

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.658 OF 2014

RAJU @ RAJIV MANIMOHAN MANDAL)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Nasreen Ayubi, Appointed Advocate for the Appellant.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 8th JUNE 2018

ORAL JUDGMENT :

1 The appellant/accused is challenging the judgment and order dated 28th February 2013 passed by the learned Additional Sessions Judge, Thane, in Sessions Case No.83 of 2010, thereby convicting the appellant/accused for 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.2,000/-, and in default, to undergo further simple imprisonment for 3 months.

2 Facts, in nutshell, leading to the prosecution of the appellant/accused can be summarized thus :

- (a) Injured PW3 Vijay Das was friend of appellant/accused Raju @ Rajiv Mandal. PW2 Kajal Das is legally wedded wife of appellant/accused Raju @ Rajiv Mandal. She has a daughter from appellant/accused Raju @ Rajiv Mandal. The couple was staying in a rented Room No.3 at Mhatre Chawl, Shivaji Nagar, Raigaon, in Thane District. PW3 Vijay Das, who is victim of the crime in question, was friend of appellant/accused Raju @ Rajiv Mandal. He also used to stay at Room No.3, Mhatre Chawl, along with appellant/accused Raju @ Rajiv Mandal and his wife PW2 Kajal Das.
- (b) According to the prosecution case, love affair started between PW3 Vijay Das and PW2 Kajal Das, who happened to be wife of appellant/accused Raju @ Rajiv Mandal. After death of Debu – brother of appellant/accused Raju @ Rajiv Mandal, he accompanied Jyoti – widow of Debu to their

native place at Calcutta and did not return for a period of six months. During that period, PW2 Kajal Das and PW3 Vijay Das started residing in the said house as husband and wife and PW2 Kajal Das had delivered a female child, fathered by PW3 Vijay Das.

- (c) After return of appellant/accused Raju @ Rajiv Mandal to Raigaon, quarrel started between him and PW2 Kajal Das. For few days, he stayed in Room No.3 and then started residing separately. Two days prior to the incident in question, appellant/accused Raju @ Rajiv Mandal started residing with PW2 Kajal Das and PW3 Vijay Das at Room No.3 of Mhatre Chawl, Raigaon.
- (d) The incident in question took place at about 5.30 a.m. of 23rd November 2009 in the residential Room No.3 at Mhatre Chawl. According to the prosecution case, after having dinner, PW2 Kajal Das, PW3 Vijay Das, appellant/accused Raju @ Rajiv Mandal and two daughters of PW2 Kajal Das

slept in their house. At about 5.30 a.m. of 23rd November 2009, appellant/accused Raju @ Rajiv Mandal lifted the grinding stone in the room and hit it on head of PW3 Vijay Das. Hearing shouts of PW3 Vijay Das, PW2 Kajal Das woke up. She saw bleeding injury on head of PW3 Vijay Das and therefore, she immediately knocked the door of neighbours for help. In the meanwhile, appellant/accused Raju @ Rajiv Mandal, fled from the spot.

- (e) Responding call of PW2 Kajal Das, PW1 Mohd. Mahamudur and PW5 Sunita Surve helped PW2 Kajal Das. In the autorickshaw of PW1 Mohd. Mahamudur, injured PW3 Vijay Das was taken up to Rajesh Hotel, from where by hiring another autorickshaw, he was taken to Bhagwati Hospital, where he was medically treated by PW7 Dr.Amit Anguwar.
- (f) After lodging First Information Report (FIR) Exhibit 17 by PW2 Kajal Das, Crime No.236 of 2009 for the offence punishable under Section 307 of the Indian Penal Code

came to be registered against appellant/accused Raju @ Rajiv Mandal, at Police Station Bhayander. The Investigating Officer visited the spot of the incident i.e. Room No.3 of Mhatre Chawl and seized grinding stone stained with blood, two blankets and a quilt, by preparing Spot cum Seizure Panchnama Exhibit 39 in presence of panch witness PW6 Mahesh Surve. Clothes of the injured were also seized vide Seizure Panchnama Exhibit 33 in presence of PW4 Vijay Soni. Seized articles were sent for chemical analysis and on completion of routine investigation, the appellant/accused came to be charge-sheeted.

- (g) Charge for the offence punishable under Section 307 of the Indian Penal Code was framed and explained to the appellant/accused. He abjured guilt and claimed trial.
- (h) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all eight witnesses. Mohd.

Mahamudur, neighbour of the injured, is examined as PW1. Kajal Das is examined as PW2. Injured Vijay Das is examined as PW3. Panch witness Vijay Soni is examined as PW4. Neighbour Sunita Surve is examined as PW5. Another panch witness Mahesh Surve is examined as PW6. Dr.Amit Anguwar of Bhagwati Hospital is examined as PW7 whereas Amarsingh Nimbalkar, Police Inspector – Investigating Officer is examined as PW8.

- (i) Defence of the appellant/accused was that of total denial.
- (j) After hearing the parties, by the impugned judgment and order dated 28th February 2013, the learned trial court was pleased to convict the appellant/accused for the offence punishable under Section 307 of the Indian Penal Code and he came to be sentenced accordingly, as indicated in the opening paragraph of this judgment.

3 I have heard Ms.Nasreen Ayubi, the learned advocate on the panel of the High Court Legal Aid, appointed to represent the appellant/accused, at the cost of the State. She vehemently argued that evidence of the prosecution is discrepant and the same is not trustworthy. The alleged victim of the crime in question i.e. PW3 Vijay Das has enticed the wife of the appellant/accused and has falsely implicated the appellant/accused in the crime in question. To substantiate this contention, he placed reliance on evidence of PW2 Kajal Das and PW3 Vijay Das and submitted that PW3 Vijay Das has not even stated in his evidence that he married PW2 Kajal Das, any time, subsequent to leaving of the house by the appellant/accused for reaching his sister-in-law to the native place. The learned advocate further argued that these two prosecution witnesses were in hostile terms with the appellant/accused, and therefore, the appellant/accused is falsely implicated in the crime in question.

4 The learned APP supported the impugned order of conviction as well as resultant sentence by submitting that the prosecution case is based upon eye witness account of PW3 Vijay Das, which is gaining corroboration from evidence of PW2 Kajal Das, PW1 Mohd. Mahamudur and PW5 Sunita Surve. The same is also corroborated by other evidence adduced by the prosecution.

5 I have carefully considered the rival submissions and also perused the record and proceedings. Now let us examine whether at about 5.30 a.m. of 23rd November 2009, the appellant/accused did an act of hitting head of PW3 Vijay Das with the intention or with the knowledge of causing death or causing such bodily injury to him as was likely to cause death of PW3 Vijay Das.

6 The prosecution has heavily relied on evidence of injured witness PW3 Vijay Das as well as that of PW2 Kajal Das. Careful scrutiny of evidence of PW2 Kajal Das and that of PW3 Vijay Das unerringly points out that appellant/accused Raju @

Rajiv Mandal is husband of PW2 Kajal Das. PW2 Kajal Das had given birth to a female child out of this wedlock. Evidence of both these witnesses and particularly that of PW2 Kajal Das shows that after death of his brother Debu, appellant/accused Raju @ Rajiv Mandal had taken widow of Debu namely Jyoti to his native place at Calcutta, from where he could not return to Raigaon, where he was residing with his wife PW2 Kajal Das for a period of six months. Evidence of PW2 Kajal Das makes it clear that though being married with appellant/accused Raju @ Rajiv Mandal, she developed intimacy with PW3 Vijay Das and started residing with him as his wife in the very same Room No.3 of Mhatre Chawl at Raigaon. Not only that, but she has also given birth to another female child out of this liaison with PW3 Vijay Das. Thereafter, appellant/accused Raju @ Rajiv Mandal, as seen from evidence of both these witnesses, returned to Raigaon and then started quarreling with his wife i.e. PW2 Kajal Das over the issue of her relations with PW3 Vijay Das. As stated by PW2 Kajal Das, after residing with her for few days, thereafter, the appellant/accused started residing separately but again returned to Room No.3 of

Mhatre Chawl, two days prior to the incident in question. Evidence of PW2 Kajal Das and that of PW3 Vijay Das shows that they both were residing together in said Room No.3 along with two daughters of PW2 Kajal Das.

7 As seen from evidence of PW2 Kajal Das and that of PW3 Vijay Das, on 22nd November 2009, after having dinner, PW2 Kajal Das, PW3 Vijay Das, as well as appellant/accused Raju @ Rajiv Mandal along with two daughters of PW2 Kajal Das slept in their house i.e. Room No.3 of Mhatre Chawl. PW3 Vijay Das has categorically deposed that in that night, the appellant/accused had assaulted him by means of a grinding stone on his head, and therefore, he shouted. PW3 Vijay Das has deposed that then PW2 Kajal Das woke up and pushed appellant/accused Raju @ Rajiv Mandal. As per version of PW3 Vijay Das, he suffered bleeding injury to his face.

8 In tune with evidence of PW3 Vijay Das, PW2 Kajal Das has deposed that at about 5.30 p.m. of 23rd November 2011,

she heard noise and therefore woke up to see appellant/accused Raju @ Rajiv Mandal lifting the grinding stone and therefore, she pushed appellant/accused Raju @ Rajiv Mandal. She further deposed that she saw blood oozing from forehead, nose, cheeks and chin of PW3 Vijay Das, and therefore, she knocked door of her neighbour for help. As per version of PW2 Kajal Das, then PW3 Vijay Das was taken to Bhagwati Hospital for medical treatment.

9 PW1 Mohd. Mahamudur is a driver of the autorickshaw who was residing in the neighbourhood of the room of PW2 Kajal Das. As per version of PW1 Mohd. Mahamudur, at about 6.00 a.m. of 23rd November 2009, PW2 Kajal Das knocked the door of his house and told him that PW3 Vijay Das needs to be taken to hospital. PW1 Mohd. Mahamudur stated that he then went to the house of PW2 Kajal Das and saw grinding stone stained with blood. He saw PW3 Vijay Das lying on the floor of the said room with blood oozing from his head. PW1 Mohd. Mahamudur testified that appellant/accused Raju @ Rajiv Mandal was present there. As per version of PW1 Mohd. Mahamudur, he

took PW2 Kajal Das as well as injured PW3 Vijay Das and others by his autorickshaw up to Rajesh Hotel and from there, by hiring another autorickshaw, they went to the hospital.

10 PW5 Sunita Surve is another neighbour of PW2 Kajal Das. She deposed that at about 5.30 p.m. of 23rd November 2009, PW2 Kajal Das knocked the door of her house and told her that appellant/accused Raju @ Rajiv Mandal had assaulted PW3 Vijay Das with the grinding stone. As per version of this witness, she went to the house of PW2 Kajal Das and saw the grinding stone stained with blood. She had also seen appellant/accused Raju @ Rajiv Mandal present there, who after changing his clothes, fled from the spot.

11 This is the ocular evidence against the appellant/accused describing the happenings at the time of the incident in question as well as the post event happenings. From cross-examination of PW3 Vijay Das, it is elicited that appellant/accused Raju @ Rajiv Mandal used to quarrel with PW2

Kajal Das over her illicit relations with PW3 Vijay Das. PW3 Vijay Das in his evidence has not even whispered that he married PW2 Kajal Das at any point of time or that PW2 Kajal Das is his wife. Thus, though the prosecution is not required to prove motive in the wake of availability of eye witness account of the incident, still the motive to commit the crime in question has surfaced on record, and illicit relations of injured PW3 Vijay Das with wife of appellant/accused Raju @ Rajiv Mandal formed a strong motive for the appellant/accused to commit the crime in question. That apart, in a case of one injured victim and one accused, theory of false implication does not deserve a moment's consideration. Evidence on record does not show any reason for PW3 Vijay Das to falsely implicate the appellant/accused in the crime in question, in the light of the fact that the room in question where the incident had occurred was occupied by only three adult persons namely, the appellant/accused, his wife PW2 Kajal Das and her paramour i.e. the injured PW3 Vijay Das.

12 Evidence of PW2 Kajal Das is gaining corroboration from her contemporaneous former statement made soon after the incident to PW5 Sunita Surve, pointing the guilt to the appellant/accused. Apart from injured PW3 Vijay Das and PW2 Kajal Das, PW1 Mohd. Mahamudur and PW5 Sunita Surve has vouched about presence of the appellant/accused at the scene of occurrence, soon after the incident. Thus, with this evidence, the prosecution has certainly established the fact that it was the appellant/accused who hit the grinding stone on head of injured PW3 Vijay Das causing injuries to him.

13 PW7 Dr.Amit Anguwar, Surgical Registrar, with the Bhagwati Hospital has deposed that injured PW3 Vijay Das was having following injuries on his person :

- i) Sutured CLW over left temporal region 3 cm
- ii) Sutured CLW over left frontal region 4 cm
- iii) Right Maxillary swelling
- iv) Left orbital odema (black eye)

Evidence of this Medical Officer, as such, corroborates the version

of injured witness PW3 Vijay Das regarding the incident of assault on him by the appellant/accused.

14 Now let us examine whether the appellant/accused is guilty of the offence punishable under Section 307 of the Indian Penal Code. The incident in question happened when the trio viz., appellant/accused Raju @ Rajiv Mandal, PW2 Kajal Das and injured PW3 Vijay Das were sleeping in Room No.3 of Mhatre Chawl, in the night intervening 22nd November 2009 and 23rd November 2009. When PW3 Vijay Das was in deep sleep, the appellant/accused assaulted him on head by means of the grinding stone. The grinding stone used as a weapon of assault is seized by the Investigating Officer, at the time of recording the Spot Panchnama after the incident. The Spot cum Seizure Panchnama is duly proved by PW6 Mahesh Surve and the same is at Exhibit 39. Perusal of the spot panchnama shows that the grinding stone, which was used as the weapon of assault, is a stone weighing about 18 to 20 kilograms. Forensic examination of that grinding stone, as reflected from Chemical Analyzer's Report

at Exhibit 79, reveals that blood of “B” group which is the blood group of injured PW3 Vijay Das was found on that stone. Thus, injured PW3 Vijay Das was assaulted by means of a heavy stone weighing about 18 to 20 kilograms. The part of body chosen for inflicting injury is head of injured PW3 Vijay Das. This injured witness has sustained extensive injuries to the fatal part of his body. Evidence of PW2 Kajal Das shows that further damage due to further assault was prevented as she woke up timely and pushed the appellant/accused and prevented him from repeating the further acts of the offence. Thus, the prosecution has certainly proved intention on the part of the appellant/accused to cause death of injured PW3 Vijay Das. With this evidence, the prosecution has made out the offence punishable under Section 307 of the Indian Penal Code. So far as quantum of sentence is concerned, the appellant/accused is sentenced to suffer rigorous imprisonment for 7 years, apart from imposition of fine of Rs.2,000/- for the proved offence. The punishment imposed on him, as such, is proportionate to the gravity of the offence proved against him.

15 In this view of the matter, the appeal is devoid of merits, and therefore the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)