
(2015) 08 BOM CK 0327
In the Bombay High Court
Case No : Criminal Appeal No. 277/2013

Ganpat

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2015) 08 BOM CK 0327

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : D.A. Sonwane, Advocate, for the Appellant; P.V. Bhoyar, A.P.P., for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The present appeal is directed against the judgment and order of conviction passed by Additional Sessions Judge, Warora dated 14.09.2012 in Sessions Case No. 8/2011 by which the appellant is convicted for the offence punishable under Section 307 of the IPC and is directed to suffer rigorous imprisonment for five years and to pay a fine of Rs. 2,000/-, in default, to undergo simple imprisonment for three months.

2. The necessary facts for the decision of the appeal are narrated hereunder.

Panjabrao Madavi (PW9) was attached to Police Station, Chimur as Police Inspector. In February-2011, Rekha Shedame (PW2) came to the police station and gave her oral report. It is dated 04.02.2011 (Exh.-15).

Panjabrao Madavi (PW9) registered an offence under Section 307 of the Indian Penal code. The printed FIR is at Exh.-16. The crime was registered vide C.R. No. 11/2011. As per the oral report of Rekha (PW2), she is Upasarpacha of Gat Gram Panchayat, Satara. The appellant is having his house in the same ward where the first informant resides. He works as Peon at Gram Panchayat, Satara.

On 28.11.2011, when the first informant was standing on the bus stop, that time the appellant, without any reason, abused the first informant. The said incident was narrated by the first informant to the Sarpancha-Bhaktadas Shrirame. It is also reported in the FIR that the appellant used to remain absent continuously and was in habit of not obeying the instructions given by the Sarpancha. On 04.02.2011, Sarpancha Shrirame gave a notice to the appellant.

The appellant was nourishing grudge against the first informant that he has received notice at the hands of Sarpancha at the behest of the first informant, therefore, on 04.02.2011 at about 01.00 p.m. when the son of the first informant Kunal, aged 3 years was playing, he lifted him and threw in the well and, thereafter, he ran away. Due to the intervention of Vilas Chouke, Mangesh Dadmal, Shridhar Dhone and others, Kunal was saved.

3. After receipt of the aforesaid FIR, Panjabrao Madavi (PW9) went to the village Satara along with Panchas. The spot was shown by PW2-Rekha. It was a public well on the side of the road. The spot panchanama was prepared (Exh.11). He also recorded statements of the witnesses. Search of the accused was taken. However, he was not traced in the village. Next day, the appellant was arrested from the house of his sister at village Tekepar. The arrest panchanama was prepared (Exh.-12). Clothes of the accused were seized under seizure panchanama (Exh.13). Statement of some other witnesses were also recorded by the Investigating Officer. After completion of investigation, charge-sheet was filed before the Court of law.

4. After the order of committal, case was registered as Sessions Case No. 8/2011 and was allotted to the file of Additional Sessions Judge, Warora. On 15.09.2011, below Exh.-5, charge was framed against the appellant for the offence punishable under Section 307 of the IPC. The appellant abjured his guilt and claimed for trial. After full dress trial, the appellant was convicted, as observed in the opening paragraph of the judgment.

5. I have heard Mr. D.A. Sonwale, who is an appointed counsel for the appellant to give and provide legal aid to him and Shri P.V. Bhoyar, learned A.P.P. for the State. With their able assistance, I have gone through record and proceedings. Both the learned counsel detailed their submissions for their respective cases.

6. In order to bring home the guilt of the appellant, the prosecution examined in all nine witnesses and also relied on the documents duly proved during the course of trial. Following are the witnesses examined by the prosecution:

Age of Kunal, at the relevant time was 3 years.

Thus, at the relevant time, he was a toddler. The spot panchanama is at Exh.-11. Spot of incident is a public well situated on a public road. It would be useful to reproduce hereunder the relevant recitals of spot panchanama.

From the aforesaid recitals in the contemporaneous document, it is clear that height of the parapet wall of the well is 2.4 ft.

The age of the victim Kunal is just 3 years. Though, the height of the said boy is not brought on record, however, his height could not have been more than 2.4 ft. Therefore, the possibility of the boy falling in the said well accidentally is completely ruled out nor through the line of cross-examination of the prosecution witness, it was even suggested to them by the defence.

7. Rekha (PW2), mother of the victim, is not an eye witness. She heard shouts of Archana (PW3) that a boy has been thrown in the well. Therefore, Rekha (PW2) came out of her house and went near the public well.

Kunal was playing on the road is the version of Rekha (PW2) and the said version is not at all challenged during her cross-examination. Thus, it is established that at the relevant time, the victim boy Kunal was not inside his house but he was playing on the road.

Archana (PW3) states that on the date and time of the occurrence, she was standing on the road near her house. She noticed Rekha (PW2) was coming back after throwing cow dung. As per the version of Archana (PW3), the appellant was coming from his house and he was following Rekha. The further version from the witness box of Archana (PW3) is that Rekha went inside her house and that time her son was playing near the well. The well is situated near the house of Shridhar (PW7). On the said incident, Archana (PW3) raised the shouts.

8. Shridhar (PW7) also corroborated the version of Archana in respect of the act on the part of the appellant in holding the boy and then throwing him in the water. He also shouted thereby Vilas (PW5) and Mangesh (PW6) reached to the spot. Vilas (PW5) corroborates the version of Shridhar (PW7) that at the relevant time, he was unloading the bullocks.

Mangesh (PW6) and Vilas (PW5) jumped into the well and lifted the boy. The boy was rotated in order to take out the water from his stomach.

For determining the act of a person whether it falls within the ambit of Section 307 of the IPC it has to be tested on three considerations and to see as to whether the prosecution is successful in bringing its case within the said three considerations. They are; (i) nature of the act done, (ii) intention or knowledge of the agent and (iii) the circumstances under which the act is done.

In the present case, from the consistent evidence of the witnesses, it is established beyond doubt that when the small, innocent boy, aged about 3 years was playing with himself was thrown in the well. This boy is not having animosity whatsoever in nature against the entire world including the appellant.

The appellant is a peon working with the Gram Panchayat, living in the same village and was having full idea in respect of the depth of the well and level of the water in it.

When the boy was thrown in the well full of water and looking to the age of the boy, the knowledge of consequences of such a act can be attributed to the

appellant. The injury is not sine quo non for securing conviction under Section 307 of the IPC, intention and knowledge of the act committed by the accused on victim is important to determine the culpability of his. Further, for no reason and for no fault of Kunal he was picked up and was thrown in the well by the appellant.

9. The evidence of the eye witnesses remained unshaken during the cross-examination of the learned cross-examiner.

10. The evaluation and reappreciation of the entire prosecution case leaves no doubt in my mind that the prosecution has successfully established its case against the appellant. Hence, I make the following order.

(i) Criminal Appeal No. 277/2013 is dismissed.

(ii) Fees of Mr. D.A. Sonwane, learned Appointed Advocate for the appellant is quantified at Rs. 5,000/-