
(2013) 01 BOM CK 0014

In the Bombay High Court

Case No : Criminal Appeal No. 240 of 2011 and Criminal Application No. 1044 of 2012

Balchand and Others

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 4399

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : S.G. Ladda, for the Appellant; K.S. Patil, APP for State in Cri. Appeal 240 of 2011 and in Criminal Application No. 440 of 2012 and Mr. M.V. Ghatge, in Cri. Appeal No. 240 of 2011, for the Respondent

Final Decision : Partly Allowed

Judgement

T.V. Nalawade, J.—The appeal is filed against the judgment and order of Sessions Case No. 238 of 2007, which was pending in the Sessions Court, Aurangabad. The appellants are convicted and sentenced for the offence punishable u/s 307 r/w. 34 of Indian Penal Code. The application is filed by original complainant Vitthal Rangnath Khomne, who was mainly injured and in respect of whom, there was charge for the offence punishable u/s 307 of I.P.C., the other injured Sunita and all the four appellants. In the application prayer is made to allow the parties to compound the offence. Both the sides are heard. The learned advocate Shri. M.V. Ghatge represented the original complainant and his wife to identify them.

2. In short, the facts leading to these two proceedings can be stated as follows:-

Accused No. 1 is a real brother of Vitthal, the main injured. Accused No. 2 and 4 are real cousins of accused No. 1 and they are real brothers interse. Accused No. 3 is also cousin of accused No. 1. There was some land dispute between the family of Vitthal and the families of the accused persons. Their lands are situated adjacent to each other. In one land, there is a well and there was dispute over

taking water of this well as some persons from these families were saying that it is a common well of all these families.

3. On 22.2.2007, two incidents took place. At about 8 to 10 p.m., during first incident near common well, assault was made on Vitthal by all the four accused by using axe and sticks. An attempt was made to finish him by using ligature material like muffler. Son of Vitthal was initially there and he somehow rescued Vitthal and brought him to home. After completing the incident near the well, the accused went to the residential place of Vitthal and there, at about 11.00 p.m. assault was made on Sunita, wife of Vitthal, by using axe and also with fist blows and kicks. After some time of the second incident Vitthal, was brought to home and then Vitthal was taken to police station. From there, police referred Vitthal to GHATI Hospital, Aurangabad. The crime was registered on the basis of report given by Sunita Khomne on the same night i.e. night between 22.2.2007 and 23.2.2007 for offence punishable u/s 324 r/w. 34 of I.P.C. The medical examination revealed that there was fracture of skull atleast at three places. C.T. scan was done. Then section 307 of I.P.C. came to be added. All the accused came to be arrested after registration of the crime and after completion of investigation, the chargesheet came to be filed for the offence of attempt of murder.

4. To the charge, all the accused pleaded not guilty. They took the defence that there was some civil dispute and the injuries were not caused by them. Prosecution examined Vitthal, Sunita and Praveen, son of Vitthal. Medical Officer is also examined. The Trial Court has believed these witnesses and has held that all the accused, in furtherance of their common intention, attempted to finish Vitthal.

5. In the application filed for permission to compound, the parties have contended that they want to bring the dispute to an end and they want to live peaceful life. They have contended that in view of their close relations and their intention for future, in this matter lenient view needs to be taken. As the offence punishable u/s 307 of I.P.C. is non compoundable, the parties were advised to argue the matter on merits.

6. The evidence of Vitthal (PW 8), Sunita (PW 3) and Praveen (PW 4) show that in the first incident assault on head was made by accused No. 4 - Rameshwar. He has specifically stated that blunt portion of axe was used for making assault. Though Vitthal (PW 8) has stated that he was assaulted by using axe, Praveen (PW 4) has specifically stated that blow of axe from blunt side was given on the head of Vitthal. There are allegations against other accused No. 3 - Raju that he assaulted by using stick. The medical evidence does not show that injury on any other portion of body of Vitthal was found. There is substantive evidence that accused No. 4 - Rameshwar gave a blow of axe from blunt side on the head of Vitthal. Praveen (PW 4) has tried to say that after starting of the incident, he ran away from the spot and he witnessed the remaining part of the incident from some distance. He has deposed that accused Nos. 1 and 2 throttled his father by

using muffler and when he became unconscious, they went away. He has deposed that when he reached the spot, he saw that the legs and hands of his father were tied by muffler. He has stated that he has untied legs and hands of Vitthal and he took his father to home by holding him. There is no medical evidence in support of the case of throttling. In F.I.R. also, the allegation was made that assault was made on Vitthal by using stick, axe and kick blows and due to that, Vitthal had become unconscious. Due to the absence of version with regard to attempt of throttling in F.I.R. and the fact that blunt side of axe was used and after the assault, the injured walked up to his house, the case of Praveen (PW 4) that attempt to finish his father by throttling was made, does not appeared to be probable in nature. Similar version is given by Vitthal (PW 8), but the way in which the incident of throttling is described by Vitthal also, it can be said that the things are very much exaggerated.

7. Dr. Garje (PW 5) examined Vitthal on the same night. His evidence is based on entries made in M.L.C. register, though they were made subsequently. His evidence is based on clinical examination and on the C.T. scan done. His evidence shows that three fracture injuries were noticed by him, which are as follows:-

- (i) Linear fracture un-displaced of squamous part of left temporal bone.
- (ii) Communicated fracture of left parietal bone.
- (iii) Linear fracture un-displaced fracture of frontal bone.

According to doctor, injuries were caused within 24 hours and they were caused by hard and blunt object. He has described these injuries as grievous injuries and he has said that such injured person may die. The injury certificate is duly proved as Exh. 30 and is consistent with the oral version. It appears that suggestions were given to show that such injuries can be caused, if a person falls accidentally. Considering the site of injuries, such possibility is not created in this case. However, the son of Vitthal admitted that in the past Vitthal had sustained bleeding injury to his head. This portion of evidence needs to be kept in mind as an attempt was made by Vitthal and his wife to show that due to the injuries caused by the accused, Vitthal is suffering from physical disability and his speech has been affected. No such evidence is given by doctor Garje (PW 5). This Court holds that the medical evidence can be believed to the extent that on that night, Vitthal sustained atleast three fracture injuries. Thus, the prosecution was required to prove that these injuries were caused by the accused and there was either intention to finish or there was knowledge, as required by section 300 of I.P.C. for the offence of murder.

8. The versions of witnesses that blunt side of axe was used, only one blow was given on the head, the incident took place in the night time, after incident Vitthal walked up to his house, and in F.I.R. no allegation was made of attempt of murder, create probability that there was neither the intention nor the knowledge as required by section 300 of I.P.C. in the present case. The version of Sunita

that they had given threat to her that they will kill her husband, itself shows that in the previous incident, they had not done something, which would have finished Vitthal. Further, if there was the intention to finish Vitthal, they would have disappeared and they would not have gone to the house of Vitthal after the first incident. The discrepancy between oral evidence and the medical evidence regarding the number of blows given on the head needs to be kept in mind in such a case. So, this Court holds that prosecution has failed to prove the ingredients which are required to be proved for offence u/s 307 of I.P.C.

9. Considering the definition of "grievous hurt" given in section 320 of I.P.C, this Court holds that the grievous injury was certainly caused to Vitthal. There is evidence of injury and the F.I.R. was given immediately. All the four accused were together and they all have dispute with the family of Vitthal. In view of these circumstances, section 34 can be safely used against the accused. Though blunt side of axe is used, axe is a dangerous weapon and so, section 326 of I.P.C. stands attracted in such a case. This Court has no hesitation to hold that the evidence on record is sufficient to prove the offence punishable u/s 326 r/w. 34 of I.P.C., though it is not sufficient to prove the offence u/s 307 r/w. 34 of IPC. The advocate of the appellants relied on two reported cases like (i) Ishwar Singh Vs. State of Madhya Pradesh, and (ii) Surendra Nath Mohanty and Anr Vs. State of Orissa, . In the second case, even when the offence was not compoundable, it was offence u/s 326 of I.P.C. in view of the fact that the parties had settled the dispute and already undergone three months of imprisonment, the imprisonment period was reduced to period already undergone. In the present case, period undergone is more than 30 days. In the present case also, this Court holds that due to the nature of dispute and the fact that due to close relations, parties want to live peaceful and amicable life, a lenient view can be taken though the permission cannot be granted to compound the offence as the offence u/s 326 of I.P.C. is non compoundable. So the order.

ORDER

1. The appeal is partly allowed.
2. The judgment and order of Additional Sessions Judge-5, Aurangabad delivered in Sessions Case No. 238/2007, convicting all the appellants of the offence punishable u/s 307 r/w. 34 of the Indian Penal Code and sentencing them for this offence is hereby set aside.
3. The appellants stand convicted for the offence punishable u/s 326 r/w. 34 of I.P.C. The appellants are sentenced to undergo R.I. for the period already undergone. The fine amount already imposed is also made a part of sentence.
4. In view of the decision in the appeal, Criminal Application stands disposed of.