

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL No. 53 OF 2015**

Shri Rajiv @ Raju Gupta
S/o. Radheshyan Gupta
22 years of age, Occupation Service.
R/o C/o. Kundil Alloys Pvt Ltd.
Kundai Industrial Estate,
Kundai Ponda Goa, N/o. Mehadinipur.
Tal-Phoolpur, P.O. Bhadoi,
P. S. Maharajaganj. Illahabad Uttar Pradesh
(presently in Central Jail Colvale, Bardez-
Goa.)

...Appellant.*Versus*

- State (through)
- 1) Public Prosecutor
High Court of Bombay at Goa
High Court Building Altinho,
Panjim.
 - 2 Police Inspector
Officer In charge
Ponda Police Station
Ponda Goa

.... Respondents.**WITH****CRIMINAL APPEAL No. 54 OF 2015**

Shri Lalji Saroj
S/o. Pathali Saroj
26 years of age, Occupation Service.
R/o C/o. Kundil Alloys Pvt Ltd.
Kundai Industrial Estate,

Kundai Ponda Goa
N/o. Laherpathar, Tal-Phoolpur,
P.O. Hanumanganj,
P. S. Saraya Inayat, Illahabad Uttar Pradesh
(presently in Central Jail Colvale, Bardez-
Goa.)

...Appellant.

Versus

State (through)

- 1) Public Prosecutor
High Court of Bombay at Goa
High Court Building Altinho,
Panjim.
- 2 Police Inspector
Officer In charge
Ponda Police Station
Ponda Goa

.... Respondents.

WITH

CRIMINAL APPEAL No. 55 OF 2015

Shri Manoj Bhartiya
S/o. Amrutlal Bhartiya
26 years of age, Occupation Service.
R/o C/o. Kundil Alloys Pvt Ltd.
Kundai Industrial Estate,
Kundai Ponda Goa
N/o. Laherpathar, Taluka-Phoolpur,
P.O. Hanuman ganj,
P. S. Saraya Inayat, Illahabad Uttar Pradesh
(presently in Central Jail Colvale, Bardez-
Goa.)

...Appellant.

Versus

- State (through)
- 1) Public Prosecutor
High Court of Bombay at Goa
High Court Building Altinho,
Panjim.
 - 2 Police Inspector
Officer In charge
Ponda Police Station
Ponda Goa

.... Respondents.

WITH

CRIMINAL APPEAL No. 56 OF 2015

Shri Abhayaraj Gupta
S/o. Ravindranath Gupta
25 years of age, Occupation Service.
R/o C/o. Kundil Alloys Pvt Ltd.
Kundai Industrial Estate,
Kundai Ponda Goa
N/o. Tiwaripur,
P.O. Dhubawal, P.S. Saraya Inayat,
Illahabad Uttar Pradesh
(presently in Central Jail Colvale, Bardez-
Goa.)

...Appellant.

Versus

- State (through)
- 1) Public Prosecutor
High Court of Bombay at Goa
High Court Building Altinho,
Panjim.
 - 2 Police Inspector
Officer In charge

Ponda Police Station
Ponda Goa

.... Respondents.

Mr. Rohan Pandurang Desai, Advocate for the Appellants.

Mr. S. R. Rivankar, Public Prosecutor/Senior Advocate with Mr. Rama Gajanan Rivankar, Advocate for the Respondents.

Coram : M. S. SONAK, J.

Date : 03rd September, 2020

ORAL JUDGMENT:

All these appeals are directed against Judgment and Order dated 23.09.2015 made by the Additional Sessions Judge, Panaji sitting at Ponda in Sessions Case No. 59/2013 convicting all the appellants i.e., accused persons of offences under Section 307 of IPC read with Section 34 of IPC. and sentencing them in terms of the operative portion of the Order.

2. The case of the prosecution is that the accused persons, on 15.07.2015 at about 03:30 hours inside the factory premises of Kundil Alloys Pvt Ltd., Kundaime Industrial Estate, Ponda-Goa with common intention assaulted one Sitasaran Yadav with an iron rod on his head and further assaulted him with dandas, kicks and fist blows

and attempted to kill him thereby causing grievous injuries to his head and other parts of his body. The case of the prosecution as unfolded in the course of the evidence laid on record was that the accused persons and the victim were co-workers and the incident took place with some ingots fell to the floor where the accused persons were working and the accused persons felt that the victim Yadav was responsible for the falling of such ingots, which might have hurt the accused persons. The prosecution also tried to make out a case that there were some previous quarrels between the accused persons and the victim.

3. The prosecution, in this case, has examined, no less than 17 witnesses including, the victim himself. Besides the victim, the prosecution has examined at least 4 eye-witnesses to the incident. Upon conclusion of the prosecution evidence, the statements of the accused persons under Section 313 CrPC were recorded. Since, no defence evidence was led on behalf of the accused persons. The learned Additional Sessions Judge, upon hearing the arguments has made the impugned judgment and order. Hence, the present appeal.

4. Mr. Rohan Desai, the learned counsel for the accused persons submits that the testimony of the alleged victim, who was examined as PW-11 is not credit-worthy and the same ought to have been rejected. He submits that PW-11 spoke of injuries over various

parts of his body, other than the head injury. However, the medical evidence on record does not establish injuries on any other part of the victim's body. This, according to him, renders the testimony of PW-11 is totally unreliable and uncreditworthy. He points out that there are contradiction and omissions in the evidence of PW-11 and this is also a good ground to reject the testimony of PW-11.

5. Mr. Desai also points out that the testimony of PW-2, PW-3, PW-5 and PW-6 who were alleged to be eye witnesses is also not quite consistent and therefore ought not have been relied upon for convicting the accused persons. He submits that there are inconsistencies inter se between the testimonies of the eye-witnesses. He submits that there are contradictions and omissions in the testimonies of these witnesses which have been duly marked and never explained by the Investigating Officer.

6. Mr. Desai submits that the genesis of the allegation is the complaints made by the accused persons against the Labour Contractor, who was due and payable an amount of ₹2,00,000/- to the accused persons. He submits that it is at the behest of this Labour Contractor that the whole incident was cooked up and the accused persons were framed.

7. Mr. Desai submits that the witnesses deposed to a

particular place near the Security cabin where the incident is alleged to have taken place. However, scene of the offence Panchanama indicates a different place. He submits that this is a serious flaw in the prosecution case, which entitles the accused persons to an acquittal.

8. Finally, without prejudice to the aforesaid contentions, Mr. Desai submits that the evidence on the record, at the highest, makes out a case under Section 335 of IPC and not of 307 of the IPC. He points out that the ingots fell quite close to the accused persons when the victim was handling the same from some height. He submits that this offered a sudden and grave provocation to the accused persons. He submits that the ingredients of Section 307 have not at all been established by the prosecution and therefore, the learned Additional Sessions Judge was not right in convicting the accused persons under Section 307 of IPC.

9. For all the aforesaid reasons, Mr. Desai submits that these appeals are liable to be allowed and the convictions recorded against the accused persons are liable to be set aside.

10. Mr. Rivankar, the learned Public Prosecutor defends the impugned judgment and order on the basis of the reasoning reflected therein. He points out that in the present case the injured victim has

deposed quite clearly to the incident. He points out that apart from the injured victim there are at least 4 other eye witnesses to the incident. He points out that there is absolutely no dent made to the testimony of all these witnesses, which, is corroborated by medical evidence on record. He, therefore, submits that these appeals are liable to be dismissed.

11. The rival contentions now fall for my determination.

12. In this case, the injured witnesses or rather, the injured victim has been examined by the prosecution as PW-11. He has, very categorically deposed to the incident in quite some detail. He has, quite candidly deposed about the falling of the ingots consequent upon the malfunctioning of the crane. He has deposed that after he got down from the ladder, the accused persons assaulted him by kicks and blows. Some of the workers present did attempt to rescue him and he escaped from the clutches of the accused persons momentarily and started running towards the main gate. However, the accused persons came running behind him and hit him on the head with an iron rod.

13. The PW-11, even pointed out to the Court the injury on the left side of his head, where, he deposed that the iron rod was hit. The learned Additional Sessions Judge has also taken judicial note of

the mark on the head of the said witness which is semi-circle to look at. The PW-11 has deposed that on account of the assault of the iron rod on his head he fell to the ground and the accused persons then assaulted him with a danda, fist blows and kicks. He has deposed that he was thereafter rendered unconscious. He has identified the accused persons, who, in any case were his co-workers. The PW-11 has deposed that he gained consciousness after about 3 days at the Goa Medical College. He has deposed that he had to undergo as many as 4 operations since, the assault, had actually cracked his skull and had to be refitted by a plastic fitting. He has also deposed that he has problems when he speaks too much. Such problems, were quite evident, when the examination of the PW-11 had to be interrupted on account of the strain which he was experiencing while deposing in the Court.

14. Despite the extensive examination, it cannot be said that any serious dent has been made to the core testimony of PW-11. There are bound to be some contradictions or omissions here and there, however, as long as they do not dent the core, there is no reason to discard the testimony of PW-11, who is the injured witness, or rather the victim of the brutal assault.

15. As if, the testimony of PW-11 was not sufficient, the prosecution has examined PW-2, PW-3, PW-5 and PW-6, who were

also the eye-witnesses to the incident. There is substantial consistency in the deposition of all these eye-witnesses. The variation Mr. Dessai speaks about are merely not some substantial variations or contradiction. It is to be remembered that each witness, views the incident from his own perspective. Therefore, some of the witnesses have emphasized on some particular aspects whereas, others, have not deposed to those aspect. However, insofar as the incident is concerned, there is really no contradiction or variation as suggested by Mr. Dessai. There is a ring of both, truth and consistency to the depositions of these eye-witnesses and there is really no good ground to discard the testimony of no less than 4 eye-witnesses to the incident.

16. The medical evidence completely corroborates the case of the prosecution particularly on the aspect of the brutal head injury suffered by PW-11. It is true that the medical evidence does not suggest any serious injuries on the rest part of the body of the PW-11. However, that is no ground to disbelieve the prosecution's version.

17. The theory proposed by and on behalf of the accused persons about the enmity with the labour contractor, is, neither borne out of any evidence on record nor, can it be said to be some plausible theory. In fact, this theory, is quite far-fetched. It is

inconceivable that PW-11, at the behest of such labour contractor, will consent to being assaulted to a degree where, his skull is virtually cracked open and he is required to undergo no less than 4 surgeries to only survive. Therefore, the defence version proposed on behalf of the accused persons mainly in their statement under Section 313 of CrPC cannot be said to have made good by the accused persons so as to deserve any credence whatsoever.

18. Besides, there is no explanation as to why no less than 4 witnesses should depose to his incident, even assuming, that the victim PW-11 had indeed conspired with the labour contractor, to frame the accused persons. In fact, there is absolutely no evidence on record to establish even by any preponderance or probability that this was some conspiracy hatched by the local contract in collusion with the victim PW-11 solely in order to frame the accused persons.

19. There is no case made out to convert the conviction into Section 335 of the IPC. No doubt, there is evidence that the ingots fell to the ground quite near to where the accused persons were working. There is also evidence that PW-11 was handling such ingots with a crane which actually malfunctioned and snapped. However, this by itself, cannot be regarded as some grave and sudden provocation which was offered by PW-11. Besides, this is a case where the accused persons were not content with momentarily

assaulting the PW-11 no sooner he stepped down from the ladder, but, the evidence on record indicates that even after PW-11 was rescued by the co-workers from the clutches of the accused persons and was running away toward the main gate, the accused persons pursued him and struck him on the head with an iron rod. The assault was such, as virtually cracked the skull of PW-11 which is corroborated by the medical evidence on record. The PW-11 had to undergo no less than 4 operations merely in order to survive and the scars, not just physical but even mental which are now virtually lifelong. Therefore, this is not a case which can be covered under Section 335 of the IPC.

20. At the highest, by giving a latitude to the accused persons, it can be said that they may not have had a clear intention of killing the PW-11. However, the accused persons, clearly had the knowledge that by assaulting the PW-11 with an iron rod on his head with such brutal force will, in all probability, lead to his death. Accordingly, the case under Section 307 has been made out by the prosecution.

21. Section 307 of the IPC provides that whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term

which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned.

22. In the present case, the ingredients of Section 307 are clearly made out by the prosecution from the evidence which it has produced on record. Further, this is a case where the PW-11 was grievously and even dangerously hurt. Possibly on account of the 4 surgeries which PW-11 had to undergo he managed to barely survive. In these circumstances, the alternate plea of Mr. Dessai cannot be accepted.

23. Mr. Desai also tried to urge that there were flaws in the recovery of the iron rod and that there was lapses in the investigation. As noted earlier, this is a case where the injured victim has himself deposed in the matter. Besides, there are no less than 4 eye-witnesses who have deposed in the matter. The medical evidence also substantially corroborates the deposition of PW-11. Therefore, even if some lapses are assumed to have taken place in the investigations, that by itself, will not entitle the accused persons to any acquittal particularly where no prejudice has been demonstrated by the accused persons on account of such lapses.

24. For all the aforesaid reasons, the conviction recorded and the sentence imposed by the learned Additional Sessions Judge is required to be upheld. These appeals are, therefore, liable to be dismissed and are hereby dismissed.

M. S. SONAK, J.

msr.