

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 710 OF 2016

Ajay S/o Shaligram Thakur  
Age 27 years, occ. Labourer  
R/o Arun Nagar, Chopda  
Taluka Chopda, Dist. Jalgaon

Appellant

Versus

The State of Maharashtra  
through the Police Station Officer,  
City Police Station, Chopda  
Tq. Chopda, Dist. Jalgaon

Respondent

Mr. Govind Kulkarni, Advocate holding for Mr. R.S. Deshmukh,  
advocate for the appellant.  
Mr. S. J. Salgare, APP for respondent-State.

**CORAM : SMT. SADHANA S. JADHAV, J.**  
**DATE : 23<sup>rd</sup> July, 2019.**

**ORAL JUDGMENT :**

1. Appellant herein is convicted for offence punishable under section 304 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and fine of Rs. 1,000/-, in default, simple imprisonment for one month, by the learned Additional Sessions Judge, Amalner in Sessions Case No. 51/2014 vide judgment and order dated 16.05.2016.

2. Such of the facts necessary for decision of this appeal are as follows :

On 28.08.2014 at about 8.30 to 9.00 am, PW 1 Anil Ghodke

had noticed injured in abandoned condition near a canal in Vidya Vihar Colony, Chopda. He immediately reported to the police about the same. At about 11.00 to 11.30 am, police had reached the spot, prepared spot panchanama in the presence of PW 1 Anil and thereafter had taken the injured alongwith them. It appears that the injured was unconscious at the time of admission. He regained consciousness on the same day. Since he had sustained grave injuries to his hands and legs, he was admitted to the hospital. Doctors suspected it to be a medico-legal case and therefore informed the same to the police. Statement of the injured was recorded and it transpired that his name was Suklal Patil aged about 48 years.

PW 9 PSI Kailas Wagh recorded statement of the injured after obtaining opinion of PW 7 Dr. Swapna Patil. The injured disclosed that on 26.08.2014 at about 2.00 pm he had no work and therefore he had gone to pluck '*Kartule*' for cooking purpose. Near the bridge he was apprehended by present-appellant who had demanded Rs.200/- for consuming alcohol. Suklal disclosed that he had no money to part with. Being annoyed, the appellant assaulted on his hands and legs with an iron rod. He had also assaulted on his back and therefore the injured fell unconscious. He was unconscious for two days till he was noticed by PW 1 Anil.

3. On the basis of his report, Crime No. 126/2014 was registered at Chopda police station for offence punishable under Sections 307, 384, 504, 506 of Indian Penal Code against appellant. The injured was admitted in Sub-District Hospital on 28.08.2014. PW 5 Dr. Tripti Patil examined him and found blunt

trauma to left arm and both legs. Upon re-examination, it was revealed that there was fracture to his left humerus, left tibia, fibula and right femur. The injuries were grave in nature. Since it was a blunt trauma, she could not ascertain age of the injury. The patient was treated at Sub-District Hospital till 04.09.2014 and thereafter he was discharged only to be admitted in Civil Hospital, Jalgaon. It is a matter of record that subsequently, dying declaration of the injured was recorded on 01.09.2014 by PW 4 Rajendra Wade, the Executive Magistrate, after obtaining proper information about his state of mind from the Medical Officer. Said dying declaration is at Exhibit 29. The injured had reiterated that on 26.08.2014, at about 2.00 pm he was assaulted by appellant upon his refusal to pay Rs. 200/- for consuming alcohol. The injured had further disclosed that due to the severe injury on his legs he fell unconscious and when he regained consciousness, he had noticed swelling on both the legs and hands. The injured was treated in the Civil Hospital since 04.09.2014 and finally on 26.09.2014, he had succumbed to the injuries. Post Mortem notes are at Exhibit 48. Column No. 17 of the Post Mortem notes would indicate that the injured had sustained injuries on left arm, left lower end leg, right lower end femur, contused lacerated wound on left calf and abrasion on back. The cause of death is shown as cardiorespiratory arrest due to septicemia with multiple fracture.

4. After completion of investigation, charge sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No. 51/2014.

5. The prosecution has examined 10 witnesses to bring home

guilt of the accused. The case rests upon the evidence of PW 1 Anil Ghodke, PW 4 Rajendra Wade, who recorded dying declaration on 01.09.2014, PW 8 Dr. Nilesh Patil, PW 9 PSI Kailas Wagh and PW 10 Dr. Pankaj Patil.

6. PW 1 has proved that he was the one who had informed the police that the injured was lying in an abandoned condition. PW 9 Kailash Wagh has proved the dying declaration Exhibit 51, on the basis of which, the offence was registered. PW 9 Kailash had deposed before the Court that on 28.08.2014 he had been to the Sub-District Hospital, Chopda for recording statement of the injured whose case was reported as a medico-legal case. He had taken opinion of the doctor who, after examining the patient, had informed that the patient was in a conscious and oriented state of mind to give statement. He has proved the contents of dying declaration Exhibit 51. After registration of offence, he had taken further steps in the course of investigation. He has also recovered an iron rod at the hands of the accused under section 27 of the Indian Evidence Act. The testimony of PW 9 Kailash Wagh has not been seriously challenged by way of cross-examination. The witness has also examined Sangita, wife of the accused. Since said Sangita has not been cited as a witness, said issue would be of no relevance.

7. PW 4 Rajendra had recorded statement of the victim on 01.09.2014. He has deposed before the Court that after examination by the doctor, he had recorded statement of the victim. He had made proper enquiry with the injured. PW 4 has proved the contents of the statement of victim which is marked as

Exhibit 29. His testimony has also not been seriously challenged. He has admitted in the cross examination that it is true that he had not mentioned the name of the person and obtained his thumb impression on the statement. However, said admission would be of no relevance since upon perusal of Exhibit 29, it is more than clear that the officer had obtained thumb impression of the injured however, has not mentioned name of the deponent. It cannot be said that there is any fault in record of dying declaration as he had taken abundant care. In these circumstances, the dying declaration appears to be sterling in nature, voluntary, truthful and inspires confidence of the Court moreover, the same is proved by PW 4 and PW 9.

8. Case papers show that the victim was also treated in Civil Hospital. However, it is not mentioned as to when and how the bone of his tibia was exposed because when he was admitted in Sub-District Hospital, he was reported as a case of blunt trauma to both legs. The doctor had also taken x-rays of the injured and thereafter a fracture was noticed. None of the doctors who had treated the injured have spoken about exposure of the bone injury. Medico-legal certificate issued by the Sub-District Hospital also shows fracture to humerus, tibia, fibula and right femur. However, it appears that at the time of Post Mortem examination, the bone was found exposed.

9. At this stage, it is pertinent to note that the most significant witness would be PW 8 Dr. Nilesh Patil who has proved Post Mortem notes which are at Exhibit 48. It is specifically denied in the cross-examination that the bone of injury no. 2 would not have

been exposed if proper treatment was given to the patient. Infact, it appears that the injuries of the victim were ignored by the Medical Officers and no proper treatment was given and therefore, the bone was exposed. None of the doctors have stated that they had applied plaster to said injury. There was negligence on the part of the doctors allowing the patient to die. It is elicited in the cross examination of PW 8 that the injury i.e. abrasion on back blackish colour described at serial no. 5 of Exhibit 48 has healed up. PW 8 has therefore candidly admitted as follows :

"I had noticed that right lung of the patient was consolidation i.e. reaction due to infection."

Naturally, the cause of death of the victim was Cardiorespiratory Arrest due to septicemia with multiple fracture. The infection of lungs was not noticed by the doctors. Hence, there was septicemia to the injuries and finally the victim died.

10. It is true that appellant is the author of the grave injuries caused to the victim. But it cannot be said that the victim has died due to the injuries alone. He has died more because of medical negligence on the part of the doctors at Sub-District Hospital, Chopda as well as Civil Hospital, Jalgaon.

11. In view of above, it can be safely inferred that the offence committed by the appellant would fall under section 326 of the Indian Penal Code and not under section 304 of the Indian Penal Code. Hence the following order :

**ORDER**

- (i) Appeal is partly allowed.
- (ii) The appellant is acquitted of the offence punishable under section 304(I) and 304(II) of the Indian Penal Code and, is instead convicted for offence punishable under section 326 of the Indian Penal Code and is sentenced to the period already undergone.
- (iii) The sentence of fine is maintained.
- (iv) In the eventuality, the appellant deposits fine amount, he be released forthwith, if not required in any other offence.

**( SMT. SADHANA S. JADHAV, J. )**

dyb/