
(2013) 01 BOM CK 0047
In the Bombay High Court
Case No : Criminal Appeal No. 36 of 2000

Deepak

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 326, 34

Citation : (2013) ALLMR(Cri) 2488

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : S.P. Katneshwarkar, for the Appellant; D.R. Korde, APP for State and Mr. G.K. Naik Thigale, Advocate for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

K.U. Chandiwal, J.—Heard learned Counsel for the parties. Appellant--Deepak is convicted in Sessions Case No. 16/1999 for an offence u/s 307 r/w 34 of Indian Penal Code, directing to undergo S.I. for seven years and to pay a fine of Rs. 5,000/-, in default, R.I. for one year; for an offence u/s 326 r/w 34 of IPC, for five years and to pay fine of Rs. 3,000/-, in default, R.I. for six months. Both the sentences were directed to run concurrently.

2. Accused No. 1--Sanjay had preferred Criminal Appeal No. 10/2000, however, owing to his death, the appeal is already abated.

3. The other two accused are acquitted by the learned Additional Sessions Judge, for which no State appeal is preferred.

4. The incident of lifting of five pigs belonging to injured Naresh or his brother Rohtas gave cause to the events. On 19.08.1998, when the complainant--Naresh, his brother Rohtas had brought back the stolen pigs to home, then in the evening at around 8.30 p.m., the appellant--Deepak, with his associates--Sanjary Tak; Ritesh Sauda and Sukhbirsingh Sauda, residing in the vicinity,

barged the house of the complainant, creating commotion. They were abusive. They questioned as to why the pigs were brought. When Rohtas came forward, he was brutally assaulted by Deepak and Sanjay by a sword which they were holding. When Naresh was intervening, he suffered bleeding injuries at vital part of the body by the appellant--Deepak.

5. The nature of injuries suffered by Naresh are as under:

(1) Incised wound, left dorsal of palm, size 5 x 2 x deep to bone, edges sharp elliptical shape and transverse.

(2) Incised wound, right cheek, 5 x 2 x deep to bone, sharp margin, elliptical shape, transverse.

(3) Incised wound over right temporal arm 5 x 3 x 2 cm sharp margin, elliptical shape.

(4) Incised wound over occipital area 4 x 2 x 2 cm, sharp margin elliptical shape transverse.

(5) incised wound over right dorsal of palm over knuckle with rupture of extensor tendons, 5 x 2 x deep to bone, sharp margins, transverse.

6. In the evidence of Medical Officer (PW No. 4)--Dr. Indrakumar, it has transpired that the injured though was found to be conscious, x-ray of the skull was suggestive of fracture of parieto-occipital bone. The x-ray plates were placed at Exhibits-37 and 38. X-ray plate of right palm equilateral was also taken. Identification marks of the injured were recorded in the certificate placed at Exhibit-30.

According to PW No. 4, injuries Nos. 3 and 4 referred above, suffered by Naresh, were on vital part of the body, which could be possible by the shown articles, i.e. Swords, (Article Nos. 1 and 9). The injuries suffered by Rohtas showed fracture of 2nd 3rd, 4th & 5th metacarpal bones (left side). The left hand thumb was having a crack while the other four fingers were amputated. Had the patient not treated in time, the said injury would have resulted into his death on account of flow of blood and would have proved fatal to his life.

7. Apart from the evidence of P.W. No. 2--Naresh; PW No. 3 -Rohtas, PW-6--Kamla, wife of Rohtas, has also supported the prosecution. A little exaggeration in her evidence will not defuse the voice projected by Naresh or Rohtas, supported by PW No. 4, the medical officer.

8. Panch PW No. 5 has established recovery of the incriminating articles, the sword. Chemical Analyser's reports are placed. It is settled legal position that evidence of the victim/injured, should not be mechanically excluded on the ground that they are interested witnesses. It has only to be scrutinized with caution and care. Medical evidence suggests the nature of injuries suffered by the witnesses. The accused/appellant assaulted with sword to vital part of Naresh and Rohtas. It was a grievous injury. The accused apparently caused it knowingly

and voluntarily, using instrument of shooting, stabbing and cutting. These events attract the provisions of Section 307 of IPC. The accused -Deepak and Sanjay had come conjointly with meeting of mind and indeed they all had participated in the said meeting.

9. The appreciation of evidence of PW Nos. 2, 3 and 6 carried by the learned Additional Sessions Judge, is in tune to the record and in legal sense.

10. Survey of evidence does not call for any interference in conviction recorded against the appellant- Deepak and the deceased appellant for offence u/s 307 and 326 of IPC.

11. During the course of submissions, I made enquiry about conduct of the accused/appellant with both the learned counsel. Mr. Katneshwarkar canvassed that in Sessions Case No. 135/2011, the appellant--Deepak was prosecuted for an offence u/s 307, however, he was convicted for an offence u/s 323 of IPC and directed to undergo R.I. For one year and to pay fine of Rs. 1,000/-. He was in custody as an under-trial accused from 25.7.2011.

12. This Court on 22.3.2012 directed the jail authorities not to release the appellant- Deepak from jail even if he completes and undergone the sentence awarded in Sessions Case No. 135/2011, as the appellant is required in the present appeal. However, the communication from this Court did not reach the jail authorities, resultantly, the appellant was released on bail. It was subsequent upon the orders of this Court (Coram: T.V. Nalawade, J.), the appellant is taken in custody on 4.10.2012.

13. The subsequent conduct of the appellant--Deepak is voluminously and clearly demonstrated, as he has assaulted Prithvi, brother of Naresh and Rohtas, which gave rise to Sessions Case No. 135/2011. The bail granted by this Court was misused. There is amputation to Rohtas. Though in the Certificate, it is said that it is semi-amputation to the fingers of Rohtas, however, the Medical Officer says, it was an amputation. The injury to Rohtas at left hand was on account of attack by accused--Deepak.

14. It cannot be said that Police has deliberately or dishonestly carried the investigation to rope the accused. Indeed, statements of two injured were recorded by Special Executive Magistrate, while they were at the hospital and struggling for survival. Its use is limited. Statement is not transgressing the events in a magnified manner. The evidence corroborates the statement. Considering all the events, though learned Counsel Mr. Katneshwarkar vehemently canvassed that it could not be a case u/s 307 of IPC, could be stretched to Section 326 of IPC, however, I find that the case in hand squarely comes within the bracket of Section 307 of the Indian Penal Code, so far as injured Naresh is concerned and u/s 326 of IPC so far as Rohtas is concerned. The conviction recorded by the learned Additional Sessions Judge, in the above fact situation, does not call for interference. Criminal Appeal No. 36/2000 is dismissed. Inform the concerned jail authorities.