

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPEAL NO. 413 OF 2000

Swarupchand s/o Bandu Gaikwad,
age 20 years, occ. Labourer,
R/o Gangapur, Tq. Gangapur,
District Aurangabad

...Appellant
[Original Accused No. 1]

VERSUS

The State of Maharashtra

...Respondent

.....
Shri N.B.Suryawanshi, advocate for appellant
Shri M.M.Nerlikar, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 24th March, 2015

ORAL JUDGMENT : -

1] Felt aggrieved, the appellant is before this court to challenge his conviction, for the offence punishable under Section 326 of the Indian Penal Code and the sentence to suffer rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for five months, as imposed by the learned II Additional Sessions Judge, Aurangabad, dated 12.10.2000 in Sessions Case No.

358 of 1996.

2] The prosecution case, as it was unfolded during the course of the trial, can be narrated as under : -

Madhukar Aute (PW 9) was attached to police station Gangapur as Police Sub-Inspector in the year 1996. He received a message from the Tahsildar on 22.1.1996 at 4.30 p.m. that a quarrel is going on in front of the Tahsil office and large crowd has gathered there. Upon receipt of such information, he rushed to the spot with police staff. There, he noticed accused persons and the complainant party had indulged themselves into the free fighting with various types of weapons in their hand. His staff immediately intervened and snatched some of the weapons from the respective accused persons. The injured was taken to the hospital. His name was Gotiram Rajput.

4] Madhukar Aute gave a requisition to the Medical Officer, Primary Health Center, Gangapur, for taking the statement of Gotiram (Exh.35). Thereafter as per the evidence of Madhukar Aute, he recorded a cursory statement of Gotiram (Exh.36). This statement of Gotiram was treated as first information report. The offence was registered against the present appellant and others vide Crime No.16 of 1996.

The first information report reveals that the first informant had been to the Tahsil Office at Gangapur and when he was standing near the tea stall, appellant came there and assaulted him by means of sickle resulting into bleeding injury. Therefore, the crime was registered for the offence punishable under Section 307 of the Indian Penal Code.

5] During the course of the investigation, PW 9 Madhukar Aute recorded statement of the witnesses. Spot panchanama (Exh.38) was also drawn. On the basis of the report lodged by the present appellant, offence was also registered against Gotiram and his family members. Under seizure memo (Exh.28) he seized weapon sickle, iron rod and wooden log from the members of his staff, who seized those articles from the respective persons. The clothes of the accused as well as the injured were also seized.

6] After the investigation was over, the charge sheet was presented in the court of Judicial Magistrate, First Class, Gangapur.

On 30.10.1996, the learned Magistrate passed committal order and committed the case to the Court of Sessions. It was registered as Sessions Case No. 358 of 1996.

7] The learned Assistant Sessions Judge, Aurangabad framed charge against the present appellant and six others for the offences punishable under Sections 147, 148, 149, 307 of the Indian Penal Code. All the accused including the appellant denied charge and claimed for their trial.

8] In order to bring home the guilt against the appellant, the prosecution examined ten witnesses and also relied upon the proved documents.

Learned II Additional Sessions Judge, Aurangabad vide judgment and order, dated 12.10.2000 acquitted all the accused persons including the appellant for the offences punishable under Sections 147, 148, 149, 307 of the Indian Penal Code, however, the learned trial court convicted the present appellant alone for the offence punishable under Section 326 of the Indian Penal Code and directed him to suffer rigorous imprisonment for three years.

9] I have heard Shri N.B.Suryawanshi, learned counsel for the appellant and Shri M.M.Nerlikar, learned Additional Public Prosecutor for respondent/State in extenso. With their able assistance, I have gone through the record and proceedings.

10] The main plank of the submission of the learned counsel for the appellant is that the prosecution witnesses, who are examined in order to show that the appellant is culprit, are untrustworthy and their evidence is not reliable. Further, it is his submission that the prosecution witnesses are suppressing the genesis of the incident, and therefore, their evidence is not reliable and cannot be used to convict the appellant. He relied upon following authoritative pronouncements of Hon'ble Apex Court.

Lakshmi Singh and others vs State of Bihar
[AIR 1976 SC 2263]

Subramani and others vs State of Tamil Nadu
[AIR 2000 SC 2980]

11] Per contra, learned Additional Public Prosecutor has submitted that the trial court has not committed any error while convicting the appellant for the offence punishable under Section 326 of the Indian Penal Code. His submission is that, in the prosecution case sufficient evidence is available for reaching to such conclusion. He submitted that the learned court below has correctly assessed the prosecution case and has reached to a right conclusion warranting no interference by this court.

12] The first information report is proved by the investigating officer. Injured Gotiram could not be examined by the prosecution due to his death, however, it is not the case of the prosecution that his death was result of the injury suffered by him. Injury certificate of Gotiram is at Exh.47. The said document is proved by Dr. Kishor Dhuthade (PW 10), who on 22.1.1996 was attached to the Rural Hospital, Gangapur as a Medical Officer. On examination of injured Gotiram, he found following injuries.

- “(1) Incised wound with severe bleeding on right hand palm ventrally and dorsally placed size 10 cm. Ventrally and 8 cm. Posterior between index finger and thumb, size of injury 10 cm. Ventrally 8 cm. Posterior into depth 3 cm.
- (2) Incised wound bone exposed, on right hand thumb of size 6 cm. 2 cm. With irregular margins.
- (3) Incised wound on forehead right side, occipital laterally, size 10 cm. In length and 2 cm. In breadth with sharp border, present bleeding.
- (4) Incised wound occipital posterior of size 5 x 2 cm. Sharp edges.
- (5) Stab wound on right side of chest, blow chavical of size 3 cm. In diameter, 2 cm. In depth.
- (6) Superficial burn on right hand wrist joint of size 3 cm x 2 cm.”

13] The prosecution witnesses, namely Jaikuwarbai

(PW 1), Kamlabai (PW 6) and Tarachand (PW 4) are in chorus in respect of the injuries due to the attack by the present appellant by means of sickle. PW 1 Jaikuwarbai, PW 4 Tarachand and PW 6 Kamlabai are the wife, father and mother, respectively of injured Gotiram, and as such they are the closely related witnesses.

Merely because the witnesses are in close relation with the injured, that does not render their version untrustworthy, nor their evidence should be viewed with tainted glasses, however, at the same time, the court should look for other evidence corroborative in nature to the evidence of such closely related witnesses.

PW 2 Popat Pardeshi, PW 3 Manik Rajput and PW 8 Shaikh Rashid, who were also examined by the prosecution as eye witnesses, did not support the prosecution and they were declared hostile. Nothing could be elicited through their cross-examination by the learned Public Prosecutor.

Thus, the entire case of the prosecution hinges on the evidence of wife, father and mother of injured Gotiram.

Jaikuwarbai (PW 1) was informed by one boy when she was in her house that a quarrel is going on between her husband Gotiram and present appellant. Therefore, she rushed towards the Tahsil office to notice that appellant was assaulting Gotiram by means of sickle and other accused persons were assaulting him by means of other weapons.

The boy, who has intimated the factum of quarrel between Gotiram and the appellant is not examined by the prosecution. Further, in cross-examination Jaikuwarbai has admitted that about 1000 people were gathered on the spot. PW 4 Tarachand has also admitted the presence of more than 100 persons on the spot.

From the evidence of these two witnesses and in the light of the evidence of PW 9 Madhukar Aute, who reached to the spot on receipt of the intimation from Tahsil office, it is clear that more than 100 persons were present at the place of incident. In fact, the evidence of Madhukar Aute would reveal that he received message from the Tahsildar about the quarrel and existence of thick crowd in front of the Tahsil office.

From the challan, 29 persons were cited as witnesses. Only 3 independent persons were examined and they failed to support the prosecution case.

In the afore said background, whether the evidence of Jaikuwarbai (PW 1), Tarachand (PW 4) and Kamalbai (PW 6) has to be believed is the question before this court.

14] PW 7 is Narayan Sabre. At the relevant time, he was Assistant Sub-Inspector attached to Gangapur police station. He was directed by PW 9 Madhukar Aute with other police staff to visit the spot after the receipt of intimation from Tahsil office. When they reached there, he found original accused no.2

Mishrilal Gaikwad was holding sickle, accused Lalchand was holding iron rod and one lady accused was holding bat, while another lady accused was holding rolling pin. His evidence would reveal that the weapons were snatched from the hands of the said accused persons. His evidence would further reveal that injured Gotiram as well as the present appellant were having bleeding injuries. Worth to note is that this independent police witness when reached to the spot did not notice any weapon in the hand of present appellant.

15] The contemporaneous document is Exh.28, which is the seizure panchanama, which clearly corroborate the version of PW 7 Narayan that accused Mishrilal was holding sickle in his hand.

16] PW 6 Kamalbai, the mother of Gotiram, made a tall claim from the witness box that the appellant has dealt sickle blows on head and throat of Gotiram. Her claim was found to be a proved omission, and therefore, her evidence that appellant has given sickle blow to Gotiram needs to be discarded.

17] The appellant was also examined by PW 10 Dr. Kishor Dhuthade. His injury certificate is at Exh.48. He found incised wound on left side of forehead to occipital region

laterally. It was having 15 cm. length, 3 cm. breadth and 10 cm. depth and skull bone was seen. Though in the injury certificate (Exh.48) he has written that injury is simple, when the doctor was in witness box, he stated that injury on the person of the appellant was serious in nature and the appellant was referred to the Government Medical College Hospital, Aurangabad. Appellant was admitted in the Surgery Ward of Government Medical College Hospital, Aurangabad on 22.1.1996 and he was there as indoor patient for two days. Even, the investigating officer Madhukar Aute has also stated that the injury sustained by the appellant was serious in nature.

In this context, PW 1 Jaikuwarbai and PW 4 Tarachand claim that they did not see any injury on appellant Swarupchand. Jaikuwarbai has stated as under : -

“ I do not admit about accused no.1 being injured.”

Whereas Tarachand has stated as under : -

“I had not seen injury on the person of accused no.1. I had not seen any injury on the person of accused no.1 which was bleeding.”

In the entire prosecution case, there is no explanation whatsoever as to how appellant Swarupchand has received such a serious injury, as deposed by PW 10.

From the nature of injury appearing on the person of the appellant, it is clear that it cannot be an self inflicted injury nor it is the case of the prosecution to that extent.

18] In paragraph 11 of **Lakshmi Singh and others vs State of Bihar** (cited supra), the Apex Court has observed as under : -

“
Not only the prosecution has given no explanation, but some of the witnesses have made a clear statement that they did not see any injuries on the person of the accused. Indeed if the eye-witnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence.”

19] In the present case, there cannot be any doubt that appellant Swarupchand has received injury in the same incident as when Aute (PW 9) and Narayan (PW 7), both, the Police Sub-Inspector and the Assistant Police Inspector, reached to the spot. They noticed the appellant with severe bleeding injury.

In spite of the presence of such serious injury on the person of the appellant when prosecution witnesses, who are closely related witnesses of Gotiram deny the presence of injuries on the person of the accused, it is clear that they are lying, rendering their testimony untrustworthy.

Omission on the part of the prosecution to explain the injuries on the person of the appellant assumes greater importance, when in the present prosecution case the evidence consists of interested witnesses. Further, it is clear from the evidence of Tarachand and Jaikuwarbai that they are the accused in the case against them which is filed on the basis of the report lodged by the appellant. Thus, it is clear that the false implication that the appellant is the author of the injuries cannot be ruled out.

Further, there is no reliable evidence available on record that the appellant was holding sickle in his hand.

20] In that view of the matter, the learned Judge of the trial court has committed error in convicting the appellant for the offence punishable under Section 326 of the Indian Penal Code by giving sickle blow to injured Gotiram.

21] The afore said discussion leads me to pass following order.

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The judgment and order of conviction, passed by the learned II Additional Sessions Judge, Aurangabad, dated 12.10.2000 in Sessions Case No. 358 of 1996, for the offence punishable under Section 326 of the Indian Penal Code is quashed and set aside.
- (iii) Appellant is acquitted of the offence punishable under Section 326 of the Indian Penal Code.
- (iv) Bail bonds of the appellant stand cancelled.
- (v) Fine amount, if paid by the appellant, be refunded to him.

[V.M.DESHPANDE, J.]