

(2010) 03 BOM CK 0204

In the Bombay High Court

Case No : Criminal Appeal No. 46 of 2008

Datta Charandas Jivne Agesd, Vinayak Bapurao Maraskolhe
and Siddarth Ramchandra Nagrale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

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

Citation : (2010) 112 BOMLR 1279

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : S.P. Gadling, for the Appellant; C.N. Adgokar, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.

1 These appeals are against the judgment and order dated 5th December, 2007 whereby the appellants were convicted u/s 307 read with Section 34 of the Indian Penal Code (in short "IPC") and was sentenced to undergo R.I. for 4 (four) years and to pay a fine of Rs. 5,000/ or, to undergo R.I. for six months in default.

2. It is the case of the prosecution that three or four days prior to the incident, the appellant Devanand went to the brickkiln and insisted upon the complainant Suresh Yamunaprasad Pandey, working as Supervisor of the brickkiln owned by Shri Anandkumar Mishra to remove it by informing the owner thereof. The complainant did not pay any heed to the threat. On 21st December, 2006 at about 8.00 a.m., the complainant went at the brickkiln at Amrai Ward, Ghuggus. The labourers were busy keeping bricks while the complainant was supervising. At that time at about 10.30 a.m., the appellants - Devanand, Datta Jivne, Siddarth Nagrale and Vinayak Maraskolhe came at the brickkiln, started cutting tyre of the trolley by an iron, thereafter climbed up over the brick kiln and started beating the complainant by stick on his right hand, left leg, and left thigh and

also gave physical blows on the face. When complainant got down by the ladder from the rope of the brickkiln, he was beaten by appellant Vinayak and other appellants. The complainant fell on the ground. Then all the four appellants lifted him and threw him into the well. The complainant was rescued by the labourers who were working at the brickkiln. The employer of the complainant came at the spot and made a phone call for police help. The complainant reported the incident to Police. The offence was registered as Crime No. 147/2006 at Ghuggus Police Station, District Chandrapur u/s 307 read with Section 34 of the IPC.

3. The injured Suresh came in the Witness Box as PW 5 and stated that the accused Datta, Devanand and Siddarth came on the Bhatti (furnace) and without saying anything, started beating him. He sustained injury on his right hand, arm, left leg and face. They pulled him to the ground from the brickkiln. Accused Vinayak was also standing there. They beat him again and he felled down. Then all the four accused lifted him and threw him into the well situated adjacent to the furnace at about 20 feet distance. His evidence further indicates that he was rescued from the well by the labourers working there. The evidence of the injured also avers the incident which occurred three four days prior to the incident when the accused Devanand came at the brickkiln at about 5.00 p.m. and told him to inform owner to remove the brickkiln. The defence suggestion that a false story was cooked up by the owner of the brickkiln is flatly denied by him as also the suggestion that he received injuries due to poisonous insect bites.

4. As regards the occurrence which took place on 21st December, 2006 at about 10.30 a.m., an oral report was lodged by the PW 5 Suresh at Ghuggus Police Station (vide Exh.24) which do corroborate the evidence of the star witness for the prosecution. PW 1 Anandkumar, owner of the brickkiln had seen all the accused running away from the scene when he reached the brick kiln. He had also seen Suresh (PW 5) in the well and the labourers Deokant Mishra and Santoshkumar were taking out Suresh from the well by means of a rope. When informed about the assault incident, PW 1 telephoned the police. Police had visited the spot. Suresh was taken to the Police Station and his report was recorded. Then he was taken to Ghuggus Hospital and then referred to Chandrapur General Hospital. PW 6 Santosh also deposed as to how the accused had visited the brick kiln on 21.12.2006 and started damaging the cart of the mud, Deva, Dutta and one more person climbed up the brickkiln and started beating Suresh by bamboo stick, fist blows and kick blows and then brought him to the ground ; whereas PW 6 tried to rush towards the PW 5 Suresh, Datta had shown stick to him and threatened to beat him also. The accused after beating Suresh had thrown him in the well and ran away. PW 10 Kisan also deposed about the incident as to how the four accused had beaten the PW 5 Suresh and threw him into the well.

5. Evidence of PW 2, a Panch regarding alleged discovery of weapon of offence stick; as also PW 9 Panch witness turned hostile, their evidence being doubtful is not of much value for the prosecution. PW 4 is witness about the spot

panchmana (Exh.19) about the brickkiln and the well. While PW 4 API of Ghuggus Police Station deposed about the FIR (Exh.21) reported by the first informant Suresh on 21.12.2006. While PW 8 PSI Investigating Officer deposed about the investigation carried out in the case right from his visit to the spot of offence.

6. Learned APP contended that all the eye witnesses though cross examined length, nothing damaging to the case of the prosecution was elicited from them. He further contended that the direct evidence was corroborated by the medical evidence of Dr. Sulbhewar (PW 7) who deposed about MLC (Exh. 28).

7. A perusal of the MLC of Suresh (Exh.28) would show that the following injuries were found on his person when he was examined in Primary Health Centre at Ghuggus :?

- (i) Swelling over left leg shin middle 1/3rd 7cm x 3.0 cm;
- (ii) Swelling on lateral side of the left leg middle 4 cm x 4 cm.;
- (iii) Swelling over thigh (left) side on lateral surface 7 cm x 10 cm.;
- (iv) Swelling over right scalp lateral 8 cm x 3 cm.

According to PW 7 Dr. Sulbhewar, Medical Officer at Ghuggus PHC, the patient was referred to the General Hospital, Chandrapur as swelling as above was noticed for further Xray and orthopaedic surgery if needed, witness opined that all the above injuries were possible by hard blunt object or if person comes in contact with the hard surface i.e. when thrown in the well. Age of the injuries was about 3 hours and 20 minutes and were fresh when observed.

This is not the case of the appellants that there was some quarrel all of a sudden between them and Suresh on that day, and the injuries caused by them to Suresh were result of that sudden and unexpected quarrel. The evidence indicate that three days prior to the incident, there was threat from the appellants to close the brick kiln.

8. In their statements u/s 313 Cr.P.C., the appellants denied having committed any offence.

9. In order to succeed, the prosecution was required to prove (i) that the death of Suresh (PW 5) was attempted; (ii) that his death was attempted to be caused by or in consequence of the acts of the appellants and (iii) that such act was done with the intention of causing death or that it was done with the intention of causing such bodily injuries as the appellants knew to be likely to cause death or were sufficient in the ordinary course of nature to cause death. Although the nature of injuries may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances. What the Court has to see is whether the act, irrespective of its result, was done with intention to knowledge and under the circumstances mentioned in the section. The intention of the assailants can be gathered from

the motive for the crime, nature of weapon used, number of blows given by them, severity of blows and the parts of the body where the injuries are inflicted and other surrounding circumstances, if any. The language of the section makes it clear that even if mere hurt is caused by an act which is done with such intention or knowledge and under such circumstances that if by that act death is caused, the offender would be guilty of murder, this section will apply. This section itself provides a punishment of 10 years for doing an act which amounts to an attempt to murder even though the act causes no hurt to anyone; but the offender is liable to the heavier punishment of imprisonment for life, if the injury is actually inflicted. If the intention of the accused to inflict injuries sufficient enough to cause death is established from the nature of the injuries and other circumstantial evidence, it cannot be said that there was no evidence that the injuries caused were known to the accused to be likely to cause death.

10. Learned Counsel for the appellants placed reliance upon the ruling in Lakshmi Singh and Others Vs. State of Bihar, in order to contend that for nonexplanation of injuries sustained by accused, adverse inference is required to be drawn. I have perused the ruling cited. The cited ruling cannot be attracted to the facts and circumstances of the case in hand inasmuch as, in the present case, injuries are explained as caused pursuant to commission of crime of throwing the victim in the well pursuant to assault. It has come in the evidence that the accused after assaulting the victim threw him inside the well. The Spot Panchnama of the well indicates that the same was constructed with stones in the field and a diesel engine is fitted on the said well. The diameter of the said round well is 20 feet. The total depth of the well is 30 feet and the water level in the well is nearabout 16 feet and the open portion from the water up to the top is 14 feet. The eastern side portion of one row (of stones) is partly collapsed. No special knowledge is required to be proved when an imminently dangerous act is committed, such as, throwing the victim into the well, which would in all probability, cause death or such bodily injury as is likely to cause death. When the act was committed, there was no valid excuse for incurring the risk of causing death or such injury as aforesaid. In the present case, fortunately there were labourers around the spot of the incident, working in the brick kiln and they had come to the rescue of the victim in order to take him out from the well with the help of a rope and could save life of injured. Under these circumstances, Section 307 IPC - offence of attempt to murder must be read with reference to Clause (4) of Section 300 IPC when the act is done which was likely to cause death was so imminently dangerous that the accused must be presumed to have known that by their act they were in all probability likely to cause death of the victim. The commission of act was so dangerous that intention or penal liability for attempt to commit murder was rightly imputed by the learned trial Judge to the appellants/accused in the present case, as the victim had survived the barbaric crime. That being so, the Appeals being sans merit, deserve dismissal, which I direct.