



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 88 OF 2002

Bhaskar s/o Asaram Autade,
Age; 22 years, Occ; Agril,
R/o; Darda, Tq.Gangapur,
District; Aurangabad.

...APPELLANT
(Orig. Accused No.1)

V E R S U S

1. The State of Maharashtra
2. Shriram s/o Mhosu Autade,
Age; 50 years, Occ; Agri,
R/o; Derda, Tq. Gangpaur,
District; Aurangabad.

...RESPONDENTS

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Advocate for the Appellant : Mr. B.V.Dhage
A.P.P. for the Respondent No. 1/State : Mr.R.B.Bagul
Advocate for Respondent No. 2 : Mr. Hanmant V. Patil (Assist
to PP)
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CORAM : SANDIPKUMAR C. MORE, J.

Date of Reservation : 30.10.2023
Date of Pronouncement : 29.01.2024

JUDGMENT

:

1. Appellant i.e. the original accused No. 1 in Sessions Case No. 80 of 2000, has challenged his conviction under Section 326 of the Indian Penal Code (for short "I.P.C."), at the hands of learned Sessions Judge, Aurangabad (hereinafter referred to as the learned trial Court), in the present appeal.

2. The learned trial Court has convicted the appellant/accused under Section 326 of the I.P.C. and sentenced him to suffer R.I. for 2 years and to pay fine of Rs. 2,000/-, in default to suffer R.I. for 6 months.

3. The prosecution case in brief is as under :

One Kailash Shriram Autade i.e. the informant in this case was the resident of village Derda. He was residing with his family members and doing agricultural business. On 15.02.1997 at about 5.30 to 6.00 p.m. when he along with his family members were in the threshing floor and putting thorny fencing around it, all three accused came there. When the father of the informant was proceeding to their land, the original accused Nos. 2 and 3 asked

him as to why they were putting thorny fencing to the threshing floor and also started abusing. When the father of the informant told them that he would remove the said fencing, if it falls in their land, they continued abuses. Accused No. 1 Bhaskar, the present appellant came armed with axe and gave blow of that axe on the left arm as well as on back of the father of the informant Kailas. At that time, original accused Nos. 2 and 3 had held him. When the informant and his family members raised shout, Bhanudas Mhasu, Narayan Ambadas and Bhaginath Bansi came there and rescued the father of the informant. The father of the informant had become unconscious and was taken to Ghati Hospital in a jeep car. Thereafter, the informant went to Shillegaon Police Station and lodged the FIR (Exh 03). On the basis of said FIR Crime No. 29 of 1997 was registered by Police Head Constable Mr. Rayphale against all the accused persons. The investigation was then handed over to A.S.I., Mahajan. On completion of investigation all accused were charge-sheeted.

4. The learned Judicial Magistrate, First Class, Gangapur found that offence punishable under Section 307 of I.P.C. was made out and therefore committed the case to the Court of Sessions

for trial. The learned trial Court framed the charge for the offences punishable under Sections 307, 323 read with Section 34 of the I.P.C. against the present appellant and conducted the trial and on completion of trial, the trial Court convicted the appellant as aforesaid.

5. The learned Counsel for the appellant vehemently argued that the learned trial Court has definitely erred in convicting the appellant/accused specially when it acquitted remaining two of the accused. He pointed out that the informant as well as PW-2 did not even identify the axe in open court and the alleged blows of axe were not given on the vital parts of the body of the injured. He pointed out that though the Medical Officer, who had examined the injured has deposed as regards the injuries sustained by the injured but the Radiologist and the Orthopedic Surgeons whom he had consulted are not examined. Moreover, the Medical Officer PW-6, Dr. Bhattacharya, had also not brought the record, on the strength of which, the injury certificate was issued. In the alternative, he just suggested that considering the passage of time the compensation amount can be increased by setting aside the sentence of imprisonment imposed on the appellant/accused.

6. Besides the submissions at bar the learned Counsel for the appellant also relied upon the following judgments :

a) 2015 DGLS (Cri.) Soft 952 (Karnataka High Court) – State of Karnataka Vs. Moti Alis Mohan and Others.

b) AIR 1979 SC 1262 – Bahadul Vs. State of Orissa.

c) AIR 2016 SC 4084 – Bharwad Navghanbhaj Jakshibhai and Ors. Vs. State of Gujarat.

d) 2008 Cri. L.J. 3744 (Rajasthan High Court) – Bholu alias Hanuman and Ors. etc. Vs. State of Rajasthan.

d) 1991 Cri. L.J. 2321(Rajasthan High Court)-
Dau Dayal s/o Jag Mohan Vs. The State of Rajasthan.

e) 1982 Cri. OL.J. 1972 (Supreme Court) – Mayur Panabhai Shah Vs. State of Gujarat.

7. On the contrary, the learned APP supported the impugned judgment on the ground that the informant's evidence is well corroborated by the injured witness and also by PW-3 who had reached the spot of incident immediately after the incident. He pointed out that it was obvious that the informant could not identified axe since he was deposing after about 5 years of the incident. He also argued that though the weapon and clothes were

not sent to the Chemical Analyzer, but for the said fact the Investigating Officer needs to be held responsible. In absence of Chemical Analyzer's report, the direct evidence of the injured, informant and the witnesses cannot be ignored. As such he prayed for dismissal of the appeal.

8. On the other hand the learned counsel for informant also supported the impugned judgment and arguments of the learned APP. He also filed the written notes of arguments on record and relied upon the following judgments :

f) 2013 ALL MR (Cri.) 63 (Bombay High Court – Nagpur Bench) – Kisan s/o Sakharam Hage & Ors. Vs. State of Maharashtra

g) 2010 ALL MR (Cri.) 3919 (Bombay High Court) – Shri Rajaram Dada Tikule and Ors. Vs. State of Maharashtra

10. Heard the rival submissions and also perused the oral and documentary evidence on record.

11. It is significant to note that all accused were initially charged with the offence under Section 307 read with Section 34 of the I.P.C., however, at the time of framing of the charge, the learned

trial Court framed the charge against the present appellant under Section 307 read with Section 34 of the I.P.C. and the other two accused were charged for the offence under Section 323 read with Section 34 of the I.P.C. Admittedly the other two accused are acquitted and the present appellant/accused No.1 has been convicted under Section 326 of the I.P.C., instead of Section 307 of the I.P.C.

12. So far as, the evidence of the prosecution is concerned, the prosecution has examined in all six witnesses. PW -1 Kailas Autade as informant, the son of the injured. PW-2 Subhash Autade, is the panch witness of spot panchanama, as well as cloth seizure panchanama. PW-3 Narayan Autade, is the witness who had reached the spot of incident just after the incident was over. PW-4 Shriram Autade, is the injured himself. PW-5 is the Investigating Officer and PW-6 is Dr. Bhattacharya, is the Medical Officer, who had issued injury certificate (Exh. 17) in respect of the injured Shriram. PW-1 Kailas i.e. the informant, has deposed as per the prosecution case on the point of assault. He specifically deposed that the present appellant came there, who was armed with an Axe and assaulted his father Shriram by an Axe on his

chest and back. He has further stated that when his father sustained bleeding injury and fell down, he raised shouts and therefore, the persons nearby rushed there. Nothing adverse to the prosecution case has been rendered in his cross-examination. Moreover, the F.I.R. (Exh. 9) is also similar to his deposition.

13. The prosecution witness No. 3 Narayan Autade has deposed that when he was working in his threshing floor, he heard shouts from the threshing floor of Shriram. When he reached there, he saw all accused at the said place and also seen Shriram was lying on the ground with injuries on his persons. He specifically stated that accused No. 1/the present appellant was armed with an Axe and the injured Shriram was unconscious at the relevant time. According to him, Kailas was also there. Then they took the injured Shriram to the hospital. Thus, this witness has fully corroborated with the testimony of Kailas, so far as the events, those took place after the main incident of assault. The injured Shriram i.e. PW-4 has deposed as per the prosecution case. According to him, after he was taken to the hospital, he was indoor patient at Ghati Hospital for about 10 to 12 days and then he received treatment in the hospital of Dr. Mundada for about 5 to 6

days. Thus, it can be seen that all these three witnesses have corroborated each other on material aspect. Further the ocular evidence is also supported by the medical evidence on record.

14. The Medical Officer Dr. Bhattacharya, i.e. PW-6 has deposed at Exh. 16 and has given the true account of all the injuries found by him on the person of injured Shriram. According to him, the probable weapon used for causing such injuries was a sharp and heavy. According to him, injury Nos. 1 and 2 in the said certificate (Exh. 17) were grievous in nature and caused within 24 hours of his examination. Thus, the medical evidence on record is also supporting the ocular evidence. Though the present witness Dr. Bhattacharya has admitted that he issued certificate on the basis of report of Radiologist and Orthopedic Surgeon, but ocular evidence brought by the prosecution is so strong that even if such persons are not examined, it will not be fatal in any manner to the prosecution case.

15. The learned Counsel for the appellant/accused relied upon the judgment in **Bholu @ Hanuman and Ors.** (supra) on the ground that the Radiologist's report about the victim was found

doubtful in the said case, so as to establish the fact that she had sustained grievous injury. In this case also though the Medical Officer, PW-6 Dr. Bhattacharya has stated about the fracture injury and opined that it was grievous injury in absence of evidence of Radiologists, but the said Medical Officer in the cross-examination has denied the suggestion that those injuries might be possible if a drunken person falls on the rough surface. This suggestion indicates the defence of the appellant/accused and by giving this suggestion, it has been indirectly admitted that the injured Shriram was having fracture injury. Therefore, merely because in absence of evidence of Radiologist and Orthopedic Surgeon who had examined injured Shriram, it cannot be inferred that the injuries mentioned in the injury certificate (Exh. 17) were not grievous in nature, specially when the eye witnesses and the injured himself had given the true account as to how those injuries were sustained. As such, the aforesaid observations of Rajasthan High Court in the aforesaid case is not helpful to the appellant/accused.

16. The learned Counsel for the appellant/accused also pointed out that the informant as well as the injured could not identified an Axe when shown to them being the weapon of an

assault. However, it is material to note that they were deposing after four years of the incident and therefore, it was obvious that they could not identify the Axe being the same Axe which was used in the commission of offence. Therefore, the inability of these witnesses to identify an Axe cannot be considered fatal to the prosecution case, specially when the defence of the accused that Shriram sustained those injuries by falling on the ground in drunken state, appears improbable.

17. The learned Counsel also vehemently argued that the recovery was doubtful and the Investigating Officer did not send the clothes of the injured along with weapon for Chemical Analysis. Admittedly, no such activity was done by the Investigating Officer during the course of investigation but it can be treated as latches on the part of the Investigating Officer. It is settled position of law that the ocular evidence always prevails on medical or scientific evidence. In the instant case the ocular evidence is well supported by the medical evidence and therefore, merely because there is no scientific report in respect of clothes of the injured and the weapon, the appellant/accused cannot be benefited.

18. Therefore, considering all the evidence on record, it appears that the trial Court has rightly appreciated the ocular evidence supported by the medical evidence on record and by proper reasoning convicted the present appellant/accused No. 1 for the offence punishable under Section 326 of the I.P.C., instead of Section 307 of the I.P.C. On independent search of facts, it reveals to this Court that the informant, PW-1 Kailas has deposed as per the prosecution case. Moreover, he has also stated about the manner of assault and his testimony is fully corroborated by the evidence of injured Shriram as well as independent witness Narayan Autade i.e. PW-3. Therefore, no interference is required in the impugned judgment. Accordingly appeal stands dismissed being devoid of merits. The appellant shall surrender himself before the learned trial Court within two months from the date of this judgment. The appeal is accordingly disposed off.

(SANDIPKUMAR C. MORE)
JUDGE