

(2012) 07 BOM CK 0165

In the Bombay High Court

Case No : Criminal Appeal No. 24 of 2006

Ganesh Kasdekar, Manik Kasdekar, Balakram Kasdekar and
Sau. Bindu Kasdekar

APPELLANT

 V_S

State of Maharashtra

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

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

Citation : (2012) 07 BOM CK 0165

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

Bench : Single Bench

Advocate : H.S. Rahangdale, Amicus curiae, for the Appellant; K.L. Dharmadhikar, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—On 16th April, 2012 when the matter was called out none had appeared on behalf of the appellants and the matter stood over to 29th July, 2012. Again on 29th July, 2012 none was present for the appellants and, therefore, so as to decide the appeal as soon as possible, Shri. H. S. Rahangdale, learned Advocate, has been appointed (*amicus curiae*) to represent case on behalf of the appellants. This Appeal is directed against the Judgment and Order passed by IInd Ad-hoc Additional Sessions Judge, Achalpur in Sessions Trial No. 83/2004, dated 19/12/2005 whereby the appellants were convicted of the offence punishable u/s 307 read with Section 34 of the Indian Penal Code and directed to suffer rigorous imprisonment for five years and to pay fine of Rs. 500/-, in default of which to undergo further simple imprisonment for three months.

2. Facts stated, in nutshell, are as under :

On 11th May, 2004 at about 7:00 p.m., injured Subhash (PW5) and his wife Kantabai (PW4) were in their courtyard of village Belmandali, District Amravait.

They were talking casually but accused persons suspected that they were discussing about them. The accused persons were in drunken condition and they hurled abuses at Subhash and his wife. Subhash had questioned accused persons as to why they are abusing. At that time, accused No. 4 - Sau. Binda fell into the drain and started shouting that Subhash is beating her. Then accused persons came there with knife, pickaxe, axe and stick, and assaulted Subhash (P.W.5). According to injured Subhash, accused No. 1 - Ganesh was armed with knife, accused No. 2 - Manik had pickaxe, accused No. 3 - Balakram was armed with an axe and accused No. 4 - Binda had a stick. According to him, accused No. 2 - Manik gave a blow of pickaxe on his neck, accused No. 3 - Balakram gave a blow of axe on his head and accused No. 1 - Ganesh inflicted a blow of knife on the person and accused No. 4 - Binda also assaulted him by means of stick. In the result, Subhash had received severe bleeding injuries and he fell down. The accused persons had ran away after the said incident. Thereafter, Subhash and his wife Kantabai lodged a report with the Chandur Bazar Police Station and Police sent injured Subhash to Chandur Bazar for medical examination. On the following day of the said incident, the police visited the spot of incident, drew the spot panchanama, seized sample of blood stained earth from the spot, arrested the accused persons and recorded statement of witnesses. It is also the case of the prosecution that pursuant to disclosure statement made by accused No. 1 - Ganesh, police had seized a knife which was hidden under one lane at village Belmandali. Police had also searched house of the accused persons and seized axe, pickaxe and stick (weapons used for commission of offence) therefrom. On 17th May, 2004 the police had seized clothes of injured Subhash, which were produced by Kanta (PW4). Police had also sent the weapons used in offence to the Medical Officer and obtained the opinion. The muddemal was sent to Chemical Analyzer, Nagpur and upon completion of investigation, the accused persons were charge-sheeted before the Court of Judicial Magistrate First Class, Chandur Bazar and the case was committed to the Court of Sessions, Achalpur, where charge (Exh. 13) was framed. The accused had pleaded not guilty and claimed to be tried. Their defence is of total denial. The prosecution had examined altogether 13 witnesses in support of prosecution case. The question arose before the trial Court for determination was; as to whether the prosecution proved that accused persons had in furtherance of their common intention attempted to commit murder of injured Subhash (PW5). The trial Court recorded the finding in the affirmative and proceeded to convict the accused persons u/s 307 read with Section 34 of the Indian Penal Code.

3. Learned Advocate for the Appellants submitted that the learned trial Judge overlooked important facts that there was no any independent witness to support the prosecution case. He has also submitted that there was no intention or motive of the appellants to commit crime or to murder Subhash (PW5). He further submitted that the prosecution case revolves around injured witness Subhash (PW5) and his wife Kanta (PW4) and both of them are interested witnesses and, therefore, they should not have been believed by learned trial

Judge. It is further submitted that the injured Subhash was also in drunken condition at the time of incident and he has criminal antecedent. Learned Advocate for the appellants referred to cross-examination of Dr. Sunita (PW8) and contended that the injuries which doctor had found were possible if a person falls on gitti on the road or on any sharp object. In the alternative, the injuries were simple in nature because Subhash had got discharge from the Hospital within about 7 days. According to learned Advocate for the Appellants, accused No. 4 - Binda and accused No. 2 - Manik were also having injuries on their person, in respect of which they had lodged a report with the Police Station. Under these circumstances, it is contended that the learned trial Judge ought to have given benefit of doubt in favour of the appellants so as to acquit them for the offence punishable u/s 307 read with Section 34 of the Indian Penal Code.

4. On the other hand, learned APP submitted that in a criminal trial, evidence of injured witness has to be kept on high pedestal and his evidence especially when injuries received by him were also examined by Medical Officer, who issued certificate deposed in support thereof, would carry higher weightage particularly when there is corroboration to such direct evidence in the instant case which is in the form of eye-witness Kanta. Learned APP submitted that the quarrel arose because of abuses from the accused. Even assuming that the accused persons were in drunken condition, it is a fact that they were armed with dangerous weapons like knife, pickaxe, axe and stick and injured witness - Subhash had attributed active role to the assailants while deposing before the Court. His evidence specifically indicate that the accused No. 1 - Ganesh, who was armed with knife, inflicted knife blow above his right eye, the accused No. 2 - Manik, who had pick-axe, gave a blow of pickaxe on the right side of chest below arm, accused No. 3 - Balakram, who was armed with an axe, gave a blow of axe on the head and accused No. 4 - Binda inflicted a stick blow on his head and in the result he fell down and lost his consciousness. He regained his consciousness in General Hospital at Amravati and had to remain as an indoor patient for seven days due to bleeding injuries. During the course of cross-examination, Subhash admitted that the accused No. 4 - Binda is cousin sister of his father and there was a marriage of daughter of maternal uncle of accused No. 1 to 3. He also admitted that there is a custom in their caste to drink liquor during marriage ceremony but he denied of having consumed liquor on the day of said incident. According to Subhash, his relations with accused persons were good prior to the incident. The said incident took place within a span of about half an hour. His evidence is corroborated by PW-4 Kanta as she also deposed about the occurrence of the incident that while she and her husband were sitting in the court-yard, all the accused persons came there and started abusing them and when accused No. 4 - Binda was questioned as to why she is abusing. Then her husband Subhash asked her to go back to her home because she was in drunken situation. Accused No. 4 - Binda fell down in drain and she had started shouting alleging that Subhash is beating her. Upon her shouting, all the accused persons came there with dangerous weapons like knife, pickaxe, axe and stick. Kanta

deposed that accused No. 2 -Manik gave a blow of pickaxe on the right side of neck of her husband so also Manik had inflicted blow of pickaxe on the right side of chest below arm area, accused No. 3 - Balakram gave an axe blow on the head of her husband and accused No. 1 -Ganesh inflicted blow of knife on the above right eye of her husband. On seeing this incident, Kanta had also lost her consciousness and she regained her consciousness after about two hours. Kanta (PW4) then lodged report with the Police Station which is at Exh. 29 while F.I.R. was noted as Exh. 30.

5. The evidence would indicate that the accused are relatives of injured Subhash and that there was an occasion of marriage of daughter of maternal uncle of accused Nos. 1 to 3. The incident had started by accused No. 4 - Binda, who had started abusing and when she was asked to go back to her home, she had instigated other accused persons to beat Subhash. On that pretext, the accused persons had come on the spot with dangerous weapons and assaulted Subhash mercilessly.

6. PW8 - Dr. Sunita Hiwse deposed about the injuries found on the person of Subhash, which are as follows :

1) Incised wound over back of neck size 2x1x1 cm. grievous in nature, caused by sharp and hard object.

2) Incised wound over scalp, size 4x3x1/2 cm. grievous in nature, caused by sharp and hard object.

3) Incised wound over right side of chest, between 5th and 6th ribs, size 3x1x1/2 cm. grievous in nature, caused by sharp and hard object.

4) Contusion with abrasion on right eye brow, size 1x1/2 cm. simple in nature, caused by hard and blunt object.

5) Swelling over right side of abdomen, size 3x2 cm., simple in nature, caused by hard and blunt object.

6) Contusion on right shoulder, size 4x3 cm., simple in nature, caused by hard and blunt object.

7. Doctor gave her opinion that the above injuries were caused within 12 hours and patient was referred to General Hospital, at Amravati for examination of the injuries which were possible by means of weapons like knife, pickaxe, axe and stick. According to Dr. Sunita Hiwse, injury no. 2 was on vital part and it may be sufficient to cause death. She has also deposed in her cross-examination that the injury Nos. 4, 5 and 6 referred in Exh. 38 can be caused if a person falls on gitti on the road and injury Nos. 1, 2 and 3 can be caused if a person falls on sharp object.

8. The prosecution case revolves around the evidence of injured eye-witness Subhash and his wife. Under these circumstances, considering the defence of total denial in the statement recorded u/s 313 of the Code of Criminal Procedure

and the report from Chemical Analyzer which corroborated the prosecution case (Exh. 63 to 68), and considering the entire evidence on record, the learned trial Judge placed reliance upon it as cogent and reliable evidence and held that the prosecution has proved the offence against accused persons beyond reasonable doubt and convicted them u/s 307 read with Section 34 of the Indian Penal Code. Bearing in mind the fact that the accused were armed with dangerous weapons like knife, pickaxe, axe and stick and they had assaulted on the vital part of the body of Subhash, in the result he had fallen down and was an indoor patient for seven days and according to medical opinion, injury No. 2 in particular was sufficient in the ordinary course of nature to cause death, the accused cannot be excused of the consequences of their acts of being armed with dangerous weapons and assault upon the witness (PW5) Subhash.

9. For reasons stated in the light of all these facts and circumstances, we do not find any fault in the impugned Judgment and Order passed by IInd Ad-hoc Additional Sessions Judge and, hence this appeal has no merit and it is dismissed. The fees quantified at Rs. 3,000/-shall be paid to Shri. H.S. Rahangdale, Advocate (amicus curiae) appointed on behalf of the Appellants (accused) by High Court Legal Aid Services Sub-committee, Nagpur.