

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

Criminal Appeal No.54 of 2003

The State of Maharashtra.] .. **Appellant.**

Versus

Kerubhan Tatyaba Gadage]
Age 60 years,]
Occupation : Labour,]
R/o Antarwali Sarati,]
Taluka Ambad, District Jalna.] .. **Respondent.**

Shri. S.A. Ambad, Additional Public Prosecutor, for
appellant.

Smt. A.S. Mantri, Advocate, holding for Smt. V.A. Shinde,
Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 7th AUGUST 2015

JUDGMENT:

1) The appeal is filed to challenge the judgment and order of Sessions Case No.58/2000 which was pending in the Court of the Assistant Sessions Judge Jalna. The Sessions Court has acquitted the respondent of the offences punishable under sections 307, 504 of the Indian Penal Code. Both the sides are heard.

2) The incident in question took place on 19-10-1999 at 8.00 p.m. near a country liquor shop of village Antarwali, Tahsil Ambad, District Jana. It is the case of the prosecution that the complainant Madhukar had gone to the shop for taking empty bottle of liquor for taking water for answering nature's call. The accused was present as watchman in the shop and he is also neighbour of the complainant. It is the case of the prosecution that the accused prevented the complainant from taking the bottle and when complainant kept the bottle back in the shop and he came out of the shop, the accused assaulted the complainant Madhukar by using spear. It is the case of the prosecution that two blows of spear were given, one on the neck and the another on the left hand. The prosecution case is that, the third blow of stick was given on the left ear of the complainant.

3) The complainant collapsed near the shop and he became unconscious. Police Patil of the village noticed that the complainant was lying in injured condition, he shifted the complainant first to the hospital and report was given to the police. Statement of the complainant was

recorded in Government hospital on the night between 19 and 20 October 1999 at 3.45 hours. During investigation the panchanama of the spot was prepared. The accused came to be arrested. On 22-10-1999 the accused gave statement under section 27 of the Evidence Act and on the basis of the statement one spear came to be recovered from the sugarcane crop and there were blood stains on the spear. The spear was sent to Chemical Analyser's office. Blood stains were found on the spear. Statements of some witnesses, including owners of the liquor shop came to be recorded and statements of some persons who had passed by the side at the relevant time were recorded.

4) The accused pleaded not guilty and claimed to be tried when the plea was recorded. The prosecution examined the complainant, the medical officer, two persons who were running the shop and also one witness who was passing by the side. The Police Patil was also examined.

5) The complainant has given evidence as per the aforesaid allegations made by him in the First Information Report which is at Exhibit 18. In the FIR and also in the substantive evidence the complainant did not take name of any person as witness who had rushed to the spot to witness the incident. The FIR was given after about seven hours of the incident. The incident took place in night time.

6) There is evidence of witness Rambhau Rajale (PW 5) showing that at the relevant time he was passing by the shop and he noticed that accused and the complainant were present in the shop and they were quarreling with each other. There is evidence of another witness Baban (PW 6) which is similar and it shows that he had gone to the shop to take liquor and he had also noticed that quarrel, grumbling was going between the accused and the complainant.

7) The prosecution witnesses have not deposed in their evidence that the accused was holding any weapon in his hands at the relevant time. These witnesses are not

declared hostile by the prosecution. The doctor has given evidence that the injury was not caused due to spear. There is one more circumstance, the spot panchanama which is at Exhibit 32 shows that on the spot of the incident one stick of babhul was found on which there were blood stains. Such stick has pointed thorny surface and that circumstance cannot be ignored.

8) The prosecution has given evidence that the accused had given statement under section 27 of the Evidence Act on 22-10-1999 and on the basis of the statement spear, the weapon, was recovered. The panch witness examined to prove this circumstance turned hostile. The recovery was belated and there are aforesaid circumstances.

9) Two persons who were running the shop have turned hostile. The incident was going for quite some time. In view of the evidence given by the aforesaid two independent witnesses it does not look probable that anybody could witness the incident of actual assault. It was night time and a stick of babhul was lying on the spot

and it was having blood stains. These circumstances create probability that the complainant has exaggerated the things. Though bleeding injuries were found, the doctor has given evidence that the injuries on the neck and on the hand were simple in nature.

10) Even for proving the offence punishable under section 324 of the Indian Penal Code, the prosecution is required to prove that the injuries were caused voluntarily. When there are aforesaid circumstances it is not possible to draw inference that the act of the accused was voluntary in nature. The trial Court has observed that there is possibility that the complainant was under influence of liquor. The evidence of the complainant shows that the complainant was drowsy and, the Police Patil also did not give report against accused when it was his duty to give report to police about the incident if the complainant was unconscious. In view of these circumstances not much importance can be given to the oral evidence of the Police Patil that the complainant disclosed to him on the spot that it is the accused who had given beating to him. All these circumstances create

probability of exaggeration of the things. Possibility mentioned by the trial Court that the complainant was under the influence of liquor also cannot be ruled out. In view of these circumstances it is not possible to infer that the accused had attempted on the life of the complainant or he had knowledge that his act would cause death of the complainant. Thus there is no scope for proving the offence under section 307 Indian Penal Code. In view of the aforesaid circumstances this Court holds that it is not possible to interfere in the decision of the trial Court.

11) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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