to Kherappa, the death was due to stone falling on the head of the deceased. There is no whisper in the F.I.R. about the accused being the person who threw the stone on the deceased.

7. The explanation of P.W. 7 for his concealing the name of the assailant before the two Doctors and Kherappa is that as the accused was his sister's husband, he did not want to implicate him and then only later he felt that he should tell the truth. The trial court observed that even if this version is true the evidence of the witnesses cannot be acted upon. We entirely agree with the view taken by the trial court. We feel that it is unsafe to accept the testimony of P.W. 7.

8. Apart from the testimony of P.W. 7, the prosecution relied on P.W. 10 and P.W. 13 who stated that P.W. 7 told them that it was the accused that threw the stone. P.W. 10 and P.W. 13 would say that P.W. 7 mentioned the name of the assailant immediately after Pandurang sustained injuries. If this version is true, the name of the assailant would have been known to everybody and there could be no explanation for the name of the assailant not being known to the two doctors or to Kherappa before he lodged the F.I. R.

9. The evidence of P.W. 7 is totally unacceptable. It is not possible to place any reliance on the testimony of P.W. 10, P.W. 12 and P.W. 13 who say that P.W. 7 told the name of the assailant immediately after the occurrence. The prosecution has failed to establish its case. In the circumstances, we allow the appeal and set aside the conviction and the sentence imposed upon the appellant. He will be set at liberty forthwith.