
(2011) 01 BOM CK 0082

In the Bombay High Court

Case No : Criminal Appeal No. 402 of 1999

Amruta Deshmukh and Anil Deshmukh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2011) CriLJ 1147

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : G.D. Kale, for the Appellant; V.G. Shelke, A.P.P, for the Respondent

Judgement

S.S. Shinde, J.—This appeal has been preferred by the Appellants challenging their conviction and sentence awarded by the 3rd Addl. Sessions Judge, Nanded in Sessions Case No. 123 of 1996. The learned trial Judge has convicted the Appellants for offence punishable u/s 324 r.w. 34 of I.P.C. and sentenced them to suffer S.I. for six months and to pay a fine of Rs. 1000/-, in default, to suffer S.I. for three months.

2. On perusal of the impugned judgment and the record and proceedings made available, the prosecution story, in nutshell is as under:

The original accused No. 1 Amruta is father of accused No. 2 Anil and accused No. 3 Digambar, who is acquitted by the trial Court. Lands of complainant Venkatrao Deshmukh and P.W.4 Nivrattiare near the land of accused at village Pimpalgaon (Mahadeo), Tq. And district Nanded. The accused are from brotherhood of complainant Venkatrao. On 8.12.1994, in the noon time accused Nos. 1 to 3 threatened the complainant Venkatrao in his field stating that they will not allow him to take the canal water to his field. The canal water to the field of complainant and other fields at village Pimpalgaon (Mahadeo) was available during the night time only. So in order to plant sugarcane, P.W.2 Datta, P.W.4Nivratti and P.W. 5 Vishwanath went to the field of complainant on

8.12.1994 at about 8 p.m. By that time, the canal water had not yet available in the field of complainant. So complainant and others slept in the field of complainant Venkatrao at 8.30 p.m. Thereafter, at about 10 to 10.30 p.m., P.W.4 Nivratti raised alarm by shouting and uttering the word "Meloire". By hearing the alarm of P.W.4 Nivratti, complainant, P.W.2 Datta and P.W.5 Vishwanath woke up. When complainant asked as to what happened, the accused No. 2 Anil assaulted complainant Venkatrao by "Jambiya" (Knife) on his head and caused bleeding injury on the head. Accused No. 1 Amruta also assaulted complainant Venkatrao on his left hand palm by held of "Katti" and caused bleeding injury. Accused No. 3 Digamber was armed with an axe and he was standing there. All the accused after assaulting the complainant Venkatrao and P.W.4 Nivratti and causing them injuries, left the place of incident. P.W.2 Datta took the complainant Venkatrao and P.W.4 Nivratti to the Civil Hospital, Nanded by Auto rickshaw for medical treatment. The Medical Officer on duty informed the P.W.9 Police Head Constable Ganesh Kendre, who recorded the complainant. Offence punishable under Sections 307 r.w. 34 of I.P.C. was registered against the accused persons. After carrying out necessary investigation, the Police filed charge-sheet in the Court of J.M.F.C., who in turn committed the case to the Court of Sessions, offence u/s 307 I.P.C. being exclusively triable by Sessions Court.

3. Consequent upon committal of the case, the Sessions Court framed charge for the offences punishable u/s 307 r.w. 34 of I.P.C. and Section 324 r.w. 34 of I.P.C. Against the accused. The learned trial Court, after trial, convicted and sentenced the original accused Nos. 1 and 2 as mentioned above and acquitted the original accused No. 3 of the charges levelled against him. Hence, this appeal by the Appellants- original accused Nos. 1 and 2.

4. Heard learned Counsel for the Appellants and the learned A.P.P. for the Respondent / State at length.

5. The learned Counsel for the Appellants submitted that the prosecution has not explained the injuries on the person of accused No. 2 Anil. It has come in the evidence of P.W.7 that accused Anil has also sustained injuries. Though there is evidence of eye witnesses, including two injured witnesses and medical evidence, the said evidence suffers from certain minor discrepancies. The learned Counsel for the Appellants also submitted that the alleged incident took place during the night and due to darkness, it is difficult to identify the culprits. He, therefore, prayed for acquittal of the Appellants.

Learned Counsel for the Appellants submitted that the prosecution has examined only interested witnesses and no independent witnesses have been examined. The Medical Officer does not support the case of the prosecution as his evidence shows that the injuries are caused by blunt object. Learned Counsel further submits that evidence of eye witnesses shows that the injuries are by sharp weapon, however, medical evidence shows that the injuries are caused by blunt object. Therefore, counsel would submit that the prosecution case that victims were assaulted by Katti and axe is falsified by medical evidence. Counsel further

submitted that injuries sustained by the victims are simple in nature. Panc has have not supported the case of the prosecution about recovery of the alleged weapon. Learned Counsel further invited my attention to the medical evidence and also evidence of eye witnesses and submitted that the Appellants deserve to be acquitted.

6. On the other hand, the learned A.P.P. submitted that there are injured eye witnesses to the incident. The accused and the injured are known to each other. Before the incident in question, there had been altercations between the complainant party and the accused persons, which has resulted in the incident of assault in the night. The prosecution witnesses have categorically named the accused persons and attributed the role played by each of the accused. The medical evidence and the report of the Chemical Analyzer also corroborates the evidence of the prosecution witnesses in material particulars. The learned trial Court believed the evidence of the prosecution witnesses, supported by the medical evidence ad C.A. Report, and convicted the Appellants original accusedNos.1 and 2 for the offence punishable u/s 324 r.w. 34 of I.P.C. and sentenced them as aforesaid. All the accused were, however, acquitted for the offence punishable u/s 307 of I.P.C. The accused No. 3 was also acquitted u/s 324 of I.P.C. The learned A.P.P. vehemently supported the judgment and order of conviction and prayed for dismissal of the appeal.

7. This Court admitted the appeal in the year, 1999 and granted bail to the Appellants. The Appellants are on bail at present.

8. I have given due consideration to the submissions of the learned Counsel for the Appellants and the learned A.P.P. for the State. I have carefully perused the evidence of P.W..1 Venkatrao, who is an injured witness. He has stated in his evidence before the trial Court in para 3, thus:

3. The incident occurred about 3 years before. On the day of incident, the accused No. 1 to 3 informed me that they will no tallow me to take water of the Canal. In that night, I, my son Sopan, my elder brother Nivratti and my nephews Datta and Vishwanath went towards field for the purpose of planting sugarcane, in the field. As there was no water coming through water channal, in the field, therefore, we went to see the same in the field. At about 10.00 p.m. or 10.30 p.m. accused No. 1 Amruta, Aniland Digamber started assaulting my elder brother Nivratti. We were all sleeping atone place in the field nearer to each other. My brother Nivratti raised alarm as "Melere". The accused persons assaulted to Nivratti with weapons Jambia, Axe and Katti(used for cutting of sugarcane). Then accused No. 2 Anil dealt with Jambia to me on my head on occipital region. Accused No. 1Amruta dealt Katti blow on my left hand palm posterior side near the wrist. Due to assault to me, my wearing shirt and Dhoti were stained with blood. Brother Nivratti was assaulted on left side arm pit, on left side near the ear and on his head. In the same night, my nephew Datta took us to Govt. Hospital, Nanded.

The evidence of P.W.1 Venkatrao is not shattered in the cross-examination.

9. P.W.2 Datta in his evidence before the Court has stated thus:

After taking meal at home, at about 8.00 or 8.30 p.m., I, my father Nivratti, brother Vishwanath, uncle Venkatrao and my cousin brother Sopan went to the field in night. As we did not notice water of the canal we went to sleep at one place nearer to each other. Then at about 10.00 p.m. or 10.30 p.m., I heard the alarm raised by my father Nivratti as "Bapre Melore". Hearing the alarm of my father, I got woke up. I saw injury to the left side rib of my father. I say accused No. 3 Digamber giving axe blow to my father near left side ear. We all had woke up hearing alarm of my father. I say accused No. 2 Anil giving Jambia blow on the head of my uncle Venkatrao. I say accused No. 1 Amruta giving blow with Katti on the left hand of Venkatrao on the palm portion. Due to assault my father Nivratti and uncle Venkatrao sustained bleeding injuries. After the incident, all the accused persons went away to their field. Our field is adjoining to road. Therefore, I took my father and uncle in one Auto rickshaw to Nanded Hospital, and both were admitted in the hospital.

In the cross-examination, the evidence of P.W.2 Datta is not shattered.

10. P.W.3 Dr. Gajendra Deshpande, Medical Officer, G.G.M. Hospital, Nanded had examined the injured persons and found two stab injuries on the person of Nivratti Kamaji Deshmukh and two C.L. Ws. On the person of Venkatrao Kamaji Deshmukh. These injuries have been proved by the Medical Officer P.W.3 Dr. Deshpande. The evidence of these witnesses is also corroborated by the C.A. Report on record.

P.W.3 Dr. Gajendra Deshpande in para 2 of his examination has stated that on examination of patient Nivrutti Kamaji Deshmukh he found following injuries on his person:

1. Stab injury on chest on left middle Axillary line of memory region, of size 1" x 1/2" x 1/2". age of injury within 24 hours, caused by sharp weapon, simple in nature.

2. Stab injury on left memory region in-between mid clavicular region. Size 1" x 1/2" x 1/2", simple in nature, age of injury within 24 hours caused by sharp weapon.

In para 3 of examination of patient Venkatrao Kamaji Deshmukh, P.W.3 found following injuries on his person

1. Contused lacerated wound, six, 1/2" x 1/2" x 1/2" on dorsal aspect let hand. Age within 24 hours, simple in nature, caused by blunt and hard object.

2. C.L.W. 1/2" x 1/2" x 1/2" on left parietal region caused within 24 hours, caused by blunt and hard object, simple in nature.

In para 4, P.W.3 Dr. has stated that the injures on the person of patient Nivrutti

mentioned in certificate Exh.22 can be possible with Article 6 Jambia-cum-knife. The injuries mentioned on the person of Venkatrao described in certificate Exh.23 can be possible with Article No. 5 Katti by its blunt side.

11. Taking overall of the matter, I am of the opinion that the learned trial Court has rightly believed the evidence of the injured witnesses and the medical evidence as also the C.A. Report and came to the conclusion that the accused - Appellants are guilty of the offence punishable u/s 324 r.w. 34 of I.P.C. The conviction of the Appellants requires noninterference.

The Appellants were in jail during trial for the period from 9.12.1994 to 17.12.1994.

There are mitigating circumstances in this case. The prosecution has not explained the injuries on the person of the accused Anil. It also cannot be lost sight of the fact that the sentence has been awarded by the trial Court in the year, 1999 whereas the appeal is being heard in the year, 2011. There is some substance in the contention of the counsel of the Appellants that recovery of weapons is not convincingly proved by the prosecution. There is also some substance in the contention of the counsel for the Appellant that there is no consistency in the evidence of eye witnesses and also in medical evidence, that the injuries caused are also simple in nature. am, therefore, of the opinion that the ends of justice will meet if the sentence of the Appellants is reduced to the period already undergone.

12. In the result, the appeal is partly allowed. The conviction of the Appellants u/s 324 r.w. 34 of I.P.C., is confirmed. However, the sentence awarded to them is reduced from S.I. for six months, to the period already undergone by the Appellants. In so far as the order of the trial court to pay fine of Rs. 1000/- is concerned, the same is maintained. In view of this, their bail bonds stand cancelled.