
(2014) 08 BOM CK 0063
In the Bombay High Court
Case No : Criminal Appeal No. 232 of 2013

Arun	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357(1)
Penal Code, 1860 (IPC) — Section 300, 302, 307, 323, 34

Citation : (2014) 08 BOM CK 0063

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : A.D. Ostwal, Advocate for the Appellant; G.R. Ingole, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—Appellant-original accused No. 1 Arun Jagtap (hereinafter referred to as "accused"), who is in jail was tried along with accused No. 2 Ratan Jagtap and accused No. 3 Rahul Suradkar in Sessions Case No. 148/2011 before the Sessions Judge, Jalna for offence under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal Code (IPC for short). Only the appellant came to be convicted and only u/s 307 of IPC and he has been sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 10 Lakhs and in default, to suffer rigorous imprisonment for three years. The Sessions Court directed that, on depositing of fine by the accused or after recovering it, the same be paid to the victim Gangadhar Limbaji Pagare (P.W. 2) as compensation u/s 357(1) of the Code of Criminal Procedure, 1973 (Cr.P.C. for short). Thus, this appeal.

2. The case of prosecution in short is as follows:-

(a) On 26.4.2011, P.W. 1 Sanjay Limbaji Pagare, (hereafter referred as "complainant") resident of Relgaon, Taluka Bhokardan, brother of victim Gangadhar, filed F.I.R. with Police Station Bhokardan, District Jalna, informing

that, on 24.4.2011, his brother Gangadhar (victim) had gone for a marriage with marriage party from the village to Bhopalzari, Taluka Jafrabad. At that place, in the marriage procession, victim had asked the procession to move faster as it was time of marriage. At that time, Arun Jagtap (accused No. 1), Ratan Jagtap (accused No. 2) and Rahul Suradkar (accused No. 3) told him that he has become very wise and they will show him after returning to the village. On the same day, the victim returned with the marriage party and told the incident to complainant. In the evening at about 8.00-8.30 p.m., the victim was sitting on the Ota of the Statue of Dr. Babasaheb Ambedkar. The complainant was standing near him. At that time, the marriage party returned. From the marriage party, the accused Arun, Ratan and Rahul went to the house of accused No. 2 Ratan and then came near the victim. At that time, the complainant asked accused No. 1 Arun as to why he spoke against the victim at the time of marriage. At that time, accused No. 1 Arun threw chilly powder on the face of the victim and the complainant and abused them as to who are they to speak. Accused No. 1 Arun took tommy (iron rod) from the vehicle and hit the victim on his head. The complainant was given slaps and fist blows by the accused Nos. 2 and 3 and he was threatened. One Amol Suradkar and Kishor Suradkar intervened in the quarrel and complainant took victim Gangadhar to Bhokardan Government Hospital and the doctor there, after giving first aid, for further treatment, referred him to Ghati Hospital, Aurangabad where the victim was admitted. Complainant explained in the F.I.R. that as he was with the victim, there was delay in filing of the F.I.R.

(b) The F.I.R. with the contents as above came to be registered by P.S.O. Shaikh Talib Musa (P.W. 8). Head Constable Daulat Landge (P.W. 12) then investigated the offence. He recorded the spot panchanama (Exh. 52) and also recorded the statements of witnesses. The accused could not be traced on 26.4.2011 and came to be arrested on 28.4.2011. After arresting the accused persons, the iron rod (Article No. 4) was seized from accused No. 1 vide panchanama (Exh. 53). The Head Constable seized blood stained clothes of victim Gangadhar on 29.4.2011 vide panchanama (Exh. 37). The further investigation was done by P.S.I. Shaikh Shahnoor (P.W. 9). From the Ghati Hospital, Aurangabad, the victim had been shifted to Sassoon Hospital, Pune. The documents from Sassoon Hospital, Pune were received by P.W. 9 P.S.I. Shaikh Shahnoor and looking to the documents, Section 307 of IPC came to be added in the matter. As P.S.I. Shaikh Shahnoor came to be transferred, the investigation was taken over by P.S.I. Ramchandra Jadhav (P.W. 11). The seized articles were sent by him to Chemical Analyser on 10.7.2011 through Police Constable Fulmare. P.S.I. Jadhav also sent blood samples of the victim. The C.A. report was received. On completing the investigation, charge sheet came to be filed in the Court of Judicial Magistrate, First Class, Bhokardan and the offence being Sessions trialble, the matter was committed to the Court of Sessions.

3. Charge was framed under Sections 307, 323, 504 and 506 read with Section 34 of the IPC. Prosecution brought on record evidence of 12 witnesses. The

defence taken by the accused persons was that of total denial. According to them, the victim fell on stone under influence of liquor and sustained the injury. The accused claimed in statement u/s 313 of the Cr.P.C. that the victim was intending to purchase one prominent plot, but it was purchased by accused Nos. 1 and 2 and, therefore, the witnesses are deposing against the accused.

4. The appellant-accused came to be convicted as above. The present appeal raises grounds and it has been argued for the appellant-accused that the witnesses examined were interested witnesses. Incident took place in public place, but still no independent witness was examined. The medical evidence, the evidence of doctor Jamal Azmi shows two injuries on the parieto temporal region while the evidence of Dr. Dilip Patil (P.W. 10) speaks only about one injury on the occipital area. The blood on the iron rod was not proved to be of the victim. The seizure panchanama of the rod is not duly proved as panchas did not support. There are contradictions and omissions in the evidence of witnesses. The incident is that only one blow was given and so it could not be said that there was intention to commit murder. The reasonings adopted by the trial Court are not maintainable. The accused is entitled to be acquitted. There was delay in filing of F.I.R.

5. The learned A.P.P. referred to the oral evidence on record to say that the eye witnesses of the incident were reliable. They are natural witnesses. There is no reason why the victim should be disbelieved who has suffered permanent disability due to the incident. The trial Court adopted proper reasons and rightly came to the conclusion that offence u/s 307 of IPC has been established.

6. Regarding the incident, there is evidence of complainant Sanjay Pagare (P.W. 1), the victim Gangadhar Pagare (P.W. 2) supported by Amol Suradkar (P.W. 3). The witnesses were cross-examined by the accused. In the cross-examination, certain omissions were brought on record regarding details. Even ignoring those omissions on record, the evidence with reference to the incident still survives and is reliable. P.W. 1 Sanjay has deposed that, on 24.4.2011, his brother had gone for the marriage to Bhopalzari, which was marriage of the brother of accused No. 3 Rahul. The witness has stated regarding an incident taking place at the time of marriage. The evidence about that incident at the time of marriage would be hearsay for this witness. What remains as substance and which is stated in the F.I.R. Exh. 31 also is that, on returning from the marriage, the victim told complainant about the incident at the time of marriage. For the incident which took place at the marriage, the victim himself has deposed that he had gone for the marriage of Gajanan Suradkar at Bhopalzari and at that place there was exchange of hot words between him and the accused persons and thereafter he had come home. Thus, the evidence of the victim shows that, earlier in the day of 24.4.2011 there was exchange of hot words between him and the accused persons and coming back, he told the incident to his brother complainant Sanjay. In the cross-examination of complainant, omission is pointed out that, he did not tell the police while giving the F.I.R. that at that function the accused had

"abused" the victim. This is not material as the F.I.R. does refer to the incident at the time of marriage and exchange of words, where accused told the victim that he has become too wise and records that such incident was told to the complainant by the victim.

7. The evidence of complainant (P.W. 1) and the victim (P.W. 2) shows that, on the said date of 24.4.2011 in the evening, they were near the platform of the Statue of Dr. Babasaheb Ambedkar. The victim was sitting on the platform and complainant was standing nearby. At that time, the evidence is that, the complainant picked up the subject with accused as to why the victim had been abused and manhandled. P.W. 1 deposed that, at such time, accused No. 1 Arun threw chilly powder in the eyes of complainant and the victim. The victim Gangadhar, however, deposed that, when accused Nos. 1 and 2 came there, "they" threw chilly powder in the eyes of the complainant and the victim. However, both the witnesses have no confusion regarding the fact that accused No. 1 Arun took iron rod from vehicle which was nearby and hit the same on the head of victim Gangadhar. Regarding this main part of the incident, there is no confusion between the witnesses. Some omission is brought on record that, in the statement to police, reference was to vehicle and not jeep while in the evidence reference was made to jeep. I do not find that this is material. Regarding this incident of accused No. 1 Arun hitting an iron rod taking the same from vehicle nearby, is corroborated by P.W. 3 Amol also.

8. The evidence of Amol is that, his house is near the Statue of Dr. Babasaheb Ambedkar and he saw a fight between the accused persons and the victim. He also deposes about accused No. 1 throwing chilly powder in the eyes of victim, and accused No. 1 hitting iron rod taking the same from his vehicle. The witness was referred to certain omissions in the cross-examination and from the investigating officer, the omissions have been proved with reference to his statement given to police on 26.4.2011. If the evidence of P.W. 3 is read with the evidence of investigating officer P.W. 12 Daulat Landge (Head Constable) read with the statement dated 26.4.2011, what can be seen is that, the omissions brought on record are relating to details and not the substance. In substance, the witness had told the police on the day when F.I.R. was registered that when exchange of words took place, accused threw chilly powder in the eyes of the complainant and victim and accused did hit the victim by tommy on head of victim taking the same from vehicle. No doubt P.W. 3 is related to the complainant, but that by itself is no reason to discard his evidence looking to other evidence available on record. Even with or without the support of this witness, the evidence of P.W. 1 and P.W. 2 appears to be reliable and unshaken in the cross-examination.

If the cross-examination of the victim is perused, the only omission brought on record is whether he had stated to police that after the incident he had become unconscious. Otherwise, there are suggestions which have been denied. There is no reason why the victim Gangadhar should be disbelieved regarding his

evidence that the accused threw chilly powder in the eyes of himself and the complainant and that the accused hit this witness by iron rod on his head. The witness fairly accepted in the cross-examination that he used to consume liquor to some extent, But the witness denied that he suffered injuries because of fall on stone. The evidence shows that, the injury suffered by this victim has left him as a paralytic person.

9. The evidence of P.W. 1 Sanjay (complainant) shows that, after the incident, he took his brother P.W. 2 to Rural Hospital from where, he deposed he was advised to shift the victim to Pune or Mumbai for brain operation. Apparently, the condition of the victim was serious. The complainant deposed that, he took the victim to Ghati Hospital, Aurangabad and went to collect money. He says that, at that time, he went and filed report with police, which is Exh. 31. The F.I.R. Exh. 31 itself gives explanation for the delay. The complainant was obviously first bothered regarding the health of his brother. In the cross-examination of complainant, the accused himself brought on record further details which show that the victim had received bleeding injury on the head, and complainant tied the injury of Gangadhar with handkerchief, but still the blood was coming out; that complainant put the victim on the seat of motorbike to take him to hospital and followed by another motorbike. It is seen from the cross-examination that, the victim was first taken to one Dr. Sonawane at Pimpalgaon. Witness Amol was holding victim when he was taken to Pimpalgaon on motorbike. The cross-examination brought on record further shows that, from Pimpalgaon complainant took the victim to Rural Hospital, Bhokardan and they were there for about an hour and after getting primary treatment, they took a jeep to Bhokardan Police Station, however, the police advised them to first take care of the patient who was serious and then to report the matter. According to the complainant, they were at the police station for 10 minutes. These details brought on record by the accused in the cross-examination from the mouth of complainant gets corroborated from P.W. 8 A.S.I. Shaikh Talib also, who was also asked in the cross-examination and stated that on 24.4.2011 complainant Sanjay indeed had come to the police station. He stated that, he does not know whether the complainant did give any report or not. Thus, the complainant with injured victim had gone to the police station on day of incident itself but was advised to first take care of his brother, which he did. In the circumstances, it cannot be said that the F.I.R. is delayed or afterthought. The trial Court has also recorded reasons in this regard and rightly came to the conclusion that the F.I.R. cannot be said to be delayed F.I.R. and that the time gap has been satisfactorily explained.

10. P.W. 5 Chandramani Salve, panch regarding seizure of the iron rod turned hostile. The seizure of the iron rod is proved by P.W. 12 Head Constable Daulat. He stated that, the accused came to be arrested on 28.4.2011 and that the iron rod was seized from accused No. 1 Arun for which the panchanama is Exh. 53. According to the trial Court, the evidence of this witness regarding seizure of iron rod from accused No. 1 is substantive evidence and the evidence was not

impeached regarding the seizure of iron rod from accused No. 1. On interrogation by police, if accused directly tells and produces the instrument, it can be seized. If it is not in hidden condition, there cannot be "Discovery" as such. The iron rod has been identified by P.W. 1, P.W. 2 and P.W. 3 as the same article, by which the injury was caused to the victim. The evidence of P.W. 12 Head Constable Landge shows that, clothes of the victim were seized vide panchanama Exh. 37. Regarding seizure of clothes of the victim, there was evidence of P.W. 6 Muktar Shabbir also. The evidence of P.W. 11 Rameshchandra Jadhav shows that with letter Exh. 47 and Exh. 50 the articles seized and the blood samples of the victim were sent to Chemical Analyser. On the clothes of the victim, blood Group "B" was found, which is of the victim. On the iron rod, there was blood found, which was reported as per C.A. report, to be human blood, but the group could not be ascertained.

11. The evidence of P.W. 10 Dr. Dilip Patil is that, on 24.4.2011, he was working as Medical Officer in Rural Hospital, Bhokardan and the victim was brought to him at about 11.05 p.m. He found a "CLW on occipital area 5x2x2 cm. oblique". According to him, he referred the patient to Government Medical Hospital, Aurangabad and issued certificate Exh. 45. He deposed, the injury was possible by iron rod like Article No. 4. The patient had given history that he was hit by iron rod. The cross-examination of the witness shows that, Exh. 45 was only a "provisional certificate" and the patient or police did not come to him to take the final injury certificate by showing papers of the patient from Ghati Hospital, Aurangabad.

Then there is evidence of P.W. 7 Dr. Jamal, who was Resident Surgeon at Sassoon Hospital, Pune on 8.5.2011. His evidence is that, on that day, the victim was admitted in the hospital and the victim had been brought by relatives. The evidence of this doctor also shows that, earlier the victim had been admitted in the Hospital at Aurangabad. The injuries recorded by this witness were as under:

"1. CLW on parieto temporal occipital region 2 x 1 cm.

2. CLW over right parieto temporal region 2 x 1 cm."

He accordingly issued certificate Exh. 40. It has been argued for the accused that, although this P.W. 7 referred to the above two injuries, P.W. 10 Dr. Dilip had referred to only CLW on occipital area and had deposed that, when he examined the patient, there was no CLW at right parieto temporal region. Thus, it has been argued that, there are discrepancies in the medical evidence. This ground was raised even before the trial Court and the trial Court, after discussing the evidence of both the doctors, observed that, by passage of time, the size of injury might have reduced, but that both the doctors were firm on the point of CLW appearing on occipital region of the victim, but since P.W. 10 Dr. Patil did not notice CLW over right parieto temporal region, even if it was ignored, the fact remains that there was CLW on occipital region of the victim which corroborates the testimony of P.W. 1 and P.W. 2 to the extent of this injury.

12. The parietal-temporal-occipital (PTO) is an area of the brain's cerebral cortex, which includes parts of the temporal, parietal and occipital lobes. It's one of several association areas in the brain and facilitates the processing of visual, auditory, and non-primary sensory information. For external examination, these are areas near each other. P.W. 10 Dr. Patil referred to CLW of occipital area 5x2x2 cm. oblique. This was noted by him on 24.4.2011 when the bleeding victim was taken to him soon after the incident. P.W. 7 Dr. Jamal, however, examined the patient after passage of time, on 8.5.2011 when the victim had already been treated at the Rural Hospital, Bhokardan and thereafter at Ghati Hospital, Aurangabad. The injury noticed by Dr. Jamal (P.W. 7) also adds the words "occipital" after referring to parieto temporal region. P.W. 10 Dr. Dilip merely gave first aid and appears to have immediately referred the patient to Ghati Hospital, Aurangabad. The evidence of P.W. 1 himself shows that they were at the Rural Hospital for just about one hour. P.W. 10 Dr. Patil admitted that, the certificate issued by him was "provisional certificate". Thus, relying on such provisional certificate, it would not be appropriate to discard the evidence of P.W. 7 Dr. Jamal regarding the injuries noted by him. P.W. 10 admitted in the cross-examination that, when he examined the patient, there was no CLW on right parieto temporal region of the patient. However, when there is evidence to show that he examined and immediately referred the patient to higher hospital with just a provisional certificate, the witness was naturally not in a position to speak against his own document. The provisional certificate cannot be given more than necessary value as the doctor himself deposed that the patient or police did not come back to him for final certificate by showing the case papers. Apparently, the witness wants to state that the final certificate could be written down if he could go through the case papers. His rush to pass on the victim to higher hospital and thus the provisional certificate needs to be kept in view. Thus, I discard the argument that, on the basis of the provisional certificate the medical evidence of P.W. 7 should be ignored or that contradictions should be read into the medical evidence.

13. It has been argued by the learned counsel for the appellant-accused that, as per the evidence, there was only one blow given. There is no evidence that there were any further blows given by the iron rod and thus, according to the learned counsel, it cannot be said that there was intention to kill. According to the prosecution, when the argument started, the rod was picked up from the vehicle and hit. For such reasons, according to the learned counsel, offence u/s 307 of IPC could not be said to have been established. Reliance was placed on the case of Premachand S. Bansode and Another Vs. State of Maharashtra, Reference was made to para Nos. 29 and 31 of the judgment to submit that, in that matter there were only simple injuries caused and there was single incised wound on the scalp and it was found that intention to cause death was not proved. Reliance is also placed on the case reported in The State of Maharashtra Vs. Bodya Ramji Patil, where the observations were:

"11. The next question that arises for our consideration is what offence can be

said to have been committed by the respondent. Mr. Naik for the State has rightly not pressed for the conviction of the respondent under S. 307 of the IPC. In order that S. 307 of the IPC should attract in a particular case, it is necessary to establish that if the victim would have met his death, the offence would have been one under S. 302 of the IPC. Now, in this case, the medical evidence of Dr. Qureshi (P.W. 5) no doubt shows that the injury was on the head and fracture of skull bone was caused. Still the question would be whether the offence would have been under S. 302 of the IPC if the victim would have died. On that question, the evidence of Dr. Qureshi is material. Dr. Qureshi (P.W. 5) stated that the injury was styled by him as dangerous being situated on vital part and, therefore, the injury was labeled as dangerous and was likely to cause death. The doctor does not state that the injury was sufficient in the ordinary course of nature to cause death. That being the position the offence under S. 307 of the IPC is ruled out. Mr. Naik has also not seriously pressed for the same..... "

14. Further, reliance was placed on the case of Sarju Prasad Vs. State of Bihar, (Vol. 70, C. No. 214), and it has been argued that, in order to sustain the conviction u/s 307 of IPC, the prosecution has to establish that the intention was one of the three kinds as mentioned in Section 300 of IPC.

15. The cases relied on have their own facts. The principles need to be kept in view. If the evidence of P.W. 7 Dr. Jamal is perused, he has deposed that, the patient was serious and C.T. Scan was done and it was found that there was haemorrhage in the brain and due to emergency the victim was operated on the brain and he was in the ICU for 10 days on ventilator. He was in the hospital for 1 1/2 month. As the condition was deteriorating, another operation on stomach for feeding purpose was done. The patient was not able to walk and talk and he was not able to eat himself. When the condition improved, the victim came to be discharged on 23.6.2011. The evidence of doctor is that, the victim has incurred permanent disability. The finding of the C.T. Scan was 9 mm size thickness on left frontal temporal region and midline shift of 6 mm. Evidence is that, shift of more than 5 mm. from midline is dangerous to life. The two MRIs done subsequently showed multiple small haemorrhages in the basal ganglia and other deep areas of brain. The doctor also deposed in cross-examination that the haemorrhage is not detected sometimes for 48 hours even in C.T. scan. Doctor denied that, the injuries were possible by fall on hard surface because the patient did not have injuries on other parts of the body which would normally appear in case of fall.

16. I do not think that the accused can take benefit from the observations in the matter of "Bodya Ramji Patil" referred above. In that matter, the doctor had styled the injuries dangerous because it was on vital part. In the present matter, the evidence is that, the injury caused was dangerous to life and there were multiple haemorrhages in the brain. It would be inappropriate to merely search the legal words of the injury being "sufficient in the ordinary course of nature to cause death".

17. As regards the argument that there was no intention to kill, the fact in present matter show that, the accused had anger due to the incident in the earlier part of the day and came to the spot with chilly powder and having thrown the same on the face of complainant and victim, took the iron rod from the vehicle and gave severe blow to the head of the victim, causing injuries, which I have discussed above. The intention is obvious. When the accused gives severe blow with dangerous weapon to sensitive part of the body, even if the accused does not follow up the same with further blows, that conduct by itself is not enough to hold that he did not have intention to kill. The accused may not follow up the initial blow by further blows for various reasons. After giving the first blow on the vital part of the body, the accused may feel that the same is enough to achieve the intention he had to kill the person or the accused may develop cold feet after having given the first severe blow with intention to kill. Thus, merely because after giving first blow the accused does not follow it up with another blow, itself is not sufficient to show that accused had no intention to kill when he gave the first severe blow on vital part of body. The accused chose sensitive part of the head to give severe blow with dangerous weapon like iron rod. Looking to the facts and circumstances of the incident as found in the present matter, merely because one blow was given, is no reason to accept the argument that there was no intention to kill.

18. I have gone through the judgment of the trial Court and the various reasonings dealing with arguments regarding applicability of Section 307 of IPC as are being raised in this Court. The trial Court has appropriately and sufficiently dealt with the arguments raised. I do not find that the findings recorded by the trial Court need to be interfered with. The offence u/s 307 of IPC is duly established. Looking to the evidence of P.W. 7 Dr. Jamal, the victim was lucky to survive. Otherwise, with such brain haemorrhage, the life of victim was indeed in danger. The evidence of the victim recorded by the trial Court in the initial paragraph to ascertain if the victim can depose and the evidence of P.W. 7 Dr. Jamal shows that the victim has been left crippled. There is no reason why the victim would leave his real assailants to depose against the accused. There is no substance in the Appeal.

19. The judgment of conviction and sentence as imposed by the trial Court does not call for interference. The same is maintained. Criminal Appeal stands rejected.