

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

CRIMINAL APPEAL NO. 244/2018

Hansraj s/o Ishwar Parekar,
aged about 36 years, Occ. Driver,
r/o Shalikram Nagar, Ghuggus,
Tq. Dist. Chandrapur.

...APPELLANT

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

The State of Maharashtra through
Police Station Officer, Police Station,
Ghuggus, District Chandrapur.

...RESPONDENT

Mr. R. M. Daga, Advocate for appellant.
Mr. T. A. Mirza, A.P.P. for respondent.

CORAM:- V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.

DATE:- AUGUST 23, 2021

ORAL JUDGMENT (Per: V. M. Deshpande, J.)

1. By this appeal, appellant is challenging judgment and order dated 21.03.2018 passed by learned Additional Sessions Judge, Chandrapur in Sessions Case No.109/2016 whereby the appellant stands convicted for the offence punishable under Sections 307 and 302 of the Indian Penal Code. For his conviction under Section 307 of the IPC, learned Judge imposed punishment of rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for ten days.

For his conviction under Section 302 of the IPC, the sentence imposed is sufferance of rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for 10 days.

2. We have heard Mr. R. M. Daga, learned counsel for the appellant and Mr. T. M. Mirza, learned A.P.P. for the State, in extenso. With their able assistance, we have also perused the record and proceedings. The learned counsel for the appellant submitted, by pointing out to the evidence of Prakash Sarode (PW3) and Yogesh Sarode (PW5) and also recitals in statement of Madan Rjagade (PW2), the injured and father of deceased Pandurang, Exh.-24, which was recorded at Shweta Hospital, Chandrapur, on the basis of which ultimately, crime was registered, submitted that in any case, the appellant cannot be convicted for the offence punishable under Section 302 of the IPC. He submitted that this is a fit case wherein the Court can impose punishment on him for the offence punishable under Section 304-I of the IPC.

Per contra, learned A.P.P. vehemently opposed this submission.

3. To appreciate the contention of Mr. Daga, learned counsel for the appellant, we will have to appreciate the aforesaid submission in the backdrop of the prosecution case, which was unfolded during the course of the trial.

4. PSI Santosh Jadhav (PW14), in the month of June-2016, was attached to Police Station, Ghuggus, District Chandrapur. On 10.07.2016, at about 6.30 p.m. a phone call was received at Police Station about the incident. The said PSI along with duty officer and other staff, immediately went to Primary Health Centre, Ghuggus whereat he found that the doctor was not present. Therefore, along with duty officer API Dolare, the relatives went to Shweta Hospital by ambulance taking two injured Pandurang Rajgade (deceased) and Madan Rajgade (injured).

5. At Shweta Hospital, Chandrapur, Dilip Dolare (PW15), as per directions given to him by PSI Jadhav (PW14), recorded statement of Madan Rajgade, Exh.-24. On the basis of the statement, initially a crime was registered at Police Station,

Ghuggus, vide Crime No.461/2016 for the offence punishable under Section 307 of the IPC. The printed FIR is at Exh.-53.

6. In the meanwhile, PSI Jadhav, after reaching to the spot of incident, prepared the spot panchanama in presence of pancha witness Tirupati Lakkakula (PW1). The spot panchanama is at Exh.-15. He also seized various articles which were found on the spot under seizure panchanama, Exh.-16, which includes; Chappal and simple as well as blood smeared earth. The appellant was arrested on 10.07.2016 itself. His clothes were seized under seizure panchanama Exh.-17 i.e. Shirt having blood stains and one full pant. During the course of investigation, on 13.07.2016, under seizure panchanama, Exh.-18, blood samples of accused was seized. Similarly, under seizure panchanama, Exh.-19, clothes of deceased were seized so also clothes of injured Madan on 14.07.2016. Under Exh.-20, blood sample of deceased and injured Madan were also collected and seized.

7. During the course of PCR, the appellant agreed to show the place where he has concealed the knife used in commission of the offence. The discovery statement was recorded in presence of

Tirupati (PW1). Admissible portion of statement of appellant leading to discovery is at Exh.-21. Pursuant to the discovery statement, police went to the spot, which was shown by appellant who took out the knife, which was concealed beneath a Subhabul tree under the iron bridge, on the spot itself. The knife was seized and sealed. At the time of sealing, it was found that the knife was having blood stains.

8. After completion of other usual investigation inclusive of forwarding muddemal to Chemical Analyzer, Nagpur, the investigating officer filed final report in the Court of learned Judicial Magistrate First Class, Ghuggus who found that the offence is exclusively triable by the Court of Sessions and committed the case to the Court of Sessions. After committal, the case was registered as Sessions Case No.109/2016. The learned Additional Sessions Judge framed and explained the charge. The appellant was charged for the offence punishable under Section 307 of the IPC for having made murderous assault on Madan (PW2), whereas he was charged for the offence punishable under Section 302 of the IPC for committing murder of Pandurang. The appellant denied the charge and claimed for his trial.

9. In order to bring home guilt of the accused, the prosecution has examined in all 15 witnesses and also relied upon various documents duly proved during the course of trial.

10. Tirupati (PW1) is pancha witness. Madan (PW2) is injured and father of deceased. Prakash Sarode (PW3) is the witness who reached to the spot immediately and to whom the deceased has made oral dying declaration. This witness has also took Madan (PW2) and Pandurang (deceased) to the hospital by auto rickshaw. Rekha Sarode (PW4) is wife of (PW3). As per her evidence, she noticed both the injured and deceased lying inside the house of the accused in injured condition. Evidence of Yogesh Sarode (PW5) would show that he noticed appellant taking out knife from the stomach of Pandurang. Shaikh Rafiuddin (PW6) has not supported the prosecution at all and even during the cross-examination by the learned A.P.P., nothing could be elicited from his cross-examination. Anwar Hussain (PW7) is an auto rickshaw driver in whose auto Prakash (PW3) took the injured as well as the deceased to Rural Hospital. Dr. Amit Pawar (PW8) is the doctor, who examined injured Madan Rajgade and issued report, Exh.42. Evidence Dr. Ajay Sakhare (PW9) would show

that on 11.07.2016, in the morning Pandurang was brought in a critical condition in ambulance at Wockhardt Hospital, Nagpur. As per his evidence, Pandurang succumbed to his injuries on 12.07.2016 at 08:00 a.m. Accordingly, he informed to police and issued death summary, Exh.-45. Dr. Manu Sharma (PW10), is an autopsy surgeon who has conducted post mortem over the dead body. Post mortem report is at Exh.-50. ASI Ashok Umap (PW11), has followed the directions given to him by ASI Kolte, who registered the crime. Vinod Mankar (PW12), is a photographer who took photographs of spot of incident. Dr. Ritesh Dixit (PW13), runs Shweta Hospital, whereat initially the injured Madan and deceased Pandurang were admitted and exploratory laprotomy was done on Pandurang. Ultimately, Pandurang was transferred from his hospital to Wockhardt Hospital at Nagpur. Santosh Jadhav (PW14) and Dilip Dolare (PW15) are the investigating officers, who have done parts of their investigation.

11. Dr. Manu Sharma (PW10), is an autopsy surgeon who has performed autopsy over the dead body and proved the post mortem report Exh.-15, did state that he noticed following three external injuries:

“i) Surgically stepped wound with 15 stepples placed vertically over the abdomen in the midline measuring 15 C.M starting 4 C.M below the xiphoid process & ending 5 C.M above pubic symphysis,

ii) Surgically sutured wound with intact sutures ad-measuring 6 C.M placed obliquely over the right side of the lower abdomen situated at 8 C.M lateral to umblicus on the right side. Opening of sutures revealed a stab wound measuring 4.5 C.M x 1.5 C.M x peritoneal cavity deep.

iii) Surgically sutured wound with intact sutures measuring 6 C.M placed horizontally over the left side of the lower abdomen situated at 10 C.M lateral & 3 C.M below the umblicus on the left side. Opening of the sutures revealed a stab wound measuring 2.5 C.M x 1.5 C.M x muscle deep.

iv) Scratch abrasion reddish brown in colour measuring 5 C.M was present over the front of the right arm in its middle 1/3rd situated 12 C.M below the right shoulder deep.”

In the cross-examination, the autopsy surgeon deposed before the Court as under:

“It is true to suggest that the injury No.1 is surgical intervention whereas the injuries nos.2 & 3 are the repair of the stab wounds mentioned in my report in column No.17.”

From the aforesaid, it is clear that there was a single stab on the body of the deceased.

12. The prosecution has duly proved the memorandum statement of appellant leading to recovery of weapon seized from the spot, which is a secluded place and it was seized and sealed from the spot itself. As per the C.A. report, Exh.-129, blood group of Madan (injured) is "B". Similarly, the blood group of deceased Pandurang is also "B", Exh.131. Similarly, the blood group of deceased Hansraj is also "B", Exh.130. However, no injuries were found on the person of the appellant at the time of his arrest. Therefore, the possibility of his own blood noticing on his clothes is completely ruled out. Exh.-111 is requisition given to the Forensic Laboratory, Nagpur by investigating officer to whom all muddemal articles were sent. C.A. report Exh.-128 shows that blood was detected on the clothes of the appellant as well as on the knife and on the shirt of the appellant. The blood of group "B" was found which is in conformity with the seizure memo panchanama Exh.-17. It shows that at the time of seizure of clothes, the investigating officer and panchanama noticed blood stains on the clothes of the appellant.

13. The question is whether the submission of learned counsel for the appellant is required to be considered and whether this finding can be converted from Section 302 to 304-I of the IPC, which is a lesser offence.

14. From Exh.-24, statement of injured Madan which was treated as FIR, it is clear that on 10.07.2016 at 6.30, when he was returning from Patanjali Stores along with his granddaughter, the appellant came to his house and gave abuses. As per the report, therefore, the injured Madan dropped his granddaughter at his house and came to the house of Hansraj in order to give him an understanding. At that time, the appellant brought knife from inside his house and assaulted on him. At that time, Pandurang (deceased) came and he was also assaulted.

15. As per the evidence of Pramod (PW3), the incident in question has occurred at the house of the accused. His evidence would show that when he was washing chicken, he heard talks between appellant and injured. However, he did not pay any heed to it since it was a regular feature. However, after some time, he heard loud noise and he went to the house of appellant,

where his wife was already present. He noticed complainant Madan (PW2) lying near the wall inside the compound of the appellant and he was holding his stomach and blood was oozing. Similarly, deceased Pandurang was standing near him. Upon inquiry, he told that he was assaulted by the present appellant.

16. As per Exh.-42, injured Madan (PW2) received two stab injuries. Both were grievous. For that act, the appellant was charged for the offence punishable under Section 307 of the IPC and he was convicted and was directed to suffer rigorous imprisonment for seven years. In the light of the evidence of injured himself and Prakash (PW3) and in the backdrop of the injury certificate, we are of the view that the learned Judge was right in convicting the appellants for the offence punishable under Section 307 of the IPC. So far as quantum of punishment of seven years, the State did not file any appeal for enhancement of the said sentence. So far as deceased Pandurang is concerned, it is clear that the incident had occurred inside the compound of appellant. That clearly shows that the deceased had been to the house of the appellant. Not only that, from the evidence of Prakash (PW3), Rekha (PW4) and Yogesh (PW5), a quarrel was

erupted between Madan (PW2) and appellant. Firstly, as per the prosecution case, Madan (PW2) was assaulted and when the deceased Pandurang tried to intervene, he was also assaulted. As per the evidence of autopsy surgeon Dr. Manu Sharma (PW10), the investigating officer gave a communication Exh.-47 for obtaining his opinion as to whether the injuries found on the dead body can be caused by a weapon, which was sent to him. The letter is at Exh.-47. The query report is at Exh.-48. In the examination-in-chief itself, Dr. Sharma stated as under:

“...P.S.I. S. K. Jadhav brought the kitchen knife for query & examination on 02.08/2016 at the hospital...”

17. Further, there is no evidence whatsoever in nature to show that the appellant was nursing any grudge against the deceased Pandurang and having intention to kill the deceased Pandurang. From the prosecution case, it is clear that the injured Mandan (PW2) reached to the house of appellant. There quarrel took place between them. Pandurang tried to intervene, he was assaulted. In that view of the matter, in our view, the present case qua Padurang falls in Exception-IV of Section 300 of the IPC. In our view, therefore, the submission of learned counsel for the appellant needs favourable consideration.

18. The conspectus of the aforesaid discussion leads us to pass the following order.

ORDER

- (i) The appeal is partly allowed.
- (ii) Judgment and order of conviction dated 21.03.2018 passed by learned Additional Sessions Judge, Chandrapur in Sessions Case No.109/2016, thereby convicting appellant for an offence punishable under Section 307 of the IPC stands confirmed.
- (iii) Judgment and order of conviction dated 21.03.2018 passed by learned Additional Sessions Judge, Chandrapur in Sessions Case No.109/2016, thereby convicting appellant for an offence punishable under Section 302 of the IPC is hereby set aside. Instead, the appellant is convicted for the offence punishable under Section 304-I of the IPC and for that, the sentence shall be ten years of actual imprisonment.

Both the sentences shall run concurrently.

Needless to mention, the appellant will be entitled to set off.

JUDGE

JUDGE