

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 343 OF 2002

Purushottam Nago Mahajan,
Age : 38 years,
Occupation - Agriculture,
R/o Jahangir Pura,
Erandol, Taluka - Erandol,
District - Jalgaon

.. Appellant
(Orig. Accused)

VERSUS

The State of Maharashtra

.. Respondent
(Orig. Complainant)

Mr. R.M. Deshmukh, Advocate and Mr. V.B. Patil, Advocate for
the appellant
Mr. N.T. Bhagat, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 12/02/2016

ORAL JUDGMENT :

Heard both sides.

2. The present appellant was convicted by the learned 1st Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 135 of 2000 on 30/05/2002 for the offences punishable under section 325 and 510 of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for a period of 6 years and to pay fine of

Rs.1000/-, in default of payment of fine, he was further directed to suffer further rigorous imprisonment for 2 months for the offence punishable under section 325 of the Indian Penal Code and was sentenced to pay fine of Rs.10/-, in default to suffer rigorous imprisonment for 1 day for the offence punishable under section 510 of the Indian Penal Code.

3. Aggrieved by the said judgment and order, the present appeal is filed.

4. In-fact, the appellant was charged of commission of murder i.e. offence punishable under section 302 alongwith section 504 of the Indian Penal Code.

5. In nutshell, the prosecution case is as under:-

. That deceased - Kishor alias Munna son of PW1/complainant Madhav Mahajan went to the tadi shop for working there on 07/02/2000. At about 8:30 pm in the night, his cousin i.e. present appellant Purushottam Mahajan came in the said shop under the

influence of liquor. He had a wooden club called as 'shingade' in his hand. He started ransacking the shop. Deceased questioned him and tried to convince him.

. Upon hearing shouts, the other nephews of the complainant also went to the shop. All of them started giving understanding to the appellant. He however continued to make a scene. When the deceased was attempting to give him understanding, the appellant suddenly kicked on the private part of the deceased. Due to the kick, the deceased became unconscious and fell on the ground. The deceased was taken away at the house.

. Thereafter, he was taken to the hospital of one Dr. S.T. Patil for treatment. Upon examination, Dr. Patil told that in-fact, the deceased has died and, therefore, father of the deceased filed the complaint with Police Station, Erandol at about 10:50 pm.

6. PW7 - A.P.I. Sureshsingh Rajput conducted the investigation. He sent the dead body for post-mortem

examination, upon firstly having the inquest panchanama of the dead body. PW6 - Dr. Karuna Bhise conducted the post-mortem examination over the dead body. On external examination, she found following injuries on the person of the deceased.

“(1) Abrasion on right side neck region size 3 cm X 2 cm.

(2) Blunt trauma over scrotum due to haematoma over testicle part both sides. Left testicle haematoma 3 cm X 3 cm right testicle haematoma was 2 cm X 2 cm

(3) Blunt trauma over chest region.”

. On internal examination, haemorrhage below upper ribs i.e. 6th, 7th and 8th was found. Heart chamber was full of blood. Blood clots were present in right side of chamber of the heart. Blood colour was blackish red. According to the Medical Officer, the death has occurred due to cardio-respiratory failure due to neurogenic shock.

7. The appellant was also arrested in injured condition. The same Medical Officer examined him. He

was smelling alcohol at that time. His state was inchoate, gait was unsteady, pupils were dilated. Following injuries were noted by the Medical Officer on his person :-

“(1) Contusion on frontal scalp 2 cm X 2 cm

(2) Abrasion on frontal scalp 2 cm X 1 cm.

(3) Abrasion on right side back region 6 cm X 4 cm

(4) Contusion on right side back region 5 cm X 3 cm.

8. The Investigating Officer recorded the panchanama of spot of occurrence, recorded statements of the eye witnesses and other peripheral witnesses and filed the chargesheet in the Sessions Court.

9. Before the learned Sessions Judge, in all 7 witnesses were examined. Out of them, PW1 - Madhav and PW5 - Narmadabai are the parents of the deceased, who claimed to be the eye witness to the incident. PW3 - Dilip and PW4 - Sharad, the cousins of deceased as well as the appellant were also claimed to be eye witness by the prosecution. They however did not support the

prosecution case totally.

. Out of them, PW3 - Dilip during examination-in-chief deposed that he was not aware of the incident. When his cross-examination was taken at the hands of the learned A.P.P., he answered all the leading questions in the affirmative, however, in the cross-examination by the defense, he again denied the prosecution case.

10. The learned Additional Sessions Judge found the prosecution case to have been proved beyond reasonable doubt. It was however found that the present appellant had no intention to cause murder of the deceased. It was found that he has caused grievous injury to the deceased by kick and, therefore, he was convicted for the offence punishable under section 325 and 510 of the Indian Penal Code. Hence, the present appeal.

11. Mr. R.M. Deshmukh, learned counsel for the appellant took me through the evidence. He submits that as per the prosecution case, in-fact, independent

witnesses i.e. customers in the tadi shop were present. Despite this, only the near relatives of the deceased were examined.

. Out of the near relatives, even the cousins PW3 and PW4 did not support the prosecution case. PW5 - mother of the deceased made vast improvements. As against the prosecution case that the appellant has kicked the deceased on his private part, she deposed that appellant hit the deceased on his private part with a wooden club.

. Thus, only PW1 - Madhav, father of the deceased went by the prosecution case.

. He submits that the material on record would show that in-fact, the deceased himself was creating a scene at the tadi shop, as he was forcing for closing of the said tadi shop at that time. In the circumstances, the customers beat the deceased. However, due to the inimical terms, the appellant is involved falsely in the incident.

. It was further submitted that though

admittedly, the Police station is merely 500 feet away from the spot of occurrence, the FIR came to be lodged after 2 hours. In all these circumstances, he submits that the appeal be allowed and the appellant be acquitted of all the offences.

12. In the alternative, Mr. Deshmukh submits that the prosecution case would show that without any premeditation, the appellant had kicked the deceased. The blood sample of the appellant obtained by the Medical Officer and sent to the Analyzer, as proved by the prosecution, would show that it contained 0.067 gms % w/v of ethyl alcohol. The Medical Officer has clarified in her cross-examination that if a person is under the influence of liquor to the above extent, as is found in the system of the appellant, the person would not be able to control himself. In the circumstances, he submits that it cannot be gathered that the appellant definitely intended to kick the testicle of the deceased and cause grievous injury.

. In the circumstances, he submits that at the most, it would be a offence punishable under section

323 of the Indian Penal Code and finding that the present appellant was behind the bar for a period of 3 months and one week, he may be released upon sentencing him for the period already undergone by him.

13. Learned A.P.P. on the other hand submits that the statement of the parents of the deceased coupled with the immediately filed FIR would show that the present appellant is the author of the injuries. If the appellant himself has consumed the liquor, it cannot be now argued that he did not intend to cause the grievous injury. He further took me through the record and submits that there is no delay in filing of the FIR.

14. On the basis of this material, following points arise for my determination :-

I) Whether the prosecution has proved that on 07/02/2000 at about 8:30 pm at Erandol, the present appellant voluntarily caused grievous hurt to the deceased ?

II) Whether the prosecution has proved that on the given date, time and place,

the present appellant in the state of intoxication in a public place, conducted himself in such a manner to cause alarm to the public ?

My findings to both the points are in the affirmative. The Appeal is therefore dismissed as regards the conviction. As regards the sentences, however, interference is warranted for the reasons to follow.

R E A S O N S

15. According to the prosecution, the incident has occurred at 8.30 pm. The prosecution witnesses admitted that the spot of occurrence is 500 feet away from the Police Station. The crime was registered at 10.50 pm. i.e. about two hours after the incident. The FIR itself however would show that after the incident, the deceased was first taken to the house. Thereafter, he was shifted to the hospital of one Dr. S.T. Patil. Said Doctor later on examined him and, thereafter, he declared him to be dead. Thereafter, the complainant went to the Police Station and filed his complaint.

In the circumstances, period of two hours in filing the complaint from the time of occurrence, cannot be called as a delayed period.

16. On the other hand, the conduct of the complainant, as found from the FIR and his deposition is natural one. The immediately filed FIR would show that the complainant was the eye witness to the incident. Therefore, his deposition in this regard cannot be faulted with.

. It is no doubt true that his wife i.e. mother of the deceased had made certain exaggerated statements regarding the incident and his nephews who are the cousins of the appellant, also did not support the prosecution case in witness box.

17. The difficulty faced by the hostile witness however is required to be appreciated. They had lost their one of the cousin while another cousin was facing prospect of suffering life imprisonment, as he was facing trial for the offence punishable under section 302 of the Indian Penal Code. In the circumstances,

though they turned hostile to the prosecution case, one cannot jump to the conclusion that no incident, as detailed supra has occurred.

18. It is no doubt true that the appellant was found injured when he was examined by the Medical Officer, however, it is not the defence that the deceased at any time tried to attack him and in the said incident, he has suffered injury. It is not his case that somebody had administered him liquor. In the circumstances, the fact that alcohol was found in his system would not give any concession to him absolving him from causing of the injury.

19. Taking into consideration all these facts, in my view, the prosecution has clearly established that the appellant has committed the offence punishable under section 325 and section 510 of the Indian Penal Code.

20. As regards the sentence, however, it should be noted that as per the prosecution case itself, the incident was unintended. The appellant has in the

incident, kicked the deceased over his testicle, which ultimately caused the death of the deceased. Appellant was 36 years old at the time of commission of the offence.

. In that view of the matter, taking into consideration all the facts, in my view, the sentences awarded by the learned Session Judge, to suffer rigorous imprisonment for a period of 6 years appears to be harsh one.

. In my view, direction to suffer rigorous imprisonment for a period of 1 year and to pay fine of Rs.1000/- for the offence punishable under section 325 of the Indian Penal Code, would meet the ends of justice. In the circumstances, the following order :-

: ORDER :

21. Criminal Appeal is hereby dismissed as regards the conviction recorded by the learned 1st Adhoc Additional Sessions Judge, Jalgaon vide the impugned judgment and order dated 30/05/2002 passed in Sessions

Case No. 135 of 2000.

22. As regards the sentence, the direction of the learned Additional Sessions Judge, Jalgaon to suffer rigorous imprisonment for a period of 6 years and to pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for 2 months for the offence punishable under section 325 of the Indian Penal Code, is hereby set aside.

. Sentence awarded to the appellant as regards the offence punishable under section 510 of the Indian Penal Code is hereby maintained.

. Instead, the appellant is directed to undergo rigorous imprisonment for a period of 1 year and to pay fine of Rs.1000/-, in default to suffer further rigorous imprisonment for 1 week for the offence punishable under section 325 of the Indian Penal Code.

23. The period during which the appellant was in custody, shall be set off from the above period of sentence.

24. Mr. Deshmukh, learned counsel for the appellant submits that the fine amount on both the counts are already deposited.

25. Learned Sessions Judge, Jalgaon to take steps for securing presence of the appellant to serve the remaining sentence, now awarded to him.

26. Criminal Appeal is accordingly disposed of.

27. On the request of Mr. Deshmukh, learned counsel for the appellant, eight (8) weeks time for surrender of the appellant before the learned Sessions Judge, Jalgaon is hereby granted.

Sd/-
[M.T. JOSHI]
JUDGE

arp/