

(2000) 01 BOM CK 0006
In the Bombay High Court
Case No : Criminal Appeal No. 699 of 1995

Harish Ramratan Gaud

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-01-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 309, 324, 326, 34

Citation : (2000) 102 BOMLR 279(1)

Hon'ble Judges : Vishnu Sahai, J; P.V. Kakade, J

Bench : Division Bench

Judgement

Vishnu Sahai, J.—Through this appeal, the appellant challenges the Judgment and order dated 4.11.1995 passed by the Additional Sessions Judge, Pune, in Sessions Case No. 285, of 1995, convicting and sentencing him in the manner stated hereinafter:-

(i) u/s 302 of the I.P.C. to suffer imprisonment for life and to pay a fine of Rs. 30/- in default to suffer R.I. for three months;

(ii) u/s 324 of the I.P.C. to suffer one months imprisonment ; and

(iii) u/s 449 of the I.P.C. to suffer imprisonment for two years and to pay a fine of Rs. 200/- in default to suffer R.I. for one month.

The substantive sentences of the appellant were ordered to run concurrently.

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

The informant Jaipal Walmiki P.W. 2 at the time of the incident was working as a sweeper in the Institute of Armament Technology (also referred to as IAT) at Pune. His quarter was situated in the IAT campus. At the time of the incident, he was residing in it along with his wife Yamunadevi, his son Sureshpal (the deceased), Sureshpal's wife Sharada P.W. 6 and his grand son Bittu (son of his son Dharmesh). The informant had another son Rajeshpal who at the time of the incident was in custody in a case of theft. 28th February was the date fixed in the

Court at Vadgaon Mawal in connection with the said theft case and the informant had gone to meet his son Rajeshpal. He returned therefrom at about 8.30 p.m. At that time, Ramratan, father of the appellant and Indrasingh were sitting near the hearth in the courtyard of his quarter. Through Ramratan's intervention, the informant had purchased ration worth Rs. 227/-. He had only paid him Rs. 100/- and had assured to pay him the balance after sometime. When the informant returned from Vadgaon Mawal, Ramratan asked for the balance money and told him that he would take his utensils if he did not pay the same. The deceased Sureshpal told Ramratan that he should come the next day. On this, Ramratan started abusing Sureshpal and threatened the latter to see him the next day. Thereafter, he went away. Thereafter, the informant, Sureshpal, Sharada, Dharmesh and other family members slept.

On the following day, i.e. 1.3.1995, at about 5 a.m. the informant, woke up and asked Sharada to prepare tea. Thereafter, he started warming water. All the doors in his house were open as he was outside. Electric light was burning inside the house. At about 5.30 a.m. Ramratan, the appellant and two other sons of Ramratan, armed with iron rods and iron strip forcibly entered the informant's court yard. They pushed the informant who, fell down near the hearth. They thereafter, inflicted blows with iron rods and iron strip on the person of Sureshpal who was sleeping. The informant made a futile bid to save him. Thereafter, he ran to inform the Security Officer one Major Shankar Narayan P.W. 4. In the meantime, the informant's daughter - in - law Sharada also tried to save Ramratan but, a blow with a iron rod was inflicted on her left forearm. Her endeavour also failed. Ramratan, the appellant and others also assaulted Dharmesh and the informant's wife Yamunadevi. After assaulting them, Ramratan, the appellant and others ran away.

After Ramratan the appellant and others had run away, Sharada started crying "Vachva Vachwa". In the meantime, the informant came. He called for a ambulance and in the same, Sureshpal was taken to the M.I. Room where Dr. Katoch (Major Katoch P.W. 3) found him dead.

3. The evidence of API Sanjiv More P.W. 8 of Haveli Police Station shows that on 1.3.1995, he received information from the IAT, Pune and proceeded there along with two constables. There, Jaipal Walmiki P.W. 2 lodged an F.I.R. on the basis of which, C.R. No. 35/1995 u/s 302 of the I.P.C. etc was registered. Thereafter he commenced the investigation. He performed the inquest on the corpse of Sureshpal and sent it for autopsy.

He arrested the appellant who during the course of his interrogation, expressed willingness to get the weapon of assault namely an iron rod and iron strip recovered. On the pointing out of the appellant, in the presence of the public panch, the said recovery was affected. Since the said recovery had been stigmatised by the learned trial Judge, as extremely weak in para 29 of the impugned Judgment, we are not entering into greater details with respect to it.

After completing the investigation, API More submitted the charge-sheet against the appellant. It is pertinent to mention that three other co-accused persons were shown as absconders in the charge-sheet.

4. Going backwards, the injuries of Sharada and Dharmesh were medically examined on the date of the incident itself by Dr. Narayan Kamble P.W. 7.

On the person of Sharada, Dr. Kamble found a contusion of the dimension of 5 cm. X 1.5 c.m. on left elbow.

On the person of Dharmesh (Dharmeshpal) Dr. Kamble found two contusions out of which one was on left thigh and one on the left cheek.

In the opinion of Dr. Kamble, the injuries of Sharada and Dharmesh (Dharmeshpal) were 24 hours old and attributable to a hard and blunt object.

Dr. Kamble in his deposition in the Trial Court stated that they could be caused by iron bars and iron strip shown to him.

5. Once again, going backwards, the autopsy on the corpse of Sureshpal was conducted on 1.3.1995 by Dr. Laxmikant Bade P.W. 1 who found on it the following ante-mortem injuries:-

1. Lacerated wound over pinna of left ear 1/4" x 1/4";
2. Lacerated wound behind pinna of left ear in the middle measuring 1" X 1/2" bone deep;
3. Abrasion over left forearm posteriorly vertical in direction 3" x 1/2" red in colour;
4. Abrasion over posterior aspect of left elbow 1/2" x 1/4" red.
5. Abrasion over left arm outer side, upper 1/3rd area 1/2" x 1/2"-
- 6 Abrasion measuring 1/4" x 1/4" over both knee joints interiorly red.
7. Abrasion over left knee joint outer aspect measuring 1/2" x 1/4" red in colour.

On internal examination, the doctor found the following injuries:-

1. Hematoma over left mastoid area.
2. Crack fracture of left temporal lobe half inch above mastoid 3" in length.
- 3 Fracture of base of the skull left middle cranial fossa upto pituitary fossa.
4. Lacerations of dura left temporal lobe 1" in length with extramural haemotoma left temporal lobe and left side base of brain. Subarachnoid haemorrhage all over the lobes.
5. Haemotoma over the sternum measuring 6" x 4".

In the opinion of Dr. Bade, the deceased died on account of shock as a result of

fracture of skull bone, lacerations of brain and intracranial haemorrhage. In his deposition, Dr. Bade stated that injury No. 1 and 2 were sufficient in the ordinary course of nature to cause death. He also stated that the ante-mortem injuries of the deceased could be caused by iron bars and iron strip shown to him.

6. The case was committed to the Court of Sessions in the usual manner where the appellant was charged on a number of counts, including Section 302 of the I.P.C. simplicitor, in the alternative u/s 302 r/w 34 of the I.P.C.

He pleaded not guilty to the charges and claimed to be tried. He pleaded not guilty to the charges and claimed to be tried.

During the trial, the prosecution in all examined 8 witnesses. Two of them, namely Jaipal Walmiki P.W. 2 and Sharada P.W. 6 were examined as eye - witnesses.

In defence, no witness was examined.

The learned trial Judge believed the ocular account furnished by the eye - witnesses and convicted and sentenced the appellant in the manner stated in para 1, above.

Hence, this appeal.

7. We have heard learned Counsel for the parties and perused the entire material on record. After the gravest circumspection, we are constrained to observe that we do not find any merit in this appeal. As mentioned earlier, the conviction of the appellant is founded on the ocular account furnished by Jaipal Walmiki P.W. 2 and Sharada P.W. 6 who are respectively the father and wife of the deceased Sureshpal. It is on the basis of the recitals contained in their examination-in-chief that we have set out the prosecution story in para 2 of this Judgment. Consequently, we do not propose to reiterate the recitals in their examination-in-chief. In short, they stated that since through the intervention of co-accused Ramratan, they had purchased ration to the tune of Rs. 227/- out of which, Rs. 127/- remained to be paid to Ramratan, a day prior to the incident, Ramratan came to their house, Ramratan asked the informant to pay the said amount. The informant's son Sureshpal said that he would make the payment the next day. On this, there was an altercation between him and Ramratan. Ramratan went away threatening Sureshpal and others. The next morning (morning of 1.3.1995) at about 5.30 a.m. when the informant was outside his house, Ramratan along with the appellant and two other sons, armed with iron rods and iron strip came. They pushed the informant and thereafter, launched an assault on Sureshpal who was sleeping. When Sureshpal wife Sharada and brother Dharmesh intervened, they were also assaulted. During the course of the assault on Sureshpal, the informant Jaipal went and informed the Security Officer Major Shankar Narayan P.W. 4. By the time he came back, the assault was over. He took Sureshpal to the M.I. Room where Dr. Ramesh Katoch P.W. 3 (Major Katoch) pronounced him dead.

8. We have examined the account furnished by Jaipal Walmiki P.W. 2 and

Sharada P.W. 6 and we find the same to be implicitly reliable. Their evidence to the effect that the appellant, Ramratan and others assaulted the deceased, Sharada and Dharmesh with iron rods and iron strip is corroborated by the nature of the ante - mortem injuries found on the person of Sureshpal and the injuries found on the person of Sharada and Dharmesh. We have earlier set out those injuries in detail. We have also referred to the evidence of the medical witnesses who have stated that the injuries could be caused by a hard and blunt object, including an iron rod and iron strip.

9. We find that both Jaipal Walmiki P.W. 2 and Sharada P.W. 6 were very natural witness of the incident inasmuch as the incident took place inside their house.

We also find that assurance to Jaipal Walmik's evidence is lent by that of Major Shankar Narayan P.W. 4 who stated that on 1.3.1995, at about 6 a.m. Jaipal Walmiki came and informed him that Ramratan and 2/3 others had come in his house and a fight was going. Major Narayan's evidence also fixes the time of the incident.

Assurance to the account of Sharada P.W. 6 is lent by the circumstance that she has alleged in her statement that she was assaulted with iron rod on her left forearm and as we have seen earlier, Dr. Kamble P.W. 7 who medically examined her, found a contusion on her left elbow.

It should be borne in mind that Sharada is an injured witness whose presence is fixed by her injuries. The duration of her injuries given by Dr. Kamble fits in with the time of the incident.

10. It should always be remembered that the evidence of an injured witness should only be rejected on the most compelling infirmities. This is because, injuries fix the presence of such a witness and when the presence is fixed, unless there are infirmities which militate against the core of the prosecution case, the evidence of an injured witness is not rejected.

We do not find any infirmities in Sharada's evidence which would warrant its rejection.

11. In our view, the evidence of Jaipal Walmiki P.W. 2 and Sharada P.W. 6 inspires confidence and the learned trial Judge acted correctly in finding the involvement of the appellant established in the incident on the basis of the evidence.

12. It is also pertinent to mention that assurance to the ocular account rendered by the two witnesses is lent by a strong immediate motive on the part of the appellant to commit the crime. As we have mentioned in para 2, a day prior to the incident at about 8.30 p.m. the appellant's father Ramratan came to the informant's house and demanded Rs. 127/- which was the balance amount in relation to the ration which the informant had purchased through his intervention. On this, there was an exchange of abuses between the deceased and Ramratan and the latter threatened the former that he would see him the

next day. Since the appellant was the son of Ramratan, naturally he had a very strong motive to commit the crime.

13. Mr. Mundargi, learned Counsel for the Appellant first tried to assail the ocular account furnished by Jaipal Walmiki P.W. 2 and Sharada P.W. 6 but, realising that his submissions were not making head -way, switched on to the alternative submission pertaining to the offence made out against the appellant, Mr. Mundargi urged that since there is no evidence to indicate that the appellant inflicted either of the two fatal injuries suffered by the deceased, the learned trial Judge should not have convicted him for the offence u/s 302 of the I.P.C. but, should have only convicted him for that u/s 326 r/w 34 of the I.P.C. So far as Mr. Mundargi's grievance that the learned trial Judge erred in convicting the appellant for the offence u/s 309 of the I.P.C. is concerned, we find merit in it because having gone through the evidence of the eye-witnesses, we find that they did not say that the appellant inflicted either or both the fatal injuries suffered by the deceased.

However, in our view, the submission of Mr. Mundargi that the learned trial Judge should have convicted the appellant for the offence u/s 326 r/w 34 of the I.P.C. is without merit. We make no bones in observing that the learned trial Judge should have convicted the appellant for the offence punishable u/s 302 r/w 34 of the I.P.C.

Section 34 of the 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.

13A. A perusal of the said section would show that for its application, it is imperative that the criminal act committed by several persons i.e. more than one person should have been committed by them in furtherance of their common intention. The said imperative contained in the section has been satisfied in the instant case. The evidence of the eye - witnesses shows that on account of the altercation which had taken place between Ramratan and the deceased Sureshpal the previous day, the following day at about 5.30 a.m. the appellant along with his father Ramratan and his two brothers armed with iron rods and iron strip came and launched an assault on Sureshpal's who at that time, was sleeping. The evidence of the eye -witnesses which is corroborated by that of the Autopsy Surgeon Dr. Bade P.W. 1 shows that the appellant and others inflicted a large number of blows on the person of Sureshpal. Evidence of the eye - witnesses also shows that when Sharada and Dharmesh went to Sureshpal's rescue, the appellant and others also assaulted them.

It is true that the eye-witnesses have not specified as to which of the accused persons were responsible for the two fatal injuries (injuries No. 1 and 2) suffered by the deceased, which in the opinion of the Autopsy Surgeon Dr. Bade P.W. 1

were sufficient in the ordinary course of nature to cause his death but, in our view that would be immaterial because, the appellant along with his father and two brothers, armed with iron rods and iron strip inflicted those injuries in furtherance of the common intention of all of them to commit the murder of Sureshpal and as a consequence of those injuries, Sureshpal died within 5/10 minutes of having received them. For the said reasons, we reject the said submission of Mr. Mundargi.

14. We may mention that by converting the conviction of the appellant from that u/s 302 of the I.P.C. simplicitor to one u/s 302 r/w 34 of the I.P.C., no prejudice would be caused to the appellant because, we find that the learned trial Judge in the alternative also charged the appellant for the offence u/s 302 r/w 34 of the I.P.C.

15. In the result, we confirm the conviction and sentence of the appellant for the offence u/s 324 and 449 of the I.P.C. and alter his conviction from that u/s 302 to that u/s 302 r/w 34 of the I.P.C. We set aside the sentence of life imprisonment imposed on the appellant for the offence u/s 302 of the I.P.C. and his sentence of fine of Rs. 300/- and sentence of three months R.I. in its default thereunder and instead sentence him to undergo imprisonment for life and pay a fine of Rs. 300/- in default to suffer imprisonment for three months for the offence u/s 302 r/w 34 of the I.P.C. The substantive sentence of the appellant for the offence u/s 302 r/w 34 of the I.P.C. shall run concurrently with his substantive sentence on other counts. The appellant is in jail and shall remain there and serve out his sentence.