
(2015) 07 BOM CK 0334
In the Bombay High Court
Case No : Criminal Appeal No. 273 of 2014

Akbar and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 325, 326, 332

Citation : (2015) 07 BOM CK 0334

Hon'ble Judges : M.T. Joshi, J

Bench : Single Bench

Advocate : Vijay Sharma, for the Appellant; R.P. Phatake, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J—Heard both sides.

2. Learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No. 117 of 2006, has convicted present appellants i.e. original accused nos.1 and 4 for the offences punishable under Section 307, 332 and 506 read with 34 of Indian Penal Code. For the offence punishable under Section 307 read with 34 of Indian Penal Code, they were sentenced to suffer R.I. for 5 years and for other offences, lesser punishment was awarded. It was directed that all the sentences shall run concurrently. Fine was also imposed on each count. Aggrieved by the above conviction and sentence, present appeal is preferred by the appellants.

3. The prosecution case, in short, is as under :.

? That PW 3 - Pandurang Pawar i.e. Police Sub-Inspector, who was attached to Shrigonda Police Station, along with his team, had arranged for a raid on 31st March, 2006 at around 5:00 a.m. in order to nab some absconding accused. Accordingly, by two vehicles, he along with PW 3 - Pandurang Pawar, along with PW 8 P.I. - Rajaram Bhangre and the staff including PW 1 - Prabhakar Zodage, Police Head Constable and PW 4 - Baban Patekar, Police Constable had reached

the slum area at Navi Arvi at about 7:30 a.m. They already had received an information that all the four accused had reached in the said slum area by two groups i.e. three males and one female. All the four accused were seen sitting in front of a cottage.

4. When the PW 3 - Pandurang - the complainant went to arrest them, at that time, one person, who was later on disclosed as present appellant no.1/accused no.1 - Akbar suddenly took out a Sattur (a short weapon) from his behind and tried to give blow of the same. PW 3 Pandurang attempted to avoid the same, however, he had it's brushing injury to his right leg. Thereupon, when appellant no.1 Akbar attempted to give certain blow, PW 3 - Pandurang the complainant, in order to defend himself, placed his left hand forward. Therefore, said blow caused injury to his left forearm. At that time, rest of the co-accused including present appellant no.2 - Lahu, were holding swords in their hands. They were threatening the PW 3 - Pandurang to return back by saying that one police was already killed by them instantaneously in the earlier incident and the complainant would meet the same fate. As those three male persons were about to attack upon the complainant, he warned them if they would march forward, he would have to shoot them. However, those three male accused did not pay heed and rushed towards the complainant. In the situation, the complainant fired two rounds from his service pistol towards all the accused.

5. In the meantime, PW 8 - Rajaram Bhangare, P.I., and other staff caught hold appellant no.1 - Akbar and the lady accused i.e. original accused Sanji, wife of present appellant no.1. Two other accused i.e. accused no.3 Ankush (who died during pendency of trial) and accused no.4 - Lahu (who was absconding at the time of filing of charge sheet, but upon his arrest, a supplementary charge sheet came to be filed before the Sessions Court) fled away in the nearby bushes. Appellant no.1 Akbar and his wife i.e. accused no.2 Sanji were identified by one Police Constable Ankush. They were arrested and the PW 3 - Pandurang Pawar, complainant was taken to the Civil Hospital.

6. PW 8 Rajaram Bhangre, P.I., conducted investigation in the offence. He carried usual investigation including seizure of the weapon of the offence, the service pistol. Panchnama of the spot of occurrence was recorded. Inter alia, two empties were recovered from the spot. Necessary earth samples were collected. The uniform shirt of the complainant was seized. Thereafter, after carrying further investigation, the charge sheet was filed.

7. Before learned Sessions Judge, in all, eight witnesses were examined. Out of them, PW 1 - Prabhakar Zodage - Police Head Constable and PW 4 Baban Patekar - Police Constable were examined as eye witnesses. PW 3 - Pandurang Pawar P. S.I. is the injured complainant. PW 5 Dr. Vidyadhar Ranade had examined the complainant on 31st March, 2006, and following injuries were found by the Medical Officer:-

1) Incised wound 2 x 1/4 cm. x 1/4 cm. tapering at both edges. Bleeding present

over left arm, upper one third region, lateral aspect oblique in direction.

2) Incised wound 1 x 1/4 cm. x 1/4 cm. right lower extremities, below right knee horizontal in direction, upper one third region of right tibia.

? Accordingly, he issued injury certificate at Exhibit 30. PW 8 Rajaram Bhangre is the Investigating Officer while, rest of the witnesses are the panch witnesses.

8. The complainant as well as two eye witnesses deposed on the line of the prosecution case. Learned Addl. Sessions Judge has scrutinised the evidence in detail and came to the conclusion that presence of the accused at the spot was corroborated from the cross-examination of the eye witnesses and more particularly, PW 1 - Prabhakar Zodage. He further observed that the injuries found on the person of PW 3 - Pandurang have corroborated his version as well as the version of the eye witnesses. Finding that there are no allegations against accused Sanji she was acquitted while, accused nos.1 and 4 were convicted, as detailed supra. Accused no.3, as detailed supra, had already died during pendency of the trial.

9. Mr. Sharma, learned counsel for the appellants, took me through the entire material. He pointed some anomalies in the versions of prosecution witnesses regarding time of gathering of the appellants on the spot. He further pointed towards the admitted fact that in the earlier encounter with the police, father of present appellant - Akbar, has died along with one Police Constable. He submitted that in the said crime, while present appellant no.1 was convicted, in appeal, he came to be acquitted. He further pointed that when the prosecution came with a case that the incident has occurred in a slum area, there is possibility of having independent eye witnesses. However, none of them was cited as an eye witness. Further, though the Investigating Officer himself was a member of the raiding party and according to him, he is also a witness to the incident, still he carried the investigation. Said investigation was apparently biased since, though, admittedly, appellant no.1 Akbar was injured in the said incident, he was neither sent for medical examination nor there was any injury certificate on record. He further submitted that accused no.2 Sanji, wife of appellant no.1 Akbar, was carrying for nine months. She was also arrayed as one of the accused, who came to be acquitted by learned Addl. Sessions Judge as there was no evidence against her.

10. All these facts, according to Mr. Sharma, would show that only in view of the earlier incident, wherein, father of appellant no.1 Akbar has died as well as one Police Constable has died, a false case is filed against present appellants. In the circumstances, he submitted that the appeal may be allowed and the appellants may be acquitted.

11. In the alternative, he submitted that the offence is proved only for the offence punishable under Section 325 of Indian Penal Code. Further, appellant no.1 Akbar is behind the bars since the date of his arrest while, appellant no.2 - Lahu, who is arrested lateron, is behind the bars since then. Considering all

these facts on record, he submitted that the period of imprisonment already undergone, would be sufficient punishment.

12. On the other hand, learned A.P.P. for respondent - State submitted that the injuries on the person of the complainant are corroborated by the Medical Officer and two eye witnesses, which is sufficient to come to the conclusion that present appellants were the authors of the crime. He submitted that taking into consideration the fact that when the police party went at the spot to arrest the appellants, PW 3 - Pandurang, complainant was seriously assaulted, no leniency is required to be shown in the award of sentence. Hence, he submitted that the appeal may be dismissed.

13. On the basis of this material following points arise for my determination :

I) Whether the prosecution has proved that on 31st March, 2006 at about 7:30 am. to 7:45 am., present appellants, in furtherance of their common intention, at village Navi Arvi, assaulted the complainant by a dangerous weapon with an intention or knowledge that such act had caused death of the complainant and they would have been guilty of offence of murder ?

II) Whether the prosecution has proved that on the above date, time and place, the appellants, in furtherance of their common intention have caused hurt to the complainant while he was discharging his official duties as a public servant ?

III) Whether the prosecution has proved that on the above date, time and place, present appellants assaulted complainant and police staff at the time of discharging their official duties and assaulted or used criminal force against the public servants from discharging their duties ?

vi) Whether the prosecution has proved that on the above date, time and place, present appellants committed criminal intimidation by assaulting and threatening the complainant and prosecution witnesses with injury to cause alarm to them or to cause them to do an act which they are legally not bound to do or to cause them to omit to do an act, which they are legally bound to do?

? My findings to the above points are in the affirmative and the appeal is, therefore, dismissed for the reasons to follow.

REASONS

14. PW 2 - Balasaheb Jadhav, panch witness regarding the spot of occurrence has not supported the prosecution case. Similar are the cases of PW 6 - Satish Pachpute and PW 7 - Ramdas Dhamdhare, panch as to the spot of occurrence and seizure of weapon respectively. The prosecution case, therefore, solely rests on two eye witnesses, injured and the Medical Officer.

15. We have already noted the injuries found by PW 5 - Dr.Vidyadhar Ranade. According to him, on 31st July, 2006 at about 10:00 a.m., he examined the complainant and found two incised wounds, as detailed earlier. According to him, those injuries can be caused by a hard, sharp and pointed object. The age of

those injuries was within 24 hours. Accordingly, he issued the injury certificate at Exhibit 30. During cross-examination, he admitted that those injuries were possible with the help of a knife or front pointed portion of a rifle. Besides this, no further cross-examination was carried. It would thus show that on 31st March, 2006 i.e. on the day of the incident, the injured had two fresh incised wounds, as detailed supra.

16. Once the wounds are proved, unless there is any material on record to doubt the veracity of the witnesses, the reasons forwarded by learned Addl. Sessions Judge cannot be faulted with. The cross-examination of PW 3 - Pandurang Pawar injured complainant, would show that village Navi Arvi was 4 k.m. away towards West from village Pedgaon. There were 4-5 huts at the spot and no villagers came on the spot upon hearing the shots of pistol. In the circumstances, there are no chances of having any independent witness.

17. It is an admitted fact that earlier, certain cases for the offences punishable under Section 302, 396 and 326 of Indian Penal Code were registered against the appellants and other accused. In the earlier skirmishes between police and accused persons, father of appellant no.1 as well as one Police Constable had died. In these circumstances, it is natural for the villagers not to visit the said slum area consisting of 45 huts, from the village upon hearing shots of pistol. In this view of the matter, the statement of PW 1 - Prabhakar Zodage that some Paradhi people had gathered after firing, should be taken into consideration. It would mean that the inmates of those 45 huts, including that of present appellants, had gathered on the spot.

18. It is no doubt true that PW 8 - Rajaram Bhangre, Investigating Officer, should not have conducted the investigation as he himself was one of the members of the raiding party or being Police Inspector, rather the leader of the same. However, that itself would not take us to disbelieve the prosecution case. The reasoning of the learned Addl. Sessions Judge, on all the counts, therefore, cannot be faulted with.

19. As regards the sentences awarded by learned Addl. Sessions Judge, considering the fact that the members of the raiding party, who went for arresting the accused, were assaulted by a Sattur and present appellant no.2, in furtherance of common intention, brandished sword towards PW 3 - Pandurang Pawar injured, in my view, no interference in the sentences also, is called for.

20. In the result, the following order :.

? The appeal is hereby dismissed.