

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1092 of 2008

Mehboob Mukhtar Ansari .. Appellant
Versus
The State of Maharashtra .. Respondent

Mr.P.R. Moses, Advocate for the appellant.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 17th APRIL, 2015

ORAL JUDGMENT :

1 This Appeal is directed against the judgment and order dated 5th September 2006 delivered by the Adhoc Addl. Sessions Judge, Sewree in Sessions Case No.307/96, 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 10 years, and to pay a fine of Rs.3,000/- in default to suffer Rigorous Imprisonment for 1(one) month.

2 I have heard Mr.P.R.Moses, the learned counsel for the appellant. I have heard Mrs.M.R.Tidke, learned APP for the State. With the assistance of the learned counsel, I have gone through the record of the case, and more particularly, the notes of evidence recorded during the trial, and the impugned judgment.

3 The allegation against the appellant was that on 26th December 2005, he had assaulted Rafique Hasan Shaikh (PW 2) by a sharp edged weapon i.e. a razor (बस्तरा), causing injuries on the throat and the back of the head of the said Rafique.

4 The prosecution examined totally 7 witnesses during the trial. The first witness for the prosecution is one Shyam Lakhan, an Assistant Sub Inspector of Police, attached to the Juhu Police Station, at the material time. The second witness is Rafique Hasan Shaikh, the injured himself. The third witness Shaikh Mohd Rafique Shaikh Mainuddin is a panch in respect of the alleged disclosure statement made by the appellant pursuant to which the weapon of assault was allegedly recovered. The fourth witness is Dr. Shailesh Harishchandra Patil, a Medical Officer attached to Cooper Hospital who had examined the said Rafique at the material time, after he had been brought to the Cooper hospital by the police. The fifth witness is also a Medical Officer. He was working in the KEM hospital at the material time. He had examined and treated Rafique after Rafique was referred to the KEM hospital from the Cooper hospital on 27th December 2005. The sixth witness Sanjay Kulkarni, Assistant Police Inspector attached to Juhu Police Station, and the seventh witness Shivaji Dadalapurkar, Inspector of Police, both attached to Juhu Police station at the material time, are the Investigating Officers.

5 The evidence of Sham Lakhan (PW 1) shows that while he was on patrolling duty on 26th December 2005 along with others, he reached at Gulmohar Road, and that, at that time, a boy

was seen by him coming running from the northern side by keeping his hand on his throat. According to this witness, he noticed blood stains on the clothes of the said boy who gave his name as 'Rafique'. The evidence of this witness shows that Rafique had immediately disclosed to this witness that one Mehboob had cut his throat by an iron knife. According to this witness, he and others took Rafique to Cooper hospital where he was treated initially, and later on, was sent to KEM hospital for further treatment. This witness has lodged the First Information Report, and therefore, he is the First Informant in the matter. The FIR lodged by him was produced before the Court and tendered in evidence.

6 In his evidence, Rafique Hasan Shaikh has stated that on 26th December 2005, he and the appellant were together, and had consumed beer together at Lal Maidan. The evidence of Rafique shows that after consuming some liquor, they both left Lal Maidan, but Mehboob managed to take Rafique back to Lal Maidan on the pretext – perhaps false – that his money purse was missing. While Rafique was attempting to search the money purse of the appellant, the appellant suddenly attacked him with an iron knife. In the cross-examination, Rafique admitted that the appellant was his best friend, and that there was no quarrel between them. He also admitted that there had been no money transactions between him and the appellant. Though this witness was extensively cross-examined, his version about the assault and the incident is not shaken, in any manner.

7 The evidence of Shaikh Mohd. Rafique Shaikh shows that on 25th January 2006, he was called at the Juhu Police Station, and that, at that time, the appellant who was in the police station, gave certain information which was recorded. This witness did not speak about the police party along with panchas going to any place, and a knife being recovered from that place. Interestingly, however, in the cross-examination, certain suggestions were given to him, in reply to which he speaks of having gone to some place by a police vehicle after the appellant had given certain information. In the circumstances, his evidence is not of much value.

8 The evidence of Dr. Shailesh Patil and Dr. Manishkumar Singh, leaves no manner of doubt that Rafique had sustained a serious injury on his throat, and another on the back of scalp. There is no challenge to this evidence of these two witnesses. The injury on throat appears to be a 'deep cut'. Dr. Shailesh Patil has opined such injury to be possible by the vastara which was produced before the Court (Article B), and which was said to be the weapon of the assault. The evidence of Dr. Manishkumar Singh shows that Rafique was admitted in the hospital till 3rd January 2006, and was thereafter, discharged.

9 The evidence of Sanjay Kulkarni (PW 6) shows that the clothes of the said Rafique were seized in the course of investigation, and that, they were having blood stains.

10 The evidence of Shivaji Dadalapurkar (PW 7) shows that the appellant was arrested on 23rd January 2006, and that,

pursuant to the information disclosed by him on 25th January 2006, which information was recorded in the presence of panchas, the police party was led to the back side of the bungalow of cine star Jitendra, and that, from the side of the road, the appellant produced a '*vastara*'. The seized articles were sent for Chemical Analysis and the reports received from Chemical Analyser, was tendered in evidence.

11 The learned counsel for the appellant contended that there were discrepancies between the evidence of Rafique. According to him, it was unsafe to accept the evidence of Rafique. He contended that no motive behind the assault was brought on record, and that itself would create a doubt about the truth of the prosecution case.

12 I am unable to accept this contention. On the contrary, after going through the evidence of Rafique, I find the same to be trustworthy and reliable in itself, apart from being corroborated by the evidence of ASI Sham Lakhan (PW 1). It cannot be ignored that the name of the appellant was disclosed by Rafique to Sham Lakhan immediately after the incident, and Sham Lakhan has mentioned the same in the First Information Report. It is true that the prosecution has not been able to bring on record the motive behind the assault, but in my opinion, that is hardly relevant when the evidence of Rafique has not been shaken, in any manner, in the cross-examination.

13 A perusal of the impugned judgment shows that the appreciation of evidence of the prosecution witnesses as done by

the learned Judge, is by and large, correct. It is obvious that the case basically rests on the evidence of Rafique (PW 2), which as aforesaid, is not shaken in any manner. Since Rafique and the appellant were friends, there was absolutely no motive for Rafique to have falsely implicated the appellant. It appears that Rafique has not tried to attribute any false motives to the appellant, and has simply stated that the appellant was his best friend. The evidence of Rafique is corroborated by the immediate disclosure of the name of the appellant as the assailant made by him to the police i.e. Sham Lakhan (PW 1). That such disclosure was made, cannot be doubted at all, because it may be recalled, that Sham Lakhan has lodged the FIR in which he has spoken about his disclosure, and has mentioned the name of the appellant.

14 I have considered whether the offence committed by the appellant would be one punishable under section 307 of the Indian Penal Code. The intention behind the assault would be a matter of inference to be drawn from the facts of the case. In this case, the appellant had given the blow on the neck of Rafiq. The blow was given by a sharp weapon, on the throat, and by coming from behind. The evidence of Rafiq shows that while giving the blow, appellant had held the head of Rafiq. The appellant also gave one more blow to Rafiq on his head. It is common knowledge that neck is a vital part of the body. The threat of 'cutting the neck' or 'cutting the throat' is commonly understood to be a threat of killing. The assault was clearly pre-planned. Considering the part of the body selected by the appellant for assaulting weapon used, the manner of attack and the nature of injury sustained by Rafiq, the *mens rea* required to make the

offence committed by him, one punishable under section 307 of the IPC, can be safely attributed to the appellant. In other words, it can be safely accepted that the appellant had assaulted Rafiq with the intention of causing his death, or, at any rate, with the intention of causing such bodily injury, as was sufficient in the ordinary course of nature, to cause death.

15 In view of this, the order of conviction of the appellant on the charge of an offence punishable under section 307 of the IPC, appears to be proper and legal.

16 The learned counsel for the appellant urged that the sentence imposed upon the appellant, be reduced. The appellant has already undergone actual Imprisonment for a period of more than eight years as of today. However, in the circumstances of the case, it does not appear to me that it would be proper to interfere with the sentence that has been imposed by the trial court. The trial Judge had an undoubted discretion in the matter. It is not possible to hold that the discretion available to him, has been exercised improperly by the learned trial Judge.

17 I am therefore, not inclined to reduce the sentence imposed upon the appellant, as prayed for by the learned counsel.

18 The impugned judgment and order of conviction and sentence is proper and legal. No interference is warranted.

19 The Appeal is dismissed.

(ABHAY M.THIPSAY, J)