IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.553 OF 2016
WITH
CRIMINAL APPLICATION NO.1747 OF 2018
IN
CRIMINAL APPEAL NO.553 OF 2016

RAJENDRA DHONDUSING RAJPUT)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.R.M.Khairnar, Appointed Advocate for the Appellant.

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

CORAM : A. M. BADAR, J.

DATE : 23rd OCTOBER 2018

ORAL JUDGMENT :

1 The appellant/accused, by this appeal, is challenging the judgment and order dated 1st September 2015 passed by the learned Additional Sessions Judge, Nashik, in Sessions Case

No.111 of 2015, thereby convicting him of the offence punishable under Section 307 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years apart from directing him to pay fine of Rs.500/- and in default to undergo simple imprisonment for 1 month. The appeal is taken up for final hearing in view of the communication of the appellant/accused from jail intimating to this court that he has undergone major part of his sentence and he is behind bars since the date of his arrest. The appeal itself is filed through jail and by providing legal aid to the appellant/accused, Ms.R.M.Khairnar, the learned advocate came to be appointed to represent the appellant/accused, at the costs of the State, vide order dated 29th July 2016 passed by this court (Coram : Smt.Revati Mohite Dere, J.).

2 Brief facts leading to the filing of the instant appeal are thus :

(a) PW7 Honaji Lande, Assistant Police Inspector, attached to Police Station Bhadrakali, Nashik, was on patrolling duty in the night intervening 15th January 2015 and 16th January

2015. At about 1.00 a.m. of 16th January 2015, he, during the course of patrolling, visited Mumbai Naka area of Nashik, and noticed three persons viz. Mitesh Wani, Aditya Maheshwari and Abhinav Jain near the Unity Complex at Mumbai Naka. PW2 Mitesh Wani informed PW7 Honaji Lande, Assistant Police Inspector, that they saw one person coming from the Unity Complex and shouting that he has assaulted one person. That is how, First Informant/PW1 Ashok Kakad, Police Head Constable, accompanied by other Police Constables visited the spot of the incident, on instructions of PW7 Honaji Lande, Assistant Police Inspector.

(b) It is noticed by PW7 Honaji Lande, Assistant Police Inspector, PW2 Mitesh Wani, PW1 Ashok Kakad, Police Head Constable and PW4 Ramchandra Jadhav, Police Head Constable, that PW5 Vishnu Zurde was lying injured at the Unity Complex, Mumbai Naka, Nashik, having suffered bleeding injuries on his mouth.

(c) PW2 Mitesh Wani had informed PW7 Honaji Lande, Assistant Police Inspector, that the person who came shouting had gone to the backside lane of the Unity Complex. Hence, along with PW2 Mitesh Wani, police personnel went at the backside of the Unity Complex. The appellant/accused came to be arrested from that place.

(d) Injured PW5 Vishnu Zurde, so also the appellant/accused, were sent to the hospital by the police. Clothes of the injured as well as that of the appellant/accused came to be seized. Paver block stained with blood, blood stained samples, sample of blood lying on the spot etc. came to be seized in presence of panch witness PW3 Bapu Suryavanshi. Routine investigation followed and ultimately the appellant/accused came to be charge-sheeted for the offence punishable under Section 307 of the Indian Penal Code.

(e) The learned trial court framed and explained the Charge to the appellant/accused. He pleaded not guilty and claimed

trial. In order to bring home the guilt to the appellant/accused, the prosecution has examined in all eight witnesses. The defence of the appellant/accused was that of total denial. He, however, did not enter in defence. After hearing the parties, the learned trial court by the impugned judgment and order was pleased to convict the appellant/accused for the offence punishable under Section 307 of the Indian Penal Code, and he was sentenced accordingly, as indicated in the opening paragraph of this judgment.

3 I have heard Ms.R.M.Khairnar, the learned advocate appointed to represent the appellant/accused at the costs of the State. She vehemently argued that there is no direct evidence to connect the appellant/accused to the crime in question and the entire case of the prosecution is based on circumstantial evidence. The prosecution has failed to prove motive harboured by the appellant/accused for commission of the crime in question. She further argued that evidence of injured PW5 Vishnu Zurde is of no

assistance to the prosecution as he was tutored to deposed before the court, as seen from his cross-examination. It is further argued that no Test Identification Parade was conducted by the prosecution. The injuries, allegedly suffered by injured PW5 Vishnu Zurde, were not on vital part of the body, and therefore, no offence punishable under Section 307 of the Indian Penal Code is made out by the prosecution. As against this, the learned APP supported the impugned judgment and order of conviction by contending that the prosecution has proved guilt of the appellant/accused on the basis of circumstantial evidence which also includes forensic evidence. Clothes of the appellant/accused were found to be stained with blood of the victim.

4 I have carefully considered the rival submissions and also perused the record and proceedings including oral as well as documentary evidence. In a case based on circumstantial evidence, the prosecution is enjoined to prove each and every circumstance leading to the irresistible conclusion of guilt of the accused in the crime in question. The chain of circumstance is

required to be so complete to come to only inference of the accused being guilty of commission of the crime and it should exclude all hypothesis of his innocence. In a case based on circumstantial evidence, motive furnishes additional link to the chain of circumstances.

5 In the case in hand, PW5 Vishnu Zurde is the injured victim. His evidence shows that after finishing his work at the Chinese food stall, he slept in front of that stall at 10.00 p.m. of the night intervening 15th January 2015 and 16th January 2015. While he was sleeping, somebody had pelted a big article on his mouth whereby he sustained injuries and became unconscious. Though this victim of the crime in question attempted to state that it was the appellant/accused who caused injuries to him while sleeping, cross-examination of this witness goes to show that at the instance of some boys, he has stated that it was appellant/accused Rajendra Rajput who had assaulted him. This evidence, as such, is of no assistance to infer that it was the appellant/accused who pelted a paver block on head of injured

PW5 Vishnu Zurde causing bleeding injuries to him. However, evidence of this injured PW5 Vishnu Zurde to the effect that there was dispute between him and appellant/accused Rajendra Rajput regarding place for sleeping is not at all shattered in the cross-examination. It is seen from the evidence of this injured witness that he as well as the appellant/accused were sleeping in the shopping complex and they had no home to go and sleep. Infact, injured PW5 Vishnu Zurde had stated that he used to sleep anywhere during night after working at the tea stall and Chinese food stall. It is, thus, clear that, there was hostility between the injured witness and the appellant/accused in respect of the place for sleeping in the night.

6 PW2 Mitesh Wani is a witness who has stated post event happenings which took place soon after the incident of assault on injured PW5 Vishnu Zurde. Evidence of PW2 Mitesh Wani shows that when he along with his friends was present at the Mumbai Naka area for receiving his friends, while sitting in the car of Maruti Swift make, he heard shouts and noticed one

person coming from the steps of Unity Complex. Evidence of PW2 Mitesh Wani shows that the said person shouted that he assaulted somebody and went to the backside of the Unity Complex.

7 Evidence of PW7 Honaji Lande, Assistant Police Inspector, who was on patrolling duty in that night makes it clear that during the course of patrolling he went to Mumbai Naka and stopped near PW2 Mitesh Wani and his friends. Thereafter, PW2 Mitesh Wani had disclosed the incident of hearing shouts of the person to PW7 Honaji Lande, Assistant Police Inspector. Congruous evidence of both these witnesses goes to show that they then went to the spot and noticed that one person i.e. PW5 Vishnu Zurde was lying injured at the Unity Complex and blood was oozing from his mouth. Evidence of these witnesses so also that of PW1 Ashok Kakad, Police Head Constable and PW4 Ramchandra Jadhav, Police Head Constable, who visited the spot soon after the incident, shows that blood stained paver block was lying on the spot.

8 As seen from evidence of PW7 Honaji Lande, Assistant Police Inspector and PW2 Mitesh Wani, so also that of PW1 Ashok Kakad, Police Head Constable, they went to the back side of the Unity Complex and found the appellant/accused present there. He was arrested by police. The appellant/accused is duly identified by PW2 Mitesh Wani.

9 The appellant/accused was arrested soon after the incident from the spot of the incident itself. Therefore, there was no propriety in conducting the Test Identification Parade when he was arrested in presence of PW2 Mitesh Wani, who had heard extra judicial confession of the appellant/accused to the effect that he had assaulted one person. Soon thereafter, PW5 Vishnu Zurde was seen lying injured on the spot.

10 It is seen from Seizure panchnama at Exhibit 29 that clothes of the appellant/accused were seized after his arrest. Perusal of the Seizure panchnama Exhibit 29 shows that these clothes were duly packed and sealed with wax seal. The seized

articles were sent for chemical analysis and the report of the Chemical Analyzer at Exhibit 26 shows presence of human blood of “B” group on seized clothes of the appellant/accused. Same is the blood group of injured PW5 Vishnu Zurde. Possibility of tampering of the seized clothes of the appellant/accused is ruled out from the recitals in the Seizure panchnama to the effect that those clothes were duly packed and sealed with wax seal.

11 Yardstick of a prudent person is required for holding a fact to be proved. In the case in hand, evidence on record does show that PW2 Mitesh Wani had heard extra judicial confession of the appellant/accused to the effect that he had assaulted someone. Soon thereafter, prosecution witnesses including PW2 Mitesh Wani and PW7 Honaji Lande, Assistant Police Inspector, had seen PW5 Vishnu Zurde lying injured on the spot of the incident. The appellant/accused was arrested immediately after the incident from the same premises. His clothes were found to be stained with blood of injured PW5 Vishnu Zurde. Evidence of injured PW5 Vishnu Zurde goes to show that he was having

dispute with the appellant/accused over the place for sleeping in the night. The cumulative effect of all these facts unerringly point out that it was the appellant/accused who had caused injuries to the victim of the crime in question by pelting a paver block on his head. The seized paver block was also subjected to chemical analysis and blood of the injured was found on it.

12 Now let us examine whether the offence punishable under Section 307 of the Indian Penal Code is made out by the prosecution. It is well settled that for making out this offence, it is not at all necessary to cause injury to the victim. Intention coupled with some overt act is sufficient to hold that the offence punishable under Section 307 of the Indian Penal Code is made out. The incident in question took place at about 1.00 a.m. of the night intervening 15th January 2015 and 16th January 2015. Evidence of injured PW5 Vishnu Zurde shows that he was deep asleep at the time of the incident in question. Weapon of assault is the paver block. Seat of the injury is head of the victim, who was fast asleep at the time of the incident. Evidence of PW8

Dr.Ramchandra Patil who had medically treated the victim at the Civil Hospital, Nashik, shows that the victim had suffered contused lacerated wound over nose of size 8 cm x 6 cm x 4 cm. Similarly, the victim had also suffered similar wound over fronto maxillary region of size 2 cm x 0.5 cm x 0.5 cm. For treating these injuries, the attending Medical Officer was required to subject PW5 Vishnu Zurde to surgical procedure of tracheostomy. The papers of medical treatment Exhibit 34 proved by PW8 Dr.Ramchandra Patil show that general condition of injured PW5 Vishnu Zurde was poor when he was admitted to the hospital. PW8 Dr.Ramchandra Patil has stated that the victim suffered grievous hurt in the incident.

13 In this view of the matter, it cannot be said that the learned trial court had erred in concluding that the prosecution has established the offence punishable under Section 307 of the Indian Penal Code. The requisite intention is established by the prosecution by making it clear that the weapon used and the part of body chosen for inflicting injury. As such, no infirmity can be

found either in the conviction or the appellant/accused for the offence punishable under Section 307 of the Indian Penal Code, so also in respect of the quantum of the sentence imposed on him. Resultantly, the appeal fails and the order follows :

ORDER

i) The appeal is dismissed.

ii) In view of disposal of the appeal, Criminal Application No.1747 of 2018 also stands disposed of.

(A. M. BADAR, J.)