

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.316/2004

Indrajit alias Indrakumar Radhelal
Sulakhe, aged major, r/o Padole Nagar,
Nagpur. **.....APPELLANT**

...V E R S U S...

State of Maharashtra through
Police Sub Inspector, P.S. Kotwali,
Nagpur. **...RESPONDENT**

AND
CRIMINAL APPEAL NO.322/2004

- (1) Jagdish s/o Ramdas Patil,
aged 32 years, Occ. Labourer,
r/o Prince Society, Wathoda, Nagpur.
- (2) Sunil Ramdas Patil,
aged 27 years, Occ. Labourer,
r/o Prince Society, Wathoda, Nagpur.
- (3) Harish s/o Vithalrao Raghute,
aged 24 years, Occ. Labourer,
r/o Shastri Nagar, Nagpur. **.....APPELLANTS**

...V E R S U S...

State of Maharashtra through
Police Sub Inspector, P.S. Kotwali,
Nagpur. **...RESPONDENT**

None for the appellants.
Mr. M. K. Pathan, A.P.P. for respondent-State.

CORAM:- V. M. DESHPANDE, J.
DATED :- 14.01.2019

ORAL JUDGMENT

1. Both these appeals are taken up simultaneously and they are being decided by this common judgment. These two appeals arise out of judgment and order of conviction passed by learned 2nd Ad hoc Additional Sessions Judge, Nagpur in Sessions Trial No. 234/2001 dated 27.04.2004. By the impugned judgment and order of conviction, the appellants in these two appeals are convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code.

2. Criminal Appeal No.316/2004 is filed by Indrajit alias Indrakumar Radhelal Sulakhe (original accused no.3). Criminal Appeal No.322/2004 is filed by Jagdish Ramdas Patil (original accused no.1), Sunil Ramdas Patil (original accused no.2) and Harish Vithalrao Raghute (original accused no.4). In the present judgment, the appellants will be referred by their original positions as mentioned in the charge.

3. Initially, Mr. A. K. Bhangde, used to appear in these two appeals for the appellants. However, it was noticed by that

the said counsel was not appearing. Therefore, vide order dated 04.05.2018, registry was directed to appoint a counsel from the High Court Legal Services Sub Committee, Nagpur to represent the appellants. Office note shows that thereafter Mr. D. A. Sonwane and Mr. B. H. Sontakke, Advocates were appointed to represent the appellants.

4. Today, when these appeals were taken up for final hearing, both the advocates appointed through Legal Aid Committee remained absent. In these appeals, the State is represented by Mr. M. K. Pathan, learned A.P.P. for the State.

5. With the assistance of learned A.P.P., I have gone through the record and proceedings and the notes of evidence. Exh.-29 is the statement recorded at Casualty Ward of Mayo Hospital, Nagpur of injured witness Vinod Rangari (PW4). As per said statement, injured is a rickshaw driver and his engagement took place with one Lata Meshram. On 09.11.2000, Shilabai Meshram, r/o Deshpande Layout, Nagpur invited him for dinner at about 7.00 O'clock in the evening. After an hour of taking dinner, Shilabai's two brothers; accused no.1, Jagdish, accused No.2, Sunil

Patil along with their accomplice accused no.4-Harish, accused no.3-Indrasingh and Dinesh, residents of Padole Nagar, came to her house and asked him not to run after Lata. On that, altercations took place and these persons gave sword-stick blows on his head.

6. Ramrao Pawar (PW5) registered the FIR after he received paper from Police Station, Lakadganj of Crime No.0/2000. Ramrao (PW5) registered the offence vide Crime No.387/2000, punishable under Section 143, 147, 148, 149 and 307 of the Indian Penal Code against six persons. Printed FIR is at Exh.-32. Thereafter, he went to the spot of incident and prepared spot panchanama, Exh.-33. He seized one Gupti and a weapon like knife on the spot itself. It was seized and is mentioned in spot panchanama itself. He recorded statement of Yogiraj Meshram, father of Lata. He also seized clothes of injured Vinod under seizure panchanama, Exh.-21. He recorded statement of witnesses. Thereafter he sent seized property to Chemical Analyser. After completion of investigation, charge-sheet was filed.

The learned jurisdictional Magistrate in whose Court charge-sheet was presented, found that the offence is exclusively

triable by the Court of Sessions. Therefore, case was committed to the Court of Sessions. After its committal, case was registered as Sessions Trial No.234/2001. Learned 2nd Ad hoc Additional Sessions Judge, Nagpur framed the charge against the appellants and one Dinesh Kheole and Pravin Meshram for an offence punishable under Sections 143, 147, 148, 149 and 307 of the IPC. The prosecution, in order to prove its case against the persons charged, examined in all six witnesses. The Court below, by the impugned judgment, acquitted all the accused persons who are charged for an offence punishable under Sections 143, 147, 148 and 149 of the IPC. The Court below, out of six persons who were charged, convicted accused nos. 1 to 4 for an offence punishable under Section 307 read with Section 34 of the IPC. Hence, these two appeals were filed.

7. It is the submission of learned A.P.P. for the State that Vinod (PW4) is very specific in his evidence and he has attributed a specific role to accused nos. 1 to 4. He submitted that evidence of Vinod (PW4) is admittedly supported by injury certificate duly proved by Dr. Prakash Maldhure (PW6). He, therefore, submitted that both these appeals are required to be dismissed.

8. Injured Vinod (PW4) was admitted in Indira Gandhi Medical College and Hospital, Nagpur. He was admitted in the hospital on 10.11.2000 and he was discharged on 18.11.2000. Dr.Prakash Maldhure (PW6), on the basis of bed-head-ticket of Vinod (PW4), submitted that following injuries were suffered by the injured:

- “1. Incise wound size 0.5 X 0.5 cm in left side of chest at 5th intercostal space. Parasterinal region. No surgical emphysema. No active bleeding.*
- 2. Incised wound 1 cm. X 0.5 cm. In left lumbar region just above left superior iliac spine. Transversely placed.*
- 3. Incised wound 1 cm. X 0.5 cm. 2 cm distal to base of pelvis. No active bleeding. Transversely placed.*
- 4. Incised wound 2 cm X 1 cm over lateral aspect 10 cm below left shoulder vertically placed. Subcutaneous deep. No active bleeding.*
- 5. Incised wound 1 cm. X 0.5 cm. On left forearm flexor aspect subcutaneous deep. Transversely placed. No active bleeding.*
- 6. Incised wound 4 cm. X 2 cm to left hand. First web space left thumb of under finger subcutaneous deep. No active bleeding.*
- 7. Incised wound 1 cm X 0.5 cm over left gluteal region 6 cm below axis obliquely placed. No active bleeding.*

8. *Incised would 2 cm X 1 cm over left gluteal region 15 cm below axis, transverse, subcutaneous deep. No active bleeding.*

9. *Incised would 1 cm. X 0.5 cm over right forearm 3 cm above wrist joint, transverse, no bleeding.*

10. *Incised would 3 cm X 1 cm. on radial head of right wrist, subcutaneous deep, oblique, no active bleeding.*

11. *Incised would 2 cm X 1 cm, right forearm, 3 cm from elbow, flexor aspect, oblique, subcutaneous deep, no active bleeding.*

12. *Incised would 1 cm X 0.5 cm. Lateral aspect of left hand skin deep, obliquely placed, no active bleeding.*

13. *Incised would 1 cm. X 0.5 cm left index finger, skin deep obliquely placed, no active bleeding.*

14. *Incised wound 2 cm X 1 cm right lower mandibular region from the mouth, bone deep, oblique. No active bleeding.*

15. *Incised wound 2 cm X 1 cm left scapular region, right lateral border, middle 3rd. No active bleeding.*

16. *Incised wound 2 cm X 1 cm skin deep, left shoulder. No active bleeding."*

According to the doctor, injury no. (2) was dangerous to life and the said injury was treated by exploratory laprotomy by surgeon Dr. Goenka and Dr. Patil. All other injuries were simple injuries.

9. From the injury certificate Exh.-45, it is clear that Vinod Rangari (PW4) suffered multiple injuries and out of that, injury no.2 was life threatening. According to the prosecution, in furtherance of their common intention, accused nos. 1 to 4 are authors of these injuries.

10. The question that this Court is expected to answer is; whether the prosecution has proved its case beyond reasonable doubt that accused nos.1 to 4 with their common intention, assaulted injured Vinod (PW4) on 09.11.2000 in which he suffered injuries.

11. Ajay Tekade (PW1) a pancha, though he has turned hostile. However, from him it is proved on record that clothes of the injured Vinod has been seized under seizure panchanama, Exh.-21. Pandit Atram (PW2) is a police official, attached with Police Station, Lakadganj. According to his evidence, Vinod (PW4) came to Police Station with written report and on the basis of said, he registered an offence at Exh.-23 vide Crime No.00400/0. Dr. Sangeeta Mehata (PW3), on 10.11.2000, has examined one

Yogiraj Meshram. She has proved medical certificate of Yogiraj which is at Exh.-25. Exh.-25 shows that she found multiple abrasion over left palm, small wound over index finger and small abrasion at base of thumb. Vinod (PW4) is injured, PSI Ramrao (PW5) is investigating officer and Dr. Prakash Malsure (PW6) is the doctor who has proved Exh.-45, the injury report. As per the prosecution case, engagement of injured Vinod (PW4) took place with one Lata, in the month of April, 2000. However, marriage could not be solemnized and the said engagement has broken. Accused no.1-Jagdish and accused no.2-Sunil are maternal uncles of Lata, whereas accused no.4-Harish and accused no.4-Indrajit are friends of accused nos. 1 and 2.

12. According to the prosecution case, on the date of incident, Shila, mother of Lata called injured Vinod (PW4) in her house for dinner and after dinner, incident in question has occurred. Oral report Exh.-29, is totally silent about the specific role played by any of the accused. Accusations made in Exh.-29 are not only against accused nos.1 to 4 but also against the acquitted accused. The nature of allegations are general in nature. However, from the evidence tendered, the injured has stated the

role and according to the injured, accused no.1-Jagdish and accused no.2-Sunil gave fist and kick blows whereas accused no.3-Indrajit and accused no.4-Harish gave gupti blows. It is to be noted that, accused Indrajit and Harish were not having any type of enmity with Vinod. It is also not his evidence that at the time of actual incident, at the instance of maternal uncles of Lata, accused nos. 3 and 4 have inflicted gupti blows.

13. In the cross-examination, Vinod (PW4) has specifically admitted that after breaking of marriage, he was not visiting the house of Shila, mother of Lata. He has also admitted that there was no re-relation of marriage after breaking of the engagement. If that be so, it is rather difficult to accept that Shila will extend dinner invitation to Vinod. This assumes importance because according to Vinod, the incident has occurred in the house of Shila. However, according to investigating officer, Yogiraj Meshram, husband of Asha and father of Lata, shown the spot of incident as open plot and construction was in progress. Thus, it is clear that during the course of trial, Vinod is trying to change the place of incident.

14. Though, according to Vinod (PW4) the incident has occurred in the house of Shila, neither Shila nor Lata or even Yogiraj is examined by the prosecution, who could have been the best witnesses in the crime.

15. Though, during the course of investigation, clothes of the injured were seized under seizure panchanama Exh.-21, clothes of accused were not seized during the course of investigation. The weapons which were found on the spot and the Gupitis were sent to Chemical Analyser. Exh.-59 is Chemical Analyser's report, which shows that no blood was noticed on the weapons which were seized during the course of investigation. Of course, there are blood stains on the clothes of the victim.

16. In absence of any corroborative piece of evidence, especially when during the course of investigation it was noticed by the investigating officer that house of Shila was surrounded by various houses and he recorded statement of various witnesses, however, none of them was examined during the course of trial so also non examination of Shila, Lata and Yogiraj requires this Court to draw an adverse inference against the prosecution case.

Further, in the light of the aforesaid aspect, when it is noticed by this Court that Vinod is trying to change the spot of the incident, it would be very difficult for this Court to accept version of the injured to be truthful one.

17. In totality of the aforesaid circumstances and on reappreciation of the prosecution case, I pass the following order.

ORDER

- (i) The appeals are allowed.
- (ii) Judgment and order of conviction dated 27.04.2004 passed by 2nd Ad hoc Additional Sessions Judge, Nagpur in Sessions Trial No.234/2001 is set aside.
- (iii) Bail bonds of the appellants, who are already on bail, shall stand cancelled.
- (iv) Since both the counsel appointed on behalf of the appellants did not appear before this Court, the High Court Legal Services Sub Committee, Nagpur shall not pay any professional charges to them.

JUDGE