

(2017) 09 BOM CK 0211
In the Bombay High Court
Case No : 508 of 2003

Ashish alias Ashotosh Dharamraj Meheshkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-09-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 324](#), [Section 307](#) - Acts done by several persons in furtherance of common intention - Voluntarily causing hurt by dangerous weapon

Citation : (2017) 09 BOM CK 0211

Hon'ble Judges : Swapna Joshi

Bench : SINGLE BENCH

Advocate : S.B. Bissa

Judgement

1. This Appeal has been directed against the judgment and order dated 26.6.2003 passed by the learned II Additional Sessions Judge, Akola in Sessions Trial No. 155/2000 thereby convicting the appellant under Section 324 of the Indian Penal Code and sentencing him to suffer R.I. for two years and to pay a fine of Rs. 1000/in default, further R.I. for one month.

2. I have heard Mr. S.B.Bissa, the learned Additional Public Prosecutor and with his assistance, I have perused the entire record. The counsel for the appellant remained absent.

3. Brief facts of the case are that: the complainant Vijay Pawar (PW8) and Ashish(appellant) were known to each other. The appellant was the classmate of elder brother of the complainant. The appellant used to intercept the complainant whenever he used to attend the tuition classes. It is alleged that the appellant used to demand money from him for the purpose of consuming liquor. There was some dispute between the appellant and the complainant on the occasion of Sankrant festival of the year 1999 on the trifle issue of flying kites. At that time, the appellant threatened to kill the complainant. On 31st December, 1999 while

the appellant and his friends were celebrating the arrival of New Year at Lala Lajpatrai Colony premises, the appellant along with the original accused no.2 Jitendra arrived there. The appellant Ashish gave a kick blow to the complainant and also threatened him that he shall see him later on. On the date of the incident i.e. on 23.1.2000 when the complainant along with his friend Atul Chavan (PW7), Nagesh Kakad, Nitin, and Bunty Rangari were sitting on the ground of Toshniwal Layout at about 7.30 pm, the appellant along with accused no.2 Jitendra came on Luna moped. The appellant started abusing the complainant and assaulted him with fist and kick blows. Thereafter Jitendra caught hold of the victim and the appellant dealt a blow by a sharp edged weapon on the lateral portion of the chest of the complainant due to which he sustained bleeding injury. Thereafter the appellant and Jitendra fled away from the place of the incident. The complainant then proceeded to the Civil Lines Police Station, Akola and lodged the complaint (Exh.36) against the accused.

4. At the relevant time, PW 9 Ramdas Lad, Police Inspector was attached to Police Station, Civil Lines, Akola. He recorded the complaint/oral report (Exh.36) and on the basis of it, registered an offence vide Crime No. 47/2000 u/s. 307 r/ws. 34 of the IPC. API Suresh Tijare (PW10) who was attached to Civil Lines, Police Station, Akola, visited the place of the incident and recorded the spot panchnama (Exh.21), so also the statements of the witnesses. He arrested the accused no.2 Jitendra on 28.1.2000 and appellant Ashish on 31.1.2000. API Suresh Tijare, (PW10), took charge of the knife at the instance of the appellant vide seizure panchnama Exh.32. The victim was admitted in the hospital. PW10 Tijare took charge of the clothes of the victim vide seizure memo (Exh.29). He also took charge of the clothes of the appellant under seizure panchnama (Exh.43). The clothes were sent to C.A. office for analysis. The CA report was secured during the course of investigation (Exh.65). After completion of investigation, chargesheet was filed. The learned Judge framed the charge. He conducted the trial and after hearing both the sides, convicted the appellant, as aforesaid. Hence, this Appeal.

5. The prosecution has examined as many as ten witnesses, out of which PW 8 the complainant/victim Vijay, PW7 Atul Chavan, an alleged eye witness, PW 6 Ganesh Thakre, a panch witness on the point of seizure of knife and the Medical officer PW1 Dr. Shruti Dongre, are the relevant witnesses.

6. PW 8 Vijay who is the victim, has categorically stated that he was knowing the appellant Ashish and Jitendra. They both used to demand money for consuming liquor, when PW8 was attending the tuition classes, they used to threaten him that if he fails to pay the money to them they will not allow him to attend the tuition classes. Even, at the time of Sankrant festival, on the reason of flying kites, there was a quarrel between PW 8 and the appellant. On 31st December also, there was a quarrel between them. At that time the appellant had assaulted PW8 by giving kick blows and threatened PW8 that he would see him later on. On the date of incident i.e. on 23.1.2000 between 7 and 7.30 pm, when PW8

was at the ground of Toshwniwal Layout along with Atul Chavan (PW 7) and Bunty Rangari, the appellant along with Jitendra came to that place by Luna moped. They assaulted the victim by means of fist and kick blows. Jitendra caught hold of the hands of PW8 and the appellant gave a blow of some sharp edged weapon on the chest of PW 8. Atul (PW7) tried to intervene. Thereafter both the accused fled away from the place of the incident. Due to the said assault, PW8 suffered bleeding injury on left side of his chest. One Nagesh Kakad took PW8 to the Civil Lines Police Station on a bicycle. The complaint (Exh.36) of PW 8 was recorded by the police.

7. The testimony of PW8 is not shattered in the crossexamination. There was no reason for PW8 to shield the real culprit and falsely implicate the appellant in the offence in question. PW 8 was knowing the appellant as well as other accused since long and the accused were on inimical terms with PW

8. There is no question of mistaken identity as such. The victim immediately rushed to the Police Station after the incident and lodged his complaint immediately within 40 minutes from the incident harming the appellant. The FIR also depicts the presence of PW7Atul at the place of incident. PW8 being an injured person, due credence to his version needs to be accorded. The contents in the complaint (Exh.36) are in consonance with the testimony of PW 8. There are no material discrepancies as such in the testimony of PW8, which go to the root of prosecution case. 8. The testimony of Vijay Pawar (PW8) is corroborated with the testimony of PW 7Atul Chavan, who deposed that on the date of the incident between 7.00 to 7.30 pm, he along with the victimVijay Pawar (PW 8), Bunty Rangari and Nagesh Kakad were sitting on the ground at Toshniwal Layout by lighting firewood. At that time, the appellant along with Jitendra came to that place on Luna moped. The appellant abused PW8Vijay. There was quarrel between Vijay and appellant. On this, the appellant assaulted PW8Vijay by giving a blow of something on the left side of his chest, due to which blood started oozing from the left side of the chest of PW8Vijay. No doubt, PW 7Atul Chavan failed to give the exact description of the weapon so also PW 8 was also unable to state as to by which weapon he was assaulted; however the testimony of PW 7 is corroborated with the testimony of PW8 on all material aspects. No doubt there are few discrepancies in the testimony of PW7 with regard to the fact that the appellant abused PW8 and there was quarrel between the appellant and PW 8. There was also a discrepancy in the version of PW7 that he tried to intervene and the appellant pushed him and asked him to be away. However, in my opinion, these discrepancies do not go to the root of the prosecution case and the fact remains that appellant assaulted PW 8 on the left side of his chest by means of some sharpened weapon.

9. As regards the medical evidence of PW1Dr Shruti Dongre, she noticed the following injuries on the person of PW8:

" Lacerated wound on chest wall which was muscle deep size 12 x 4 cm. This wound was inflicted on left lateral side of chest. It was caused by sharp weapon

and in my opinion, it was inflicted prior to half an hour of examination. The patient had given me history of stab injury to him. The portion of body on which the injury was inflicted i.e. lateral side of chest is vital organ of human body."

10. According to PW1, though the said injury was muscle deep it might have caused the death of the patient as the heart is situated just inside that part of body over which the injury was caused. She further stated that the injury is possible by the knife. In the cross-examination, however, she stated that the injury on the person of PW8Vijay was a simple injury. PW1Dr. Shruti issued the medical certificate at Exh.19. The testimony of the Medical Officer corroborates with the testimony of PW7Atul and PW8 with regard to the injury caused to PW8 on the left side of his chest. It is noticed that there is discrepancy in the size of injury mentioned in injury certificate (Exh.19) as 12x4 cms. and the bed head ticket as Exh.58 as 5 x 3 inches. However the Medical Officer (PW1) has herself examined the victim on the date of incident i.e. 23.1.2000 as stated by PW1 in her cross-examination. PW1 categorically denied that by means of knife injury of the size 5x3 inches is not possible. There is nothing to doubt the testimony of Medical officer and it shows that PW8 was injured by knife.

11. In the case of Baleshwar Mahto and another vs. State of Bihar and another, reported in (2017) 3 SCC 152 in Para no.11, the Hon"ble Supreme Court has observed as under:

"11.....How medical evidence is to be collated with ocular evidence is described by this Court in Kamaljit Singh v. State of Punjab: (2003) 12 SCC 155 in the following fashion :

8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out. (See Solanki Chimnbhai Ukabhai v. State of Gujarat (1983) 2 SCC 174). The position was illuminatingly and exhaustively reiterated in State of U.P. vs. Krishna Gopal :(1988) 4 SCC 302. When the acquittal by the trial court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High court cannot in this case be found fault with for its wellmerited interference."

The Hon"ble Supreme Court held by the that the testimony of injured witness is accorded a special status in law. It is as a consequence of fact that injury to the witness is an inbuilt guarantee of his presence at the scene of crime and because the injured witness will not want to let his actual assailant to go unpunished merely to falsely implicate a third party for the commission of offence. Thus, the deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and

discrepancies therein.

12. With regard to the seizure of the weapon, the prosecution has examined PW6 Ganesh Thakre. According to PW6 on 1st February 2000 he was called by police to act as a panch. In his presence, the appellant made a statement that he had thrown the knife in the lane situated behind his house. The memorandum panchnama was drawn accordingly. Thereafter PW6 along with the appellant, police other persons proceeded to the house of the appellant. Thereafter along with appellant they went to the lane situated behind his house. The appellant then took out the knife from that land, which was having an iron handle with stains of blood. The police seized the said knife under Panchnama (Exh.32). Panchnama depicts that it was narrow lane of three feet wide, behind the house of appellant. The testimony of PW6 is not shattered in crossexamination. However, the said recovery cannot be termed as discovery of the knife u/s 27 of the Evidence Act, which was found in the lane, which place is accessible to the general public.

13. On careful scrutiny of the evidence on record, it is amply clear that the appellant had assaulted PW8Vijay on the left side of his chest. No doubt, PW8 was unable to give description of the weapon. However his testimony is corroborated by the testimony of PW 7Atul, who is his friend. The FIR (Exh.36) too is in consonance with the testimony of PW8, which was lodged immediately after the incident. The Medical Officer has explained the injuries recovered by the victim, the injury was simple in nature as stated by Medical officer and it was muscle deep. Moreover, the Medical officer has opined that the said injury can be caused by the knife produced before the Court. The CA report supports the case of the prosecution that bloodstains which were found on the weapon were of the blood group of PW8. Thus, the prosecution has proved its case beyond reasonable doubt. The learned trial Judge has rightly considered the evidence adduced on record. No illegality, perversity or irregularity is noticed in the judgment and order delivered by the learned trial Judge. Hence the following order :

ORDER

i) Criminal Appeal No. 508/2003 is dismissed.

ii) The judgment and order dated 26.06.2003 passed in Sessions Trial No. 155/2000 delivered by the learned 2nd Additional Sessions Judge, Akola convicting the appellant of the offence punishable under section 324 of the IPC and sentencing him to suffer RI for two years and to pay a fine of Rs.1000/, in default, to suffer RI for one month, is maintained.

iii) The appellant who is on bail, shall surrender to his bail bond, within four weeks, to serve out the remaining part of the sentence.

(iv) The muddemal property, if any, be destroyed after the appeal period is over.