
(2016) 01 BOM CK 0146
In the Bombay High Court
Case No : Criminal Appeal No. 869 of 2010

Atul Sadanand Dhanawade & Others	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 307, 323, 326

Citation : (2016) 2 AIRBomRCri 535 : (2016) ALLMRCri 2266 : (2016) 4 BomCR(Cri) 125 : (2016) 4 MhLJCrI 139

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Sharad Bhosale i/b Dilip Bodake, Advocates, for the Appellant; A.A. Mane, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

Sadhana S. Jadhav, J.—Appellants herein are convicted for offence punishable under section 307 r/w 149 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years and fine of Rs. 2,000/- each i/d to suffer simple imprisonment for 6 months. They are also convicted for offence punishable under sections 147, 148 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 6 months with fine of Rs. 500/- each i/d to suffer simple imprisonment for 1 month. They are also convicted for offence punishable under section 135 of Bombay Police Act and sentenced to suffer simple imprisonment for 4 months and fine of Rs. 500/- each i/d to suffer simple imprisonment for 1 month by Additional Sessions Judge, Jaysingpur vide Judgment and Order dated 29/09/2010 in Sessions Case No. 8 of 2008. Original accused Nos. 2, 4, 5 & 6 preferred Criminal Appeal No. 869 of 2010. Original accused No. 1 preferred Criminal Appeal No. 901 of 2010.

2. Learned counsel for the appellants has sought an adjournment, however, since the appeal is of the year 2010, this court is not inclined to adjourn the matter. With the help of learned APP, this Court has perused the records and

proceedings, evidence of witnesses and other documents.

3. Such of the facts necessary for the decision of this appeal are as follows.

4. On 22/09/2007, there was a cricket match between New Zealand and Pakistan. Match relayed on the television set at Sarkarwada. People had gathered for watch the telecast. Over a trifling issue, there was an altercation between Amit Dhanawade and Sachin Magdum. People had intervened and pacified the quarrel, however, Amit Dhanawade had gone to his house only to return with his friends to satisfy the vendetta against Sachin Magdum. They had returned with deadly weapons and had assaulted Sachin Magdum. Accused No. 1 Amit Dhanawade was armed with a sickle and Atul armed with stick. Accused Kiran was armed with an axe. Others had accompanied the aforesaid three persons. Amit had assaulted Sachin on the front side of the neck causing bleeding injury to neck, Atul had assaulted Sachin with a stick over his back, accused Kiran had also assaulted Sachin followed by other accused assaulting Sachin with fist and kick blows. Sachin was taken to the hospital of Dr. Shital Magdum at Jaysingpur. Upon seeing the condition of Sachin, Dr. Shital Magdum advised that he be taken to civil hospital Sangli, accordingly Sachin was taken to civil hospital at Sangli and was admitted. At the civil hospital, Dr. Shinde who was on duty as C.M.O. has examined Sachin. Injured was found to be conscious. Sachin had given history of assault to Dr. Shinde. Dr. Shinde had found bleeding injury on the anterior aspect of neck of Sachin Magdum just above the jugular notch. Said injuries were sutured and he was discharged from the hospital on 27/09/1997. In the meanwhile, the cousin of the injured Sachin, namely Mahavir Magdum had lodged a report at the Jaysingpur Police Station. On the basis of the report of Mahavir Magdum, crime No. 82 of 2007 was registered at Jaysingpur Police Station against the accused for offence punishable under section 143, 147, 148, 307 r/w 149 of Indian Penal Code and section 323 and 504 of Indian Penal Code and section 135 of Bombay Police Act. Upon completion of investigation charge-sheet was filed on 07/01/2008. Since section 307 of Indian Penal Code is exclusively triable by the court of sessions, case was committed to the court of sessions and was registered as Sessions Case No. 8 of 2008. Prosecution examined as many as 16 witnesses to bring home the guilt of the accused. Accused Kiran had expired during the pendency of the trial and hence, the case stood abated against him.

5. In the present case, F.I.R. is lodged by Mahavir Magdum who is prosecution witness No. 7. He has deposed before the court that on 22/09/2007 he was watching the live telecast of a cricket match between New Zealand and Pakistan in Sarkarwada. He was accompanied by his cousin Sachin. That some trifling quarrel had taken place between Amit and Sachin on account of place for sitting at the time of watching the live telecast. After match was over, villagers and the complainant were returning to their respective houses. He had seen his cousin Sachin standing by the side of the road in front of Karmvir Bhaurao Patil Doodh Sanstha. P.W. 7 had seen accused Amit, Kiran, Sachin and three other persons

coming from the opposite direction. Amit and his companions were armed with sticks, axe etc. Amit was armed with a sickle, Kiran with an axe and Atul with a stick. Amit was asking Sachin as to whether the people belonging to Jain community had become proud. He suddenly gave a blow of sickle on the neck of Sachin, above the chest. Atul had hit Sachin with stick on his back and other accused had assaulted Sachin with fist and kick blows. Sachin had fallen down. He was rescued by P.W. 7 and others.

6. P.W. 7 has further deposed that he had then taken Sachin to the hospital of Dr. Shital Magdum of Jaysingpur. She had examined Sachin in the jeep vehicle and advised them to immediately take him to civil hospital at Sangli. Sachin was admitted in civil hospital. P.W. 7 immediately rushed to the Jaysingpur Police Station and lodged a report. On the basis of the report, crime No. 82 of 2007 was registered for offence punishable under sections 143, 147, 148, 149, 307, 323 & 504 of Indian Penal Code and section 135 of Bombay Police Act against the accused. P.W. 7 has proved the contents of F.I.R. which is at Exhibit 31. It is elicited in the cross-examination that P.W. 7 was about 60 years old at the time of recording of evidence. He could not give the names of the players of New Zealand cricket team or Pakistan cricket team. It is also elicited that at the time of incident, there used to be load shading for 12 hours in the village. It is also admitted that all the accused belong to scheduled cast. Whereas complainant and witnesses belong to Jain community. It is also admitted by him that there is a television set in almost each and every house and therefore there is no reason for the members of scheduled caste to come to the house of Jain people to watch television or vice versa. He has admitted that he is working as a driver on the vehicle of Papa Patil who is a political and very influential person. It is also admitted that accused Amit Dhanawade had contested the Grampanchayat elections and was elected. He has also admitted that he did not know the full names of all the accused persons.

7. P.W. 8 Sachin Magdum is the injured. He has deposed before the court that at the time of watching the live telecast of cricket match between New Zealand and Pakistan he had dashed Amit Dhanawade and therefore there was some altercation between them. After the match was over, they were standing by the side of the road. Amit was proceeding towards him from the opposite side. He was armed with a sickle, Kiran with axe and Atul with stick. Amit had given a sickle blow on the front side of neck of P.W. 8. He has identified his clothes before the court. He has also admitted in the cross that when the altercation took place, it was only between Amit and himself. He had not made any attempts to lodge a report at civil hospital Sangli after he regained his consciousness. He has also admitted that he was unable to speak till police recorded his statement on 26/09/2007.

8. P.W. 9 Dr. Shital Patil is the first person who had examined Sachin. She had examined him in the vehicle itself. According to her, he was semi conscious and was feeling giddiness. P.W. 9 happens to be real sister of Papa Patil of

Nimshirgaon.

9. P.W. 10 Vishnu Shinde who was medical officer at civil hospital Miraj had questioned the injured about the cause of injury. He had shown the injury at his neck measuring 4 inches long and 1.5 c.m. deep injury on the anterior aspect of his neck, therefore he got him admitted. He has admitted in the cross-examination that the injury sustained by the victim on the neck portion was a simple injury. It is also admitted that the said injury was not possible in the ordinary course of nature to cause death.

10. Injury certificate is at Exhibit 55/C. The certificate issued only the extent of the injuries sustained by Sachin Magdum on his head and other parts of the body. The opinion given by the doctor is at Exhibit 90. When the prosecution was examining the witnesses, the court had observed that there was an incised wound at mid line of neck, bleeding injury and scrutiny report.

11. P.W. 11 Suresh Pujari who was working as peon at Grampanchayat at Shirgaon has deposed that on 12, 13 and 14th September 2007 he had declared in the village by the beats of a drum that there was an order prohibiting the assembly of public and possessing dangerous arms. Villagers were directed to maintain peace in the village.

12. P.W. 12 Dr. Amit Patil has deposed before the court that on 22/09/2007, he had attended the patient Sachin Magdum in casualty department. He found cut throat injury. On 24/09/2007 he was admitted in the surgery ward of the hospital. That Sachin was not able to make any statement on 24/09/2007 and finally on 26/09/2007 police officer had recorded the statement of Sachin. He has admitted in the cross-examination that Sachin was treated by other doctors till he was discharged on 27/09/2007. The injury was simple in nature. Sachin had not sustained any injury on his vocal cords.

Findings:

(i) Upon perusal of the records and proceedings of the case and the evidence adduced by the prosecution, it appears that Amit & Sachin belong to political rival parties.

(ii) That on the date of incident, there was a trivial dispute between accused No. 1 Amit and Sachin.

(iii) That Sachin was deliberately standing with his companions by the side of the road and had picked up some quarrel.

(iv) That Amit had returned with his friends. That Amit was assaulted with weapons and had in all probabilities returned only to intimidate Sachin. In the altercation he had assaulted Sachin.

(v) Kiran had assaulted Sachin with an axe. Appeal filed by Kiran stands abated. All the other accused had assaulted Sachin with fist and kick blows. There is no evidence on record to remotely indicate that other accused persons had any

knowledge that Amit would assault Sachin on his neck.

(vi) It cannot be said that other accused persons had shared common object with Sachin.

13. This Court had called for a report from Central Prison, Kolhapur in respect of sentence undergone by the respective accused. A report is received which shows that accused Amit Sukumar Dhanawade has undergone actual imprisonment of 5 years 3 months and 2 days with remissions he has undergone 6 years 10 months and 23 days. Accused Atul Dhanawade has undergone 1 year 3 months and 30 days and all other accused have undergone 1 year 2 months and 4 days of substantive sentence.

14. The medical evidence on record shows that injury sustained by Sachin was simple injury. The said injury was not sufficient in the ordinary course of nature to cause death.

15. The Hon"ble Apex Court in the case of Virsa Singh v. State reported in AIR 1958 SC 465 has observed that:

"That the prosecution must prove the following before it can bring a case under section 300 Indian Penal Code third clause.

(1) It must establish, quite objectively, that a bodily injury is present.

(2) The nature of the injury must be proved; these are purely objective investigations.

(3) It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

(4) It must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. The third clause of Section 300 Indian Penal Code consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is found to be present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death. The words "and the bodily injury intended to be inflicted" are merely descriptive. All this means is, that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature ; it must in addition be shown that the injury found to be present was the injury intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention."

16. In view of this, it would be incumbent upon the prosecution to prove that the injury was a grievous injury, that there was an intention to inflict a particular

injury and that it was not accidental or unintentional or that some other kind of injury was intended.

17. Offence punishable under section 307 of Indian Penal Code contemplates a substantive sentence which may extend to 10 years. That Amit Dhanawade deserves to be convicted for offence punishable under section 326 of Indian Penal Code. Since this Court is of the opinion that other accused had not shared common object with Amit Dhanawade and therefore, they deserve to be convicted under section 323 of Indian Penal Code since they had assaulted Sachin only with fist and kick blows.

18. A.P.I. of Jaysingpur Police Station sent a report to the A.G.P. which is tendered in the court. A.P.I. has stated that accused/appellants and the witnesses are residents of the same village. That accused persons have nurtured a grudge against witnesses since they had deposed against accused and therefore A.P.I. has requested learned A.P.P. To plead the matter and request the court to confirm the conviction and sentence. Report is taken on record and marked as article "X" for the purpose of identification.

19. The court would decide the appeal after appreciating the evidence adduced by the prosecution on record. The court cannot convict the accused and sentence them to the maximum only because there may be breach of peace. The records would indicate that accused persons have been enlarged on bail by this Court vide orders dated 27/06/2011 and 30/09/2011. Since then, there is no untoward incident attributed to the appellants. Report of the A.P.I. is dated 17/12/2015. Hence, the said report cannot be taken into consideration. Hence, following order.

Order

(i) Appeals are partly allowed.

(ii) Appellant Amit Sukumar Dhanawade in Criminal Appeal No. 901 of 2010 is acquitted of the offence punishable under section 307 of Indian Penal Code and is convicted for offence punishable under section 326 r/w 34 of Indian Penal Code and he is sentenced to the period already undergone. Sentence of fine is maintained.

(iii) Appellants in Criminal Appeal No. 869 of 2010 are acquitted of offence punishable under section 307 r/w 34 149 of Indian Penal Code and are convicted for offence punishable 323 of Indian Penal Code and sentenced to the period already undergone. Sentence of fine is maintained.

(iv) Bail bonds of the appellants stand cancelled.

(v) Appeals stand disposed of.

(vi) In view of the fact that appeals are disposed of, prayers in criminal application Nos. 1387 of 2010 and 888 of 2012 have become infructuous. Hence, disposed of accordingly.