

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

CRIMINAL APPEAL NO.660 OF 2010

Mohammad Ahesan s/o Sheikh Hasan,
Aged about 35 years,
Occupation-Labour,
R/o. Chaman Nagar, Pipari Road,
Badnera, District-Amravati. ... Appellant

.. Versus ..

State of Maharashtra,
Through P.S.O. Police Station,
M.I.D.C., Nagpur. .. Respondent

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Shri A.K. Bhangde, Advocate for the Appellant,
Shri I.J. Damle, APP for the Respondent-State.
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CORAM : N.B. SURYAWANSHI, J.
DATED : 22.02.2021.

JUDGMENT

1. The appellant is convicted by the learned Additional Sessions Judge, Nagpur for the offence punishable under Section 307 of the Indian Penal Code and sentenced to suffer rigorous

imprisonment for 2 years and to pay a fine of Rs.500/- in Sessions Trial No.623/2005. The conviction is challenged by the appellant in the present appeal.

2. The prosecution case, in short, is that the accused was working as a driver on Truck No. MH-27/C-622. Ramkaran Dhuliya was driver on Truck No. MH-31/W-3783. On 24.9.2005 at about 9 pm, Ramkaran and cleaner Raju Uike were taking the truck from Pardi to Aurangabad. At about 10 pm, when his truck came near Wadi toll post, suddenly Truck No. MH-27/C-622, which was parked in front of his truck, started coming in reverse direction. The accused was driving the said truck. Sensing the possibility of accident, Ramkaran asked the accused as to how he was taking his truck in reverse when his truck was behind the truck of the accused. The accused got annoyed and took out a Tommy from his truck and dealt its blow on the head of Ramkaran, due to which, he received bleeding injury on his head and he fell down and became unconscious. Then the accused started running away from the spot by driving his truck. At that time, Truck No. MH-31/8083 arrived at the spot. Raju Uikey stopped that truck and told the incident to its driver and

asked him to chase the truck of the accused. The truck driver chased and apprehended the accused at some distance and brought him to M.I.D.C. Police Station along with his truck. After some time, M.I.D.C. Police came to the spot of incident and they took the injured to the hospital for treatment. His condition was critical and he was not in a position to make any statement. Therefore, Raju Uikey, cleaner, lodged oral report against the accused at M.I.D.C. Nagpur Police Station which was registered at Crime No.242/2005 for the offence punishable under Section 307 of the Indian Penal Code and investigation commenced. After conducting the investigation, the chargesheet was filed against the accused.

3. The accused was charged under Section 307 of the Indian Penal Code, he denied the charge. His defence was that he was falsely implicated. He contended that because of a scuffle between some persons, road near toll tax post was blocked. Therefore, he got down from the truck and at that time, police came and arrested him and took him to M.I.D.C. Police Station. The learned Trial Judge, after recording the evidence, convicted the appellant. Hence, the present appeal.

4. The learned Advocate for the appellant has submitted that injured has not supported the prosecution case. The evidence of PW-1 Raju Uike, alleged eyewitness, is not reliable. Considering the evidence of PW-3 Virendra Kuthe, he cannot be said to be an eyewitness. He further submitted that none of the witnesses have identified the alleged weapon, no CA report is brought on record and, therefore, the prosecution has failed to prove the charge beyond reasonable doubt. He therefore submitted that the appeal may be allowed and the appellant-accused may be acquitted.

5. On the other hand, the learned APP supported the judgment passed by the learned Trial Court. According to him, PW-1 and 3 have corroborated each others' evidence on material particulars. The injury report has been admitted by the appellant. The seizure of the Tommy, the weapon, is proved on record. The evidence of PW-1 and 3 has not been shattered in the cross-examination. The injury is on the vital part of the body of the injured. The learned Trial Court has properly appreciated the evidence and has rightly convicted the appellant-accused. No case is made out by the appellant to interfere in the

conviction. He, therefore, submitted that the appeal may be dismissed by maintaining the order of the learned Trial Court.

6. Heard the learned Advocate for the appellant and the learned APP for the respondent-State at length. Perused the record.

7. In support of its case, the prosecution has examined five witnesses. PW-5 Ramkaran Dhulia is the injured, who has not supported the prosecution case. Nothing material involving the appellant could be brought on record in his cross-examination conducted by the learned APP.

8. PW-1 Raju was the cleaner on Truck No. MH-31/W-3783 i.e. on the Truck of injured. He deposed that the incident happened at Toll tax office at Wadi. On the date of incident at about 9.30 pm, the accused was taking his truck in the reverse direction and at that time, their truck was behind the truck of the accused. The accused and Krushna Dhurve got down from their respective trucks. The injured asked the accused, as to how, he was taking the truck in reverse without there being any cleaner to guide him from behind the truck. An altercation

occurred between the injured and the accused. Thereupon the accused took out an iron rod (Tommy) and gave one blow on the head of Ramkaran which caused a bleeding injury on his head. Krushna Dhurve fell down on the ground. Thereafter, the accused started his truck and tried to run away. He told the said incident to another truck driver, who chased the truck of the accused and after some time, brought the accused on the spot. Thereafter, the police came to the spot, inspected the spot and sent the injured to the hospital. He had also gone to the hospital. From the hospital, he was taken to the Police Station, where he narrated the incident to the police. Police reduced the same into writing and on the basis of which, FIR (Exh.9) was registered.

In the cross-examination, he admitted that the road beside the toll office was quite wide. He also admitted that he got down from the truck and went to the toll office for getting the receipt. He stated that the truck of the accused had not dashed or touched their truck. He admitted that when the injured shouted at the driver of the truck coming in reverse direction, the driver stopped his truck. He further admitted that at the toll office, injured had not got down from their truck. He

stated that his clothes were also stained with blood on that day. But his clothes were not taken by the police. He also admitted that he could not see the face of the driver of the truck which was taking reverse. Omission "Krushna Dhurve got down from the truck and said to the accused as to how he was taking the truck reverse though there was cleaner at the back side", was brought on record in his cross-examination. He was unable to explain as to why the said fact was not mentioned in his previous statement. He admitted that every truck has a Tommy in it. He also admitted that he did not know the name of the driver of the truck which was coming in reverse direction. He denied the suggestion that injured sustained injury while repairing his own truck.

9. PW-3 Virendra Kuthe was the cleaner, who deposed that the incident occurred about 5-6 months back near toll tax office at Wadi. At that time, they were going in their truck No. MH-31/AP-3083. They were going from Bhandara to Amravati. One truck bearing no.MH-31/3783 was in front of their truck. The accused, who was the driver of the other truck, had beaten a driver of the truck bearing no.MH-31/3783 with an iron rod and

was running away with his truck. Therefore, they chased the truck of the accused and after catching him at the place about 1 km. away from the spot of incident, brought him back to the spot. Thereafter, police took him along with them. He identified the accused as the same person whom they had caught and brought to the spot.

During cross-examination, he stated that he did not know the name of the injured driver. The truck of the injured driver was standing at a distance of about 100 meters from the toll tax office. He stated that it did not happen that the people working in the toll tax office had rushed on the spot. He admitted that he was previously working on the truck of PW-2 Ramesh Kushwah. He further admitted that since morning on the day of deposition, he was with PW-2 Ramesh. He denied that he was not the cleaner on the truck no.3083. He further denied the suggestion that on the say of previous truck owner, he was making false allegations against the accused.

10. PW-2 Ramesh Kushwah was the panch witness, who proved the spot panchanama Exh.11. According to him, he was called by the police for panchanama and he reached on the spot

at about 12.00 in the night. According to him, there was mercury street light on the spot.

11. PW-4 Shaikh Mushtaque Shaikh Mehboob is the Investigation Officer. In his evidence, he proved the panchanama of seizure of Tommy at Exh.16. He forwarded the articles and samples to the Chemical Analyser on 2.10.2005 along with requisition (Exh.17). Thereafter, he received the invoice challan from the Chemical Analyser, Nagpur. He deposed that till the date of his deposition, the Chemical Analyser report was not received.

12. On careful scrutiny of the evidence on record, it appears that PW-5, who was injured witness, has not supported the prosecution case. PW-1 has categorically admitted in his cross-examination that at the time of accident, he got down from the truck and went to toll office for getting the receipt. He has further admitted that at the toll office, injured had not got down from the truck. The vital admission is that he could not see the face of the driver of the truck which was being taken in reverse direction. The material omission that 'the injured got down from

the truck and said to the accused as to how he was taking the truck reverse though there was no cleaner' is proved on record in his cross-examination. He also did not know the name of the driver of the truck which was coming in reverse direction. Taking into consideration the admissions given by him and the omission brought on record, his evidence does not inspire confidence.

13. The evidence of PW-3 is also of no help to the prosecution case. Admittedly he was not present when the incident took place. It is the specific case of PW-1 that after the incident, one truck came there, which was stopped by PW-1 and he narrated the incident to the truck driver and asked him to chase the accused. PW-3 claims to be cleaner on that truck. The truck driver was not examined by the prosecution. PW-3 since has admitted in his evidence that he was previously working on the truck owned by PW-2 Ramesh, there is every possibility that he is deposing at the instance of Ramesh (PW-2). His statement that nobody working in the toll tax office had rushed to the spot creates doubt about his veracity. His further admission that since the morning, on the date on which he deposed in the

Court, he was with PW-2 Ramesh, also creates doubt about his conduct.

14. The prosecution has failed to show the weapon to the injured or to the other witnesses. The alleged weapon was also not referred to Doctor for his opinion, as to whether, the injury suffered by the injured could be caused by that weapon. There was no blood on the alleged weapon, when the same was seized vide panchanama (Exh.16). PW-3 has admittedly caught the driver i.e. the accused at a distance of 1 km from the spot, the possibility cannot be ruled out that somebody else had committed the offence, but the appellant was caught and brought on the spot. There are discrepancies in the prosecution evidence. PW-3 states that the accused was caught at a distance of 1 km from the spot and he was brought on the spot. The arrest panchanama shows that the accused was arrested at M.I.D.C. Police Station. Taking into consideration the discrepancies in the prosecution case, the prosecution has failed to prove beyond reasonable doubt that the incident occurred as alleged by the prosecution and the appellant was the author of the crime.

15. The learned Trial Court has failed to consider the discrepancies in the prosecution case in the proper perspective and has erroneously convicted the appellant. The appellant therefore deserves to be acquitted. Hence, the following order :

O R D E R

- i) Criminal Appeal No.660/2010 is **allowed**.
- ii) The impugned judgment and order of conviction passed by the learned Sessions Judge, Nagpur in Sessions Trial No.623/2005 thereby convicting the appellant-accused under Section 307 of the Indian Penal Code is hereby quashed and set aside.
- iii) The appellant-accused is acquitted of all the charges. His bail bond stands cancelled.
- iv) Fine amount, if any, deposited by the appellant-accused be refunded to him.
- v) The appellant-accused shall furnish P. R. Bond in the sum of Rs.15,000/- (Rs. Fifteen Thousand) with one or two sureties in the like amount in terms of Section 437-A of the Code of Criminal Procedure.

(N.B. Suryawanshi, J.)