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In the Bombay High Court

Case No : Criminal Appeal No. 305 of 1995

Gokul Dadu Jadhav and Another — APPELLANT

Vs

The State of Maharashtra — RESPONDENT

Date of Decision : 25-11-1999

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 154, 165, 235, 313, 378(1)
Evidence Act, 1872 — Section 3, 45, 59, 8, 9
Penal Code, 1860 (IPC) — Section 300, 302, 307, 324, 34

Citation : (2000) 5 BomCR 489 : (2000) BomCR(Cri) 489 : (2000) 2 BOMLR 213 : (2000) 1 MhLj 461

Hon'ble Judges : Vishnu Sahai, J;D.G. Deshpande, J

Bench : Division Bench

Advocate : Vaidehee Mhaispurkar and Manoj Mohite for S.R. Chitnis, for the Appellant; Usha Kejriwal, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Though this appeal, the appellants challenge the judgment and order dated 17-6-1995 passed by the Additional Sessions Judge, Pune, in Sessions Case No. 123 of 1994, convicting and sentencing them in the manner stated hereinafter:-

(i) Gokul Dadu Jadhav:---Under section 302 I.P.C. to suffer imprisonment for life and to pay a fine of Rs. 100/ - in default to undergo three months R.I.; and

(ii) Datta Suresh Awale:---Under section 302 r/w 34 I.P.C. to suffer imprisonment for life and to pay a fine of Rs. 100/- in default to undergo three months R.I.

It is pertinent to mention that along with the appellants, was tried one Digambar Khandale but, he has been acquitted vide the impugned judgment and the State of Maharashtra has not challenged his acquittal by preferring an appeal u/s 378(1) Cr.P.C.

2. In short, the prosecution case runs as under:-

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On 9-1-1994, there was marriage of Sham Bate P.W. 2 in Kasam Zopdpatti within the limits of District Pune. The marriage was performed at 7.45 p.m. Thereafter, some of the invitees sat for dinner. The appellants, the acquitted accused Digamber Khandale and some other persons, who were also invited, started dancing. Sham Bate and his bride were sitting on chairs.

The evidence of Sham Bate shows that at that time, the appellant-Gokul Jadhav put his hand on the shoulder of the deceased Mahadu and inflicted a knife blow on his chest. Thereafter, the appellant. Datta Awale inflicted a knife blow on the right arm of Mahadu. The acquitted accused Digambar asked Gokul Jadhav to give fist blow to Mahadu in order to take out the knife which had been pierced in his chest. Thereafter, the appellant Gokul Jadhav proceeded towards the informant Bapu Bhise P.W. 1 who was also there and inflicted a knife blow on his thigh. Then the accused persons are said to have ran away.

Apart from Sham Bate, this incident was seen by the informant Bapu Bhise P.W. 1, Raju Gaikwad P.W. 4 and Chavan Pawar P.W. 5.

Evidence of the eye witnesses shows that after the appellants and Digambar Khandale had run away, Salim Patel P.W. 3 took Mahadu, who was in a precariously injured condition, in a rickshaw to Sasoon Hospital. Bapu Bhise who was also injured was also taken there. On reaching there, Mahadu was pronounced dead, and Bapu Bhise was medically examined.

3. Evidence of P.S.I. Dattatraya Temghare P.W. 8 shows that on the date of the incident, when he was present at the Dattawadi Police Chowky, P.S.O. of Swargate Police Station informed him that one Bapu Bhise had been admitted in Ward No. 12 in the Sasoon Hospital. Consequently, he proceeded to the said ward and after enquiring from the Medical Officer in charge as to whether Bapu Bhise was in a position to make a statement and on receiving a reply from him in the affirmative, recorded Bapu Bhise''s statement (Exhibit 30 which is the F.I.R.). It appears that the F.I.R. was recorded at about 10 p.m. because P.S.I. Temghare stated in his cross-examination that he reached Sasoon Hospital at the said time.

4. The post mortem examination on the corpse of the deceased Mahadu was conducted on 10-1-1994 by Dr. Laxman Ferwani P.W. 11 who found on it the following two ante-mortem injuries:-

(i) 1. An incised stab wound present on the front of chest in centre at the level of third rib 1 1/4" x 1/4" x going deep in chest cavity transverse in direction, margins regular antemortem clot present.

2. An incised wound, Rt. arm near the cubital fossa, medial aspect 1 1/4" X 1/ 4" X muscle deep transverse in direction, margin regular.

On internal examination, Dr. Ferwani found that beneath injury No. 1, there was a cut in pleural cavity of the right, lung; pericardium was also cut; and there was cut beneath the heart.

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In the opinion of Dr. Ferwani, the deceased died on account of antemortem injury No. 1 accompanied with internal damage beneath it. In his opinion, the said injury was attributable to a sharp weapon and was sufficient in the ordinary course of nature to cause death.

5. The investigation was conducted in the usual manner by P.I. Atmacharan Shinde P.W. 10. On 10-1-1994, he sent the blood-stained clothes of the deceased and his blood sample to the Chemical Analyst. The same day, he recovered under a panchanama the blood-stained pant of Bapu Bhise P.W. 1 which had been produced by his father. The same day, he also recorded the statements of the eye-witnesses and apprehended the appellants and the acquitted Digambar Khandale. On 11-1-1994, he seized the blood-stained clothes of the appellants and Digambar under a panchanama and referred them to the Sasoon Hospital for collection of the blood samples. The blood samples of the appellants and Digambar was handed over to him by P.H.C. Jagtap.

During the course of interrogation, on 13-1-94 the appellant-Gokul Jadhav stated that he could have the weapon of assault recovered. Consequently, the said information was recorded under a panchanama in the presence of public panch K.P. Kasab P.W. 9. Thereafter, P.S.I. Shinde in the presence of the said public, panch, on the pointing out of the appellant-Gokul Jadhav, recovered a dagger (knife) which was concealed beneath a stone near the Waghajai temple. The said dagger was having blood-stains and its recovery memo is Exhibit 35.

On 14-1-1994, the appellant-Datta Awale expressed his willingness to get the weapon of assault recovered. Consequently, the said willingness was recorded in a panchanama in the presence of public panch M.S. Nadkarni P. W. 7. Thereafter, on the pointing out of the said appellant, a dagger (knife) was recovered from the thorny bushes in Janata Vasahat behind temple. The said dagger was blood-stained and was seized under a panchanamas Exhibit 28.

It is pertinent to point out that both the daggers were sent to the Chemical Analyst.

6. After completing the investigation, P.I. Shinde submitted the charge sheet against the appellants on 7-3-1994.

7. The case was committed to the Court of Sessions in the usual manner where the appellants were charged u/s 302 I.P.C. , in the alternative u/s 302 r/w 34 I.P.C. and u/s 307 I.P.C. in the alternative u/s 307 r/w 34 I.P.C.

The appellants pleaded not guilty to the charges and claimed to be tried. Their defence was that of denial.

During the trial, in all the prosecution examined 11 witnesses, four out of them namely the informant Bapu Bhise, Sham Bate, Raju Gaikwad and Chavan Pawar, P.Ws. 1, 2, 4 and 5 respectively were examined as eye-witnesses. Bapu Bhise turned hostile. The other eye-witnesses however, gave a credible occular account which the trial Judge accepted. On its basis, and on that of recovery of the blood-

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stained clothes from the appellants Gokul and the blood-stained daggers from both the appellants the learned trial Judge convicted and sentenced the appellants in the manner stated above.

Hence, this appeal.

8. We have heard Ms. Vaidehee Mhaispurkar for the appellants and Ms. Usha Kejriwal, Additional Public Prosecutor for the respondent. We have also perused the depositions of the prosecution witnesses; the material exhibits tendered and proved by the prosecution; the statements of the appellants recorded u/s 313 Cr.P.C. and the impugned judgment. After the utmost circumspection, we have reached a conclusion that this appeal deserves to be partly allowed in-as-much as, in our view, the conviction of the appellant-Datta Awale for the offence u/s 302 read with 34 I.P.C. , is unsustainable in law and only an offence u/s 324 I.P.C. is made out against him.

9. So far as the involvement of the appellants in the incident is concerned, the same in our view, has been established beyond the pale of all doubt through evidence of a dual nature namely;-

(a) the occular account rendered by Sham Bate, Raju Gaikwad and Chavan Pawar, P .Ws. 2, 4 and 5 respectively; and

(b) presence of human blood on the knives recovered on the pointing out of the appellants.

10. We would first take up the occular account furnished by Sham Bate, Raju Gaikwad and Chavan Pawar. The evidence of Sham Bate P.W. 2 shows that he was present at the place of the incident because, he was married that evening and that of the other eye-witnesses shows that they had been invited in the marriage.

We have no reservations in observing that the evidence of the fourth eye-witness, namely the informant Bapu Bhise P.W. 1, is use-less because, he turned hostile and when confronted with his earlier statement, wherein he incriminated the appellants, he denied having made them. In our view, the learned trial Judge was justified in excluding his evidence.

The evidence of Sham Bate, Raju Gaikwad and Chavan Pawar shows that the marriage was performed at 7.45 p.m. and thereafter, when the dinner had started at about 8.15 p.m. the incident took place. Sham Bate P.W. 2 stated that at that time, the appellant-Gokul Jadhav put his hand on the shoulder of the deceased Mahadu and inflicted a knife blow on his chest. Thereafter, the appellant Datta Awale inflicted a knife blow on the right arm of Mahadu and the acquitted accused Digambar Khandale asked the appellant-Gokul Jadhav to inflict fist blow on Mahadu in order to take out the knife which he had pierced in his chest. Thereafter, appellant-Gokul Jadhav proceeded towards Bapu Bhise and inflicted a knife blow on his thigh.

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Broadly on the same lines, the incident has been described by Chavan Pawar P.W. 5. Raju Gaikwad P.W. 4 has described the incident differently. He stated that after the marriage, some persons, including the appellants and the acquitted accused Digambar Khandale, started dancing. All of a sudden, he noticed that persons were running and saw that the appellant Gokul Jadhav who was holding a knife in his hand, inflicted a blow with the same on the chest of Mahadu. Thereafter, as per his statement, appellant-Datta Awale arrived there and inflicted a knife blow on the arm of Mahadu and the acquitted accused Digambar Khandale hinted to the appellant-Gokul Jadhav to take out the knife from the chest of Mahadu, and the latter gave a fist blow on Mahadu''s chest.

It is pertinent to mention that Chavan Pawar P.W. 5 has not stated about the appellant-Gokul Jadhav giving a fist blow.

11. We have examined the occular account of the said three eye-witnesses and we find that it suffers from no infirmity. All the three witnesses in one voice have nominated the appellants. They have stated that the appellant-Gokul Jadhav inflicted a knife blow on the chest of Mahadu and the appellant Datta Awale inflicted a knife blow on the arm of Mahadu. The ante-mortem injuries suffered by the deceased, which we have set out earlier, corroborate their said version. It is pertinent to point out that the place of the incident deposed to by these witnesses stands assured by the circumstance that the Investigating Officer found blood thereon.

It is significant to point out that no plausible reason was suggested to these eye-witnesses during their cross-examination which would explain their falsely implicating the appellants.

12. In our view, the evidence of these three eye-witnesses squarely establishes the involvement of the appellants in the incident.

13. Apart from the occular account, referred to above, there is strong circumstantial evidence connecting the appellants with this crime. As mentioned earlier, pursuant to their arrest, the appellants expressed their willingness to get the weapon of assault namely knifes recovered and on their pointing out knives were recovered under panchanamas in the presence of the public panchas.

We have earlier mentioned that on 10-1-1994 on the pointing out of the appellant-Gokul Jadhav, a blood-stained knife was recovered, in the presence of the public panch K.P. Kasab P.W. 9, from beneath a stone near the Waghajai temple. We have also mentioned earlier that on the pointing out of the appellant Datta Awale, a blood-stained knife was recovered in the presence of the public panch Mahesh Nadkarni P.W. 7 from the thorny bushes in Janta Vasahat. We have mentioned earlier that both the knifes were stained with blood and were sent to the Chemical Analyst who found human blood on them. The Supreme Court in para 10 in the oft-quoted case of Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, has held that presence of human blood on the recovered article even in the absence of the fact that the blood group has not been

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determined, is a incriminating circumstance.

We have gone through the statement of the Investigating Officer P.I. Shinde in whose presence both the knives were recovered and also that of K.P. Kasab P.W. 9 and Mahesh Nadkarni P.W. 7 in whose presence the knives were recovered from the appellants Gokul Jadhav and Datta Awale respectively.

In our view, their evidence inspires implicit confidence and nothing could be extracted therefrom during cross-examination which would discredit their evidence in any manner. Consequently, we accept this recovery evidence which, in our view, highly incriminates the appellants.

13-A.It is significant to point out that the Autopsy Surgeon found a stab wound on the chest of the deceased (which was attributable to the appellant-Gokul Jadhav according to the eye-witnesses) and a incised wound on the arm of the deceased (which according to the occular account was inflicted by the appellant-Datta Awale).

The Autopsy Surgeon candidly stated in his deposition that they were caused by a sharp edged weapon which, as is common knowledge, would include a knife.

14. In our view, the evidence referred to above conclusively establishes the involvement of the appellants in the incident.

15. Ms. Vaidehee Mhaispurkar, learned Counsel for the appellants, failed in advancing any plausible submission which could persuade us to reject the occular account or the evidence of recovery of knives on the pointing out of the appellants.

16. In our view, the learned trial Judge was wholly justified in convicting the appellant-Gokul Jadhav for an offence punishable u/s 302 I.P.C. The evidence of the three eye-witnesses namely Sham Bate, Raju Gaikwad and Chavan Pawar, P.W. 2, 4 and 5 respectively, which we have accepted, candidly and clearly shows that the said appellant intentionally inflicted a knife blow on the chest of the deceased. The evidence of the Autopsy Surgeon Dr. Laxman Ferwani P.W. 11 to which we have referred in some detail earlier, clearly shows that the incised stab wound suffered on the chest of the deceased resulted in colossal internal damage namely cut in the region of the right lung, cut in the pericardium; and cut in the heart. He rightly, in our view, stated that the said injury was sufficient in the ordinary course of nature to cause death. In our view, the act of this appellant in inflicting a blow on the chest of the deceased and in causing a injury sufficient in the ordinary course of nature to cause death, would be squarely covered by Clause Thirdly of section 300 I.P.C. the breach of which is punishable u/s 302, I.P.C.

"The said Clause provides that culpable homicide is murder if an act is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

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A perusal of the said Clause would show that for its application, two pre-requisites are necessary. They being :

(a) there should be intention to inflict the injury inflicted (in contra-distinction to its being accidental);

(b) the injury inflicted should be sufficient in the ordinary course of nature to cause death.

Since the evidence of the eye-witnesses shows that appellant-Gokul Jadhav intentionally inflicted a knife blow on the chest of the deceased and that of the Autopsy Surgeon makes it crystal clear that the chest injury sustained by the deceased was sufficient in the ordinary course of nature to cause death, both the pre-requisites are satisfied.

17. However, in our view, the learned trial Judge erred in convicting the appellant Datta Awale for an offence u/s 302 r/w 34 I.P.C. Section 34 I.P.C. reads thus :

"Acts done by several persons In furtherance of common intention.--- "When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

A perusal of the section would show that before it can be invoked, the following pre-requisites have to be satisfied :

(a) a criminal act should be committed;

(b) the criminal act referred to in (a) should have been committed by several persons i.e. by persons more than one, in furtherance of their common intention.

It is only when (a) and (b) co-exist, would the criminal act which is said to have been committed, would be deemed to have been committed, in furtherance of common intention.

Bearing in mind the said analysis, when the evidence of the eye-witnesses is examined, it cannot be safely said that the criminal act committed which in this case was the murder of Mahadu, was committed in furtherance of common intention of the appellant-Datta Awale. The evidence of Raju Gaikwad P.W. 4 shows that after the marriage was over, the appellants and the acquitted accused Digambar Khandale, as also some other persons, started dancing. His evidence further shows that all of a sudden, he saw that the appellant-Gokul Jadhav who was holding a knife in his hand, inflicted a knife blow on the chest of Mahadu. His evidence shows that at that time, the appellant-Datta Awale was not present there and arrived there thereafter and inflicted a solitary knife blow on the arm of Mahadu. His evidence however shows that the acquitted accused Digambar Khandale hinted to the appellant-Gokul Jadhav to take out the knife by inflicting fist blow on the chest of Mahadu and the latter gave a fist blow on the chest of Mahadu and thereafter the appellants and Digambar Khandale rushed towards Bapu Bhise.

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In such a factual matrix, it cannot be said that the fatal knife blow inflicted by the appellant-Gokul Jadhav, was inflicted by him in furtherance of common intention of the appellant-Datta Awale. In our view, the said blow was the individual act of the appellant-Gokul Jadhav and cannot be said to be caused in furtherance of common intention of both Gokul Jadhav and Datta Awale and consequently, appellant-Datta Awale would not be liable for the offence u/s 302 r/w 34 I.P.C. We feel that he would be only liable for his individual act of inflicting simple injury on the arm of Mahadu. For this act, in our view, an offence u/s 324 I.P.C. simplicitor would be made out against him.

Evidence of Dr. Laxman Ferwani P.W. 11 categorically shows that the injury inflicted on the arm of the deceased was simple in nature and was not accompanied by any internal damage.

18. The Privy Council in the time-honoured case reported in AIR 1945 118 (Privy Council) , has held that :

"the inference of common intention within the meaning of the term in section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case."

When the said warning given by the Judicial Committee of the Privy Council is borne in mind and the evidence of Raju Gaikwad P.W. 4 examined, in our view, it becomes extremely difficult to hold that the appellant-Datta Awale shared the common intention for the murder of the deceased Mahadu and was guilty for the offence punishable u/s 302 r/w 34 I.P.C. As observed above, he would be only liable for the offence punishable u/s 324 I.P.C.

19. For the said reasons, we partly allow this appeal. Although we confirm the conviction and sentence of the appellant-Gokul Jadhav for the offence u/s 302 I.P.C. and dismiss his appeal. We set aside the conviction and sentence of the appellant-Datta Awale for the offence u/s 302 r/w 34 I.P.C. and instead find him guilty for one u/s 324 I.P.C. Since the said appellant has been in jail for nearly six years and the maximum sentence for an offence u/s 324 I.P.C. is only three years, we direct that the said appellant be released from jail unless wanted in some other case and the fine paid by him be refunded to him.

The appellant Gokul Jadhav is in jail and shall remain there and serve out his sentence.

20. Appeal allowed partly.

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