

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO. 420 OF 2012

Dinesh
S.
Sherla

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Rupesh S. Mayekar

... Appellant

V/s.

The State of Maharashtra

(at the instance of Ratnagiri

Gramin Police Station, Dist. Ratnagiri)

... Respondent

Mr. Kuldeep S. Patil a/w. Ms Megha S. Bajoria for the Appellant.
Mrs. M.H. Mhatre, APP for the Respondent – State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, J.J.**

**RESERVED ON : JANUARY 22, 2021.
PRONOUNCED ON : MARCH 16, 2021.**

JUDGMENT (PER N.R. BORKAR, J.)

1] This appeal challenges the judgement and order dated 8.7.2011 passed by the Sessions Court, Ratnagiri in Sessions Case No. 2 of 2010.

2] In the abovesaid sessions case, the appellant (original accused No.1) and three more accused were tried for the offences punishable under sections 302, 324, 504 read with section 34 of the Indian Penal Code (for short "IPC"). By the impugned judgment and order, the trial court convicted the appellant only for the offence punishable under section 302 of

the IPC and sentenced him to suffer R.I. for Life Imprisonment and to pay fine of Rs.5000/-, in default, to suffer S.I. for three months. The trial court acquitted rest of the accused.

3] It is the case of the prosecution that the deceased Ravindra Mayekar was the worker of Rashtrawadi Congress Party and the accused were workers of Shiv Sena Party. There was a political rivalry between them.

4] The incident took place on 16.10.2009. According to the prosecution, on the day of incident, at about 8.00 p.m., original accused No.4 Deepak Mayekar and others assaulted PW-6 Dinesh Sohani, who was worker of the Rashtrawadi Congress Party. The deceased, who at that time was at Ratnagiri, was informed about the incident of assault on PW-6 Dinesh. He told his brother PW-1 Vilas to reach to the house of PW-6 Dinesh. At about 9.00 p.m. , the deceased came to the house of PW-6 Dinesh and made inquiry with him in relation to the incident. According to the prosecution, the deceased at that time was accompanied by his nephew PW-7 Nilesh Mayekar. The deceased and PW-6 Dinesh then decided to lodge the complaint against the accused No.4 and others in relation to the said incident. Accordingly, they left the house of PW-6 Dinesh and came to Mayekarwadi bus stop for going to police station. PW-1 Vilas met them, while they were coming to Mayekarwadi bus stop.

5] It is alleged that at about 9.30 p.m., while the deceased, his brother PW-1 Vilas, nephew PW-7 Nilesh and PW-6 Dinesh

were at Mayekarwadi bus stop, the present appellant/accused No.1 along with original accused Nos. 2 to 4 came there at the bus stop and started assaulting the deceased Ravindra. It is alleged that the deceased Ravindra was pushed in a drainage abutting to the bus stop. The appellant/accused No.1 then assaulted the deceased with sharp weapon on his chest. The accused No.2 also tried to assault the deceased by sharp weapon, however, he was prevented by PW-1 Vilas and in the said attempt, PW-1 sustained injury to his right index finger. Because of the shouts raised by the deceased and PW-1 Vilas, people residing in nearby area gathered at the place of incident. The accused on seeing them ran away from the place of incident. The deceased was then pulled out of drainage and was taken to the Civil Hospital at Ratnagiri. The Doctor at the Civil Hospital has declared him as brought dead.

6] The report of the incident was lodged by PW-1 with Rural Police Station, Ratnagiri. On the basis of said report, Crime No. 96 of 2009 for the offence punishable under sections 302, 323, and 504 read with section 34 of the IPC was registered by the said Police Station. On completion of investigation, the charge-sheet was filed against the accused for the offences punishable under sections 302, 323, & 504 read with 34 of IPC. Accused Nos.1 to 4 were charged and tried for the said offences. As stated earlier, the Trial Court convicted the present appellant/accused No.1 for the offence punishable under section 302 of IPC and acquitted rest of the accused.

7] We have heard the learned counsel for the appellant/accused No.1 and learned APP for the respondent - State.

8] The prosecution case is mainly based upon the direct evidence of the following eye-witnesses:

- (i) PW-1 Vilas Mayekar ; (ii) PW-6 Dinesh Sohani and
- (iii) PW-7 Nilesh Mayekar.

9] The learned counsel for the appellant/accused No.1 has submitted that there is delay in lodging the first information report. It is submitted that the evidence of the alleged eye-witnesses is not consistent with regard to alleged incident and therefore, it will not be safe to rely upon their evidence. He submits that the prosecution has not explained the injuries sustained by the accused Nos.1 and 4 in the incident in question, which means that the prosecution has suppressed the genesis of incident. It is submitted that the appellant/accused No.1, therefore, needs to be acquitted. In the alternative, it is submitted that considering the facts and circumstances of the case, at the most it will constitute offence punishable under section 304 of the IPC.

10] On the other hand, learned APP for the respondent - State has submitted that the Trial Court has rightly believed the eye-witnesses. It is submitted that in addition to the evidence of eye-witnesses there is recovery of knife at the instance of accused No.1. It is submitted that no interference is, thus, required in the impugned judgment and order.

11] PW-1 Vilas Mayekar with regard to the incident has stated in his evidence that while he, his brother Ravindra (deceased), nephew Nilesh (PW-7) and PW-6 Dinesh were at the bus stop, accused Nos.1 to 4 came there and started assaulting his brother Ravindra. Accused No.1 assaulted his brother Ravindra by sharp weapon on his left side of chest. Accused No.2 also tried to assault his brother Ravindra by sharp weapon, however, he intervened and prevented him and in the said attempt, he sustained injury to his right hand index finger. Due to assault, his brother sustained injuries and fell down. The accused thereafter, ran away from the place of incident.

12] PW-1 Vilas has admitted in his cross-examination that the detailed enquiry was made with him by the Doctors at Civil Hospital, Ratnagiri in relation to the incident. During the said enquiry, he did not disclose names of the assailants. He has further admitted that he did not disclose the incident to the people who had gathered at the place of incident. He has further admitted that his brother was worker of Rashtrawadi Congress Party and the accused were workers of Shiv Sena Party and there was political rivalry.

13] PW-6 Dinesh Sohoni has stated in his evidence that on 16.10.2009 at about 8.00 p.m., accused No.4 and others assaulted him while he was going to the house of one Sushant Pawar on account of political rivalry. He informed the said incident to the deceased Ravindra on phone. At about 9.00

p.m., the deceased Ravindra and his nephew PW-7 Nilesh came to his house. He narrated the entire incident to them. The deceased Ravindra told him to lodge the complaint about the incident. Accordingly, they came to Mayekarwadi bus stop for going to the Police Station. PW-1 Vilas met them while they were coming to Mayekarwadi bus stop. They reached Mayekarwadi bus stop at about 9.30 p.m.. While they were at bus stop , accused Nos.1 to 4 came there and started assaulting the deceased Ravindra. They pushed him in drainage. Accused No.1 assaulted the deceased Ravindra by sharp weapon on his chest. Due to assault, the deceased Ravindra fell down. Accused No.2 also tried to assault the deceased Ravindra, however, he was prevented by PW-1 Vilas. In the said attempt, PW-1 Vilas sustained injury to his right hand finger. They shouted and because of that people residing in nearby area gathered at the place of incident. On seeing them, the accused ran away from the place of incident.

14] PW-6 Dinesh has admitted in his cross-examination that he had not seen by which weapon the deceased Ravindra was assaulted.

15] PW-7 Nilesh Mayekar has stated in his evidence that on 16.10.2009, while he and the deceased Ravindra were at Ratnagiri, at that time, the deceased Ravindra received the phone call of PW-6 Dinesh and he told him that accused No.4 and others assaulted him. They came back to Mayekarwadi

and went to the house of PW-6 Dinesh. PW-6 Dinesh narrated the incident to them. The deceased Ravindra advised him to lodge the report with the police. Then they left the house of PW-6 Dinesh and came to Mayekarwadi bus stop to go to the Police Station. PW-1 Vilas met them on their way to the bus stop and accompanied them. While they were at the bus stop, the accused came there and rushed on the person of the deceased. The accused assaulted the deceased with the fist and kick blows and pushed him in the drainage. Accused No.1 assaulted the deceased Ravindra by some sharp weapons on his chest due to which the deceased fell down. Accused No.2 also tried to assault the deceased Ravindra, however, he was prevented by PW-1 Vilas, but in the said attempt he sustained injury on his right hand.

16] PW-7 Nilesh has admitted in his cross-examination that they read their statement given to the police before giving their evidence.

17] In a written statement filed by the accused under section 313 of Code of Criminal Procedure, they have stated that on the date of incident while accused Nos.1 and 4 were at the Mayekarwadi bus stop, the deceased Ravindra, Umesh Borkar and 15 to 20 unknown persons came there and they assaulted them. In the said assault, accused Nos.1 and 4 sustained grievous injuries and became unconscious. After regaining consciousness they came to the Rural Police Station, Ratnagiri. There they lodged the report in relation to

the incident occurred with them. While they were in police station, PW-1 Vilas came there along with his relatives and political leaders. From the talk of the people, they learnt about death of the deceased. They have stated that they have been falsely implicated in the crime in question.

18] PW-16 Shirish Sasane, the Investigating Officer, in the cross-examination conducted on behalf of the accused, has admitted that on the basis of complaint lodged by accused No.4 cross case was registered in relation to the incident in question. He has further admitted that the said case was against the deceased Ravindra and one Borkar. He has further admitted that there were visible injuries on the person of accused Nos.1 and 4.

19] The involvement of appellant/accused No.1 in the incident in question from the case put to the Investigating Officer on behalf of the accused coupled with his statement under section 313 of Cr.P.C. is apparent. The death of the deceased was homicidal, has not been seriously challenged. The question is, however, whether the incident had occurred as alleged by the prosecution or the prosecution has suppressed the genesis of the incident as none of the witnesses have rendered any explanation about the injuries sustained by the accused Nos.1 and 4. This aspect needs to be considered in view of submission of learned counsel for the appellant that on the basis of circumstances on record at the

most it can be a case of culpable homicide not amounting to murder.

20] According to PW-6 Dinesh, prior to incident in question, on the very same day he was assaulted by accused No.4 and others. He informed the said incident to the deceased Ravindra. According to PW-6, the deceased Ravindra accompanied by his nephew PW-7 Nilesh came to his house and advised him to lodge the complaint with the police. PW-6 has admitted in his cross-examination that the deceased Ravindra had motorcycle and it was possible for both of them to go to the Police Station on motorcycle. Despite this, it is not understood as to why the deceased Ravindra chose to take his brother PW-1 Vilas, his nephew PW-7 Nilesh to the Police Station.

21] PW-1 Vilas has admitted in his evidence that the built of the deceased was robust and it was not easy for even two to three persons to overpower him. It appears from the first information report at Exhibit-29 that, at the time of alleged incident, the deceased in addition to PW-1, PW-6 and PW-7 was accompanied by his cousin namely Prashant.

22] It has come on record that there was political rivalry between the deceased and the accused. It has further come on record that the incident which occurred with PW-6, on the day of incident, was also result of the political rivalry.

23] According to accused Nos.1 and 4, the deceased and one Borkar along with 15 to 20 persons assaulted them while they were at Mayekarwadi bus stop. PW-16, the Investigating Officer, has admitted that there were visible injuries on the person of the accused Nos.1 and 4. There is no evidence on record that the accused were aware of the fact that the deceased is going to come to Mayekarwadi bus stop for going to police station. Admittedly, the deceased Ravindra was not involved in the incident which took place on the day of incident with PW-6. Therefore, there appears to be no reason for the accused to assault the deceased on the day of incident. On the contrary, it appears that the deceased on the day of incident was infuriated due to assault on PW-6 by accused No.4 and others. From these facts and circumstances, the only inference which can be drawn is that, the deceased was assaulted in unpremeditated incident.

24] According to the witnesses, the deceased was assaulted by knife only once. PW-15 Dr. Samina Dalwal, who conducted the postmortem has stated that, on external examination, following injuries were found :

- (i) perforating stab wound, L shaped on left side of chest at the level of Areola 5th inter-costal space;
- (ii) CLW on left occipital region of the scalp; and
- (iii) CLW on the left Atria below the opening of Aorta.

According to PW-15, the cause of death was due to shock due to stab injury.

25] PW-6 has admitted that the accused ran away from the place of incident, after the deceased had fallen down. Considering these facts and circumstances, the accused No.1 cannot be said to have acted in a cruel manner. In the facts and circumstances of the present case exception 4 to section 300 would attract. The appellant, therefore, deserves to be convicted for the offence punishable under section 304(I) of the IPC. In the result, the following order :

ORDER

- i] Criminal Appeal is partly allowed.
- ii] The conviction of the appellant (original accused No.1) for the offence punishable under section 302 of the IPC vide judgment and order dated 8.7.2011 passed by the Sessions Court, Ratnagiri in Sessions Case No. 2 of 2010 is quashed and set aside.
- iii] The conviction of the appellant is altered to an offence punishable under section 304(I) of the IPC and he is sentenced to rigorous imprisonment for ten (10) years.
- iv] Sentence of fine is maintained.
- v] The appellant/original accused No.1 is in Jail. Set off be granted to the appellant/original accused No.1 for the period of detention undergone by him till date.

(N.R. BORKAR, J.) (SMT. SADHANA S. JADHAV, J.)