

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 497 OF 1995

Shripat Barku Bhagat
Age 55 yrs, Occ.Agriculturist
Residing at Kundalaj,
Taluka : Karjat, Dist.Raigad .. Appellant

Versus

The State of Maharashtra .. Respondent

Mr.Manas N. Gavankar i/b Mr.N.N. Gawankar, Advocate for the appellant.

Mrs.S.Gajare-Dhumal, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 10th JULY, 2015

ORAL JUDGMENT:-

1 This Appeal is directed against the judgment and order dated 20th September 1995 passed by the Sessions Judge, Raigad in Sessions Case No.151 of 1992, convicting the appellant who was an accused in the said case of an offence punishable under section 307 of the IPC, and sentencing him to suffer Rigorous Imprisonment for a period of 5(five) years, and to pay a fine of Rs.1,000/- in default to suffer Rigorous Imprisonment for 2(two) years. There was one more accused i.e. one Barku Mundhe (accused no.2) in the said case, but the learned Sessions Judge acquitted him.

2 The case of the prosecution, as put forth before the trial court, may, in brief be stated thus :-

Jairam (PW 2), a resident of Village Bhatgaon had gone to the house of Mahadu Mundhe at Bhoirwadi for attending a dinner hosted by the said Mahadu Mundhe. Taturam (PW 3), Ganpat (PW 6), and a number of others had attended the dinner party. The appellant was also one of the invitees. When the dinner was going on, the appellant started teasing Jairam which was not liked by Jairam, and he therefore, abused the appellant. On this, the appellant had got up and attempted to assault Jairam, but due to the intervention of the son of the appellant, no untoward incident took place there. The appellant, however, threatened Jairam that he would 'see him.' After the dinner party was over, the invitees were going back. Jairam, Taturam and Ganpat were also going towards their houses. When they had crossed a distance of about 400 feet, the appellant came from behind and abused Jairam in filthy language. The appellant then hit Jairam with a stone on the left side forehead of Jairam. Jairam fell down. He had sustained a serious bleeding injury. He was taken to the rural hospital in an unconscious condition. He was then referred to the J.J. Hospital, Mumbai, for further medical treatment.

Ganpat, who was accompanying Jairam had gone to the police station and lodged a report immediately after the incident. It was registered at about 22 hours and was treated as the First Information Report. A case in respect of an offence

punishable under section 307 of the IPC came to be registered on that basis, and investigation commenced. In the course of investigation, the involvement of the said Barku Mundhe (Accused no.2) was revealed. The appellant and the said accused came to be arrested. Jairam was hospitalized for about one and a half month, and was not in a position to talk clearly.

On completion of investigation, the appellant as also the said accused no.2 were prosecuted, and the trial as aforesaid, resulted in the conviction of the appellant and acquittal of the said accused no.2.

3 The prosecution examined 7 witnesses during the trial. I have gone through the evidence of these witnesses. I have also gone through the impugned judgment.

4 I have heard Mr.Manas Gavankar, learned counsel for the appellant. I have heard Mrs.S.V.Gajare, learned APP for the State.

5 The first witness Dattatraya Bhoir is a panch in respect of the spot panchnama under which a stone said to be a weapon of the assault (Article 1), was seized. No blood was seen on the stone. That, on the spot, there were other stones also lying, is admitted by this witness in his cross-examination.

6 The second witness is the injured – Jairam himself. In his evidence, he has stated about Mahadu Mundhe having arranged a dinner on 13th June 1992 at his house, and that he,

Taturam (PW3) Tanaji and others, being present there. According to Jairam, the appellant who was also present there, started teasing him. Because of this, Jairam abused him whereupon the appellant got up and came to assault Jairam. The son of the appellant – Gurunath – intervened and, therefore, nothing happened at that time, but the appellant abused Jairam and threatened him that he would 'see him.' Immediately after the incident, all started leaving and Jairam was also proceeding towards his house along with Taturam (PW 3), Ganpat (PW 6) and one Tanaji. Jairam states that when they had travelled a distance of about 400 feet, the appellant came from behind and abused Jairam in filthy language. According to Jairam, the appellant was having a long towel in his hands and a stone had been tied to one end of the towel. The appellant then hit Jairam on the left side of Jairam's forehead by moving the towel and stone in the air. Jairam fell down, sustained a bleeding injury and was taken to the hospital. He had lost his consciousness. According to him, he was unconscious for about one and a half month, and was not in a position to talk clearly.

7 In the cross-examination, it was suggested to Jairam that there is a vegetable shop of one Raghunath, and that the said Raghunath had witnessed the incident. It was also suggested that the shop of Raghunath was burnt by Jairam and Ganpat (PW 6). The purpose of this questioning is difficult to comprehend. In the cross-examination, Jairam stated that Mahadu had called about 250 to 300 persons for dinner. It was suggested to him that a procession was taken out in the honor of Mahadu, but he said that he was not aware of any such procession. He denied that he

was present in any such procession. It was also suggested that a number of persons who were in the procession were under the influence of liquor, but Jairam expressed no knowledge about any such thing. Ultimately, it was suggested in the cross-examination that there was stone pelting when the procession was going on, and that the stone had hit him when he was in the procession. This, however, was denied by Jairam as not true. Jairam was questioned as to whether the stone was in the hand of the appellant, and whether he had stated before the police that the stone had been tied at one end of a towel. He admitted that he had not stated before the police, that the stone had been tied at one end of a towel. It was suggested to him that the appellant had purchased land from Jairam and his family, and that due to the last dispute, Jairam was on inimical terms with the appellant, which suggestion was also denied by Jairam.

8 The third witness Taturam is an eye witness to the incident and he has supported the version of Jairam. He also speaks about the quarrel that had taken place between Jairam and the appellant during the dinner and that the appellant had threatened Jairam that he would see him. Taturam then speaks of the incident that while Jairam, he and others were going to their respective houses after the dinner party was over, appellant came from behind abusing in a filthy language and hit Jairam by a stone. He also states that the blow was given on the left side forehead of Jairam. He then speaks about Jairam falling down and the appellant leaving the place. In his evidence, he also said that he knew the appellant since his childhood and that, he could identify him as it was not completely dark, and further, the

appellant could be identified by him from the appellant's voice also. He disclosed information to the effect that the appellant is a life convict, and had undergone the sentence. In the cross-examination, he was asked whether he and others tried to catch the appellant to which he answered in negative. He was questioned about the manner in which the incident took place and some variations between his evidence and the contents of his statement recorded by the police were brought on record. He was also questioned about the procession, but he replied that the procession was already over by the time they reached Bhoirwadi. The suggestion that the appellant had not hit Jairam at all, was denied by him.

9 The fourth witness Sadashiv Vidhe is a panch in respect of the seizure of the clothes of the victim Jairam under a panchnama. In the cross-examination, he admitted that a panchnama was already written when he was asked to put his signature on him. He, however, added that the clothes were indeed there. Not much turns on the evidence of this witness.

10 The fifth witness is Dr.Rambhau Sable who was working as Medical Hospital, Rural Hospital, Karjat at the material time. He had examined Jairam at about 8.15 p.m on 30th June 1992. He found the following injury on the person of Jairam.

“CLW 3” c ½ cm on left parietal region bone deep with bleeding through left ear with # skull”

His evidence shows that the injury had been caused by hard and blunt object like a stone. The stone (Article 1) was shown to him and he said that the injury in question could be caused by that stone. Regarding the seriousness of the injury, he said that it was on a vital organ and that if medical treatment had not been given, the injury would have been sufficient to cause death in the ordinary course of nature. His evidence shows that Jairam was unconscious when he was brought to Rural hospital. Some questions were asked to him in the cross-examination about the original case papers to which he replied that they were not traceable. He, however, denied 'that the papers produced before the Court were not in conformity with the original papers, and that therefore, he had deliberately not brought the original papers.' In the cross-examination, he admitted that the injury in question could be caused if a stone is hit in an incident of stone pelting.

11 The sixth witness Ganpat is an eye witness to the incident. In fact, he is the First Informant. He however, did not support the case of the prosecution. He said that there was a pelting of stones, and that one stone had hit Jairam on his head as a result of which Jairam had fallen down. He claimed that as it was night time, he could not know who had pelted the stone. He also said in the examination-in-chief itself that he did not know 'Shripat Bhagat' i.e. the appellant. However, when he was declared hostile by the learned Public Prosecutor, and when questions in the nature of cross-examination were put to this

witness with the permission of the Court, he admitted *that both the accused (i.e. the appellant and accused no.2) had been sentenced to suffer Imprisonment for Life in one murder case. This clearly indicates that his earlier statement that he did not know the appellant, was false.*

12 The seventh and last witness is the Investigating Officer. In his cross-examination, he was asked about the shop of Raghunath Bhoir and being open on the relevant date when the incident took place, but he said that it was not open. Contradictions in the version of Ganpat as given before the Court, and his version reflected in the First Information Report, were brought on record through this witness.

13 Mr.Manas Gavankar contended, firstly, that the recovery of a stone under a spot panchnama had no substance, and that there was no particular reason or basis for identifying a particular stone as the stone with which Jairam was hit. There is substance in this contention and it, therefore, needs to be accepted.

14 Mr.Gavankar next contended that the version of Jairam that the appellant had tied the stone to one end of the towel and had hit him by moving the towel, cannot be accepted. He pointed out that Jairam had omitted to state so in his statement recorded during investigation. According to him, this theory has been introduced deliberately to show planning and determination by the appellant and in order to take the offence to the level of an offence of attempt to commit murder. He also

submitted that no towel was recovered in the course of investigation.

15 I have carefully considered the matter.

16 The evidence clearly indicates the presence of the appellant Jairam, Taturam (PW 3) and Ganpat (PW 6) in the house of Mahadu Mundhe for the dinner party. The evidence also indicates that a quarrel had taken place between Jairam and the appellant, and that Jairam had abused the appellant, as a result of which the appellant was angry and wanted to hit Jairam in the house of Mahadu Mundhe itself. There is absolutely no challenge to the evidence that Jairam had sustained a particular injury at a particular time, and that he was immediately taken to the hospital. The evidence of Jairam and Taturam does not seem to be suffering from any infirmity in that regard. Even otherwise, it is not possible to accept that Jairam would falsely implicate the appellant though he had been assaulted by someone else. The theory of a procession having taken place and that pelting of stones having taken place during that procession, and one of such stones hitting Jairam, cannot be accepted for a moment for atleast two reasons. In the first place, Taturam's evidence shows that the procession was already over when he and others reached Bhoirwadi (where the house of Mahadu Mundhe was situate.) This statement of Taturam which was made by him in the cross-examination was not subjected to any further challenge. Secondly, there is absolutely no evidence and not even a suggestion that besides Jairam, anybody else was injured in the alleged stone pelting. If indeed stone pelting had taken place, there ought to

have been some other persons who had suffered some injuries as a result thereof. What for the stone pelting had allegedly, taken place and who were the persons who had pelted stones, has not even been suggested.

17 Though Ganpat did not support the prosecution case, that a First Information Report in which the appellant was shown as the accused came to be lodged immediately after the incident, cannot be doubted and this shows that an accusation was levelled immediately against the appellant.

18 The learned Sessions Judge has appreciated the evidence properly. The order of acquittal passed by him, so far as accused no.2 Barku Mundhe on the ground that there was evidence against him, is also proper. The conclusion arrived at by him that there was sufficient and satisfactory evidence to show that the appellant had indeed assaulted Jairam causing him a serious injury, is proper and legal. On an independent appreciation of the evidence, this Court also comes to the same conclusion.

19 The learned counsel for the appellant submitted that clearly, the assault was not pre-planned. According to him, the evidence shows that the appellant acted in a fit of rage, and no intention or knowledge as would be required for constituting the offence committed by the appellant one punishable under section 307 of the IPC, could be attributed to him. He submitted that the theory of the stone having been hit after tying it to the end of the towel, was deliberately introduced to show preparation and

deliberation on the part of the appellant, but as there was no evidence to support such a theory, the fact remains that there was no pre-planning of the assault by the appellant. He also submitted that if the appellant had an intention to commit murder of Jairam, he would have given several blows to him and would not have left after giving a solitary blow.

20 I have carefully considered this aspect of the matter. It is not possible to agree with the learned counsel for the appellant.

21 The question would be whether if the death of Jairam would have been caused by the injury caused to him by the appellant, the appellant would have been guilty of murder. If the answer to this question is in the affirmative, then it follows that the appellant is guilty of an offence punishable under section 307 of the IPC.

22 That the assault was not pre-planned, cannot be accepted though there indeed arises a doubt about whether the stone had been tied to the end of a towel, and the injury was caused in the manner stated by Jairam. However, *even if Jairam has stated a lie in that regard, and even if it is accepted that the appellant had just picked a stone which was already lying somewhere, and then hit the appellant by the stone, still the offence committed by the appellant cannot be brought to a lower level.* The evidence clearly shows that there had been a quarrel between the appellant and Jairam that Jairam had abused the appellant; and the appellant had threatened Jairam. It is immediately after this

incident had taken place that everybody left Mahadu Mundhe's house and the assault took place within a very short time after the incident. The appellant was, therefore, clearly determined to attack Jairam. The blow was given on the head of Jairam and actually caused a serious injury to him. There is no challenge to the evidence of Dr.Sable(PW 5) that the *injury that was caused was sufficient in the ordinary course of nature to cause death*. When such is the position, the contention that *the intention to cause death of Jairam cannot be attributed to the appellant, and therefore, the offence committed by him would not be one punishable under section 307 of the IPC*, cannot be accepted. There is absolutely nothing to indicate that the appellant did not intend to cause the particular injury as has been actually caused. Even if the act of the appellant was not done with the intention of causing a bodily injury which the appellant knew to be likely to cause death, still, certainly, the injury was sufficient in the ordinary course of nature to cause death. The point is explained with great erudition by Their Lordships of the Supreme Court of India in the case of **Virsa Singh Vs.The State of Punjab**¹. The observations made in paras 12 & 13 of the reported judgment make the following legal position clear viz:-**'once the intention to cause the bodily injury actually found to be present, is proved, the rest of the enquiry is purely objective, and the only question is whether as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death'**. Once that kind of injury is proved to have inflicted, the case would be covered by clause 'thirdly' of section 300 of the IPC, and would amount to the offence of murder in case of death being caused. Since in this case, the injury was sufficient in the ordinary course of nature to

1 1958 AIR 465

cause death, had Jairam died, the appellant would have been guilty of murder, the offence committed by the appellant is rightly held to be one punishable under section 307 of the IPC.

23 The learned counsel for the appellant submitted that in any case, the sentence imposed upon the appellant, be reduced. He submitted that the incident had taken place about 23 years back. He also submitted that the age of the appellant is now about 80 years. He also submitted that Jairam had admittedly abused the appellant, and the appellant acted on a sudden provocation.

24 Indeed, it appears to me that the evidence indicated that Jairam had abused the appellant in the name of his mother. Though in the English translation of the notes of evidence, it is simply mentioned as the 'appellant abused', if the Marathi version of the evidence is seen, it is specifically mentioned that the abuses were given in the name of mother (आईवरुन शिवी दिली). It is also undisputed that the incident took place shortly after this has happened as immediately after the quarrel and the abuses, everybody left Mahadu Mundhe's house. The assault took place within a short time after everybody was out of Mahadu Mundhe's house.

25 Considering all the relevant aspects of the matter, and the purpose of inflicting punishment on an offender, I find substance in the contention of the learned counsel for the appellant that even if the sentence is reduced, the desired effect can be achieved.

26 I have considered the possibility of reducing the substantive sentence and increasing the sentence of fine considerably so as to be able to award compensation to be given to Jairam, but I am informed that Jairam has already passed away having died a natural death. As such, there is no point in reducing the sentence of Imprisonment substantially, and increasing the sentence of fine so that Jairam receives compensation from out of that. However, considering that the incident had taken place more than 23 years back, that the Appeal has remained pending for such a long time, and that the appellant is now around 80 years of age, in my opinion, a sentence of Rigorous Imprisonment for three years would meet the ends of justice.

27 In the result, it is directed that the substantive sentence imposed upon the appellant shall be reduced to Rigorous Imprisonment for a period of three years.

28 Subject to modification in the sentence as above, the Appeal is dismissed.

29 The appellant shall surrender his bail bonds forthwith.

(ABHAY M.THIPSAY, J)