
(2011) 11 BOM CK 0141
In the Bombay High Court
Case No : Criminal Appeal No. 131 of 1991

Imtiyaz A. Rahiman Inamdar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 304(II), 304I

Citation : (2012) BomCR(Cri) 754 : (2012) 114 BOMLR 254

Hon'ble Judges : V.M. Kanade, J;M.L. Tahaliyani, J

Bench : Division Bench

Advocate : Prakash Naik instructed by Mr. Ujjwal R. Anandsurve, for the Appellant; J.P. Kharge, APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Tahaliyani, J.—The appellant has been convicted by the 2nd Additional Sessions Judge, Solapur, for the offences punishable u/ss. 302 and 324 of IPC. He has been sentenced to suffer imprisonment for life and to pay a fine of Rs.300/-, in default, to suffer RI for one month for the offence punishable u/s. 302 of IPC. As far as offence punishable u/s. 324 of IPC is concerned, he has been sentenced to suffer RI for one month. The substantive sentences are directed to run concurrently. This judgment was delivered on 15th February, 1991 in Sessions Case No.186/1990 of Solapur District.

2. The appellant was in custody after the judgment and he has been released on bail pursuant to the Order dated 13th March, 1991 passed by this Court. As such, at present, he is on bail.

3. Learned Counsel Mr. Prakash Naik is heard on behalf of the appellant and learned Additional PP Mr. Kharge on behalf of the State.

4. Before we deal with the submissions made by the learned Counsel for the appellant and the learned Additional PP for the State, it will be convenient to briefly state the facts of the case and the evidence on the basis of which the

appellant has been convicted.

5. The appellant had a sister by name Hamida who was in love with the deceased Iqbal. Both of them got married. The appellant however was not happy. The mother of Hamida had given consent for marriage of Hamida with deceased Iqbal. The appellant however, as stated earlier, was not happy as he did not want his sister to marry Iqbal. It is a case of prosecution that the marital life of Hamida after sometime was disturbed as the relations between Hamida and the deceased could not continue to be cordial for a longer time. After sometime, Hamida started staying with her mother and the appellant while the deceased Iqbal went to reside with his parents. It is a case of prosecution that since six months prior to the date of incident, the deceased Iqbal and Hamida had been staying separately. The alleged incident had taken place in the dispensary of Dr. Kanagi (PW 4).

6. According to prosecution case, PW 3 Mumtaj, wife of Bilal, had gone to the dispensary of Dr. Kanagi for treatment of her son Asif. While PW 3 was sitting in the waiting hall, the deceased Iqbal and his sister Mehmooda had also come there for consulting the doctor. It is a case of prosecution that Mumtaj and Mehmooda both had entered the doctor's cabin together. After consulting the doctor, both had come out of the doctor's cabin and they were in the waiting hall when the incident in question had occurred. It is alleged that the appellant had entered the waiting hall with a dagger in his hand. Iqbal was sitting in the waiting hall. The appellant caught hold of shirt collar of Iqbal. PW 3 Mumtaj questioned this behaviour on the part of the appellant. The appellant responded by saying that he would not spare deceased Iqbal. Dr. Kanagi came out of his cabin due to commotion in the waiting hall. Dr. Kanagi and his assistant both had driven the deceased and the appellant out of the waiting hall. PW 3 Mumtaj and Mehmooda both followed the deceased and the appellant. As soon as the deceased and the appellant came out of the waiting hall, the appellant had allegedly inflicted dagger (jambiya) blows on the deceased. The deceased had sustained injuries on various parts of his body. PW 6 Mehmooda attempted to intervene and tried to save the deceased from the attack. However in the process she also sustained a dagger injury. The deceased had fallen down, due to multiple injuries and the appellant ran away. In the meantime, Asif, son of Mumtaj, called his father Bilal. Mumtaj narrated the incident to Bilal. Deceased Iqbal was taken to civil hospital in an injured condition by Bilal and Mehmooda. The deceased was attended by Dr. Patil (PW 5), who declared him dead before admission. The doctor gave intimation to Jail Road police station. Police Head Constable Kulkarni (PW 9) was available at the police station. He made necessary entries at the police station and gave intimation to Police Inspector More. By that time, Mumtaj had already reached the police station. She had lodged complaint vide Exhibit 19. The accused himself had surrendered before the police with a dagger in his hand. Crime No.93/1990 was registered on the basis of complaint made by Mumtaj.

7. During the course of investigation, the appellant was arrested. Blood-stained clothes of the appellant and the dagger were seized under the panchnama. Mehmooda was sent for medical examination and for treatment. Statements of witnesses were recorded. Inquest of the dead body was done and the dead body was sent post mortem examination. The Medical Officer had reported that the deceased had died due to "shock & Haemorrhage due to stab injury on the back & injury to Lung." After completion of investigation, chargesheet was filed in the Court of Sessions, Solapur.

8. When the case came up for hearing, a charge u/ss. 302 and 324 of IPC was framed against the appellant. He pleaded not guilty. The defence of the appellant was two fold before the trial court, 1) that he had been falsely implicated, and (2) that the deceased had sustained injuries during the course of scuffle. The learned trial court recorded the evidence of about twelve witnesses. The evidence of witnesses was believed. Defence of the appellant was rejected and he was convicted as above.

9. During the course of arguments before us, the learned Counsel for the appellant has submitted that he may not press for clear acquittal of the appellant as there are number of witnesses who had witnessed the incident of assault. As far as cause of death is concerned, there does not appear to be serious dispute with regard to the opinion given by the Medical Officer Ashok Kanaki (PW 11). The Medical Officer has said that death was due to shock and haemorrhage due to stab injury on back with injury to the lung. Though the Medical Officer has been cross-examined at length, nothing has been brought on record to show that the injury sustained by the deceased was not sufficient to cause death in ordinary course of the nature. As far as injuries sustained by Mehmooda are concerned, the prosecution has examined PW 10 - Dr. Subhas Ganu. He had noted that there was one CLW on right thumb about 2 cm x 1/2 cm. It was opined that the said injury could be caused by blunt side of the dagger. There is no serious challenge to the opinion of Dr. Subhas.

10. The learned trial court has examined the evidence of eye witnesses in detail and has come to the conclusion that there is no reason to disbelieve those witnesses.

11. We have also gone through the evidence of the witnesses particularly PW 3 Mumtaj, PW 4 Dr. Shivanand Kanagi, PW 6 Mehmooda, PW 7 Bilal and PW 8 Appasaheb Narhari Dodse.

12. As far as actual incident is concerned, the prosecution case rests upon the evidence of PW 3, 4, 6, 7 and 8.

13. PW 3 has stated in her evidence that she herself, her son Asif and Mehmooda had entered the cabin of doctor together and after consulting the doctor, they were coming out of the cabin. At that time, she heard the shouts. She had seen that accused had caught hold of the deceased and accused was holding knife in his right hand. The accused also said that he would not spare the deceased. In

the meantime, doctor had come out of his cabin in the waiting hall. Doctor and his compounder (Assistant) had driven the appellant out of the waiting hall. PW 3, her son Asif and the Mehmooda had followed them. It is stated by this witness that the appellant had inflicted dagger blows on the deceased. She has further stated that when Mehmooda had tried to intervene, she also had sustained injuries on her finger. She was also pushed by the appellant.

14. PW 4 Dr. Kanagi has also supported the evidence of PW 3. He has clearly stated that he had come out of his cabin and had asked the deceased and the appellant to go out of the waiting hall.

15. PW 6 Mehmooda has also supported the evidence of PW 3 Mumtaj. Her evidence is more or less similar to the evidence to PW 3. There is nothing in the cross-examination of this witness to indicate that the incident had not occurred in the manner described by Mumtaj. This witness, in addition to corroborate the evidence of PW 1, has narrated as to how she herself had injuries on her finger.

16. PW 7 Bilal is the husband of PW 3-Mumtaj. He was not present at the spot at the time of the incident. He was informed by his son Asif about the incident. He, therefore, rushed to the place where the incident had allegedly occurred. He was informed by his wife Mumtaj that the appellant had assaulted the deceased Iqbal. He had seen the deceased lying at the distance of 25 ft. from dispensary. PW 7 and PW 6 Mehmooda had taken the deceased Iqbal to civil hospital where Iqbal was declared dead.

17. The evidence of PW 3 Mumtaj and PW 6 Mehmooda establishes beyond reasonable doubt that there was no scuffle between the deceased and the appellant of any nature before the incident. It is apparent that appellant had come to the dispensary with dagger in his hand and had attempted to assault the deceased in the dispensary itself and he was driven away by the doctor and his assistant. However immediately after coming out of the dispensary, he had inflicted multiple blows on the deceased by means of dagger. One of the blows inflicted on backside has proved to be a fatal blow. After having gone through the evidence of Dr. Shivanand Kanagi (PW 4), we are left with no doubt that the evidence of PW 3 Mumtaj and PW 6 Mehmooda cannot be rejected. We have examined the evidence of PW 3 Mumtaj and PW 6 Mehmooda carefully in view of the fact that they were relatives of the deceased. However PW 4 Dr. Kanagi, who is an independent witness, has clearly stated that on 24th May, 1990 at about 8.45 p.m. after attending Mehmooda, Asif and Mumtaj, he heard the noise in the waiting hall. When he came out of the cabin, he had occasion to see that one person had caught hold of collar of deceased Iqbal. The said person was holding a weapon like dagger. The accused had been identified by this witness to be the same person. Both of them were driven out of the dispensary. Mehmooda and Mumtaj had followed them. As such the evidence of Mumtaj and Mehmooda had been corroborated in all material particulars by this witness.

18. As already stated, the learned Counsel for the appellant has not seriously

contested the occurrence of the incident. However it is submitted by him that there was no intention on the part of appellant to cause death of the deceased. It was also submitted that there is no material on record to indicate that the appellant intended to cause injury to the deceased by means of dagger and that the said injury was sufficient to cause death in ordinary course of the nature. It was pointed out that the injury caused by the appellant which had proved to be fatal injury was on backside of the deceased. It is further submitted that unfortunately the said injury had caused perforation in left lung. The learned Counsel has submitted that the appellant never knew or imagined that the stab injury caused by him on backside might result in serious injury to the lung of the deceased. It was, therefore, contended before us that there was no intention to cause death of the deceased and similarly, there was no intention to cause bodily injury to the deceased which was sufficient to cause death in ordinary course of the nature. The learned Counsel has further submitted that in view of the fact that the injuries were not directed on vital parts, the accused could at the most be convicted of the offence of culpable homicide not amounting to murder punishable u/s. 304(II) of IPC. It is contended that at the most, the appellant could be said to have knowledge that the injury was likely to cause death. It is submitted that the appellant had no intention to cause death or injury sufficient to cause death in ordinary course of the nature.

19. We do not agree with the submission made by the learned Counsel for the appellant that there was no intention to cause death of the deceased. It can be seen that the appellant was not consenting party to the marriage of his sister Hamida with the deceased. Moreover since six months prior to the date of incident, Hamida had been staying with her mother as her relations with the deceased were not cordial. As such, the appellant had strong motive to commit the murder of the deceased. Though the multiple injuries sustained by the deceased, except the injury no.1, were not on vital parts of the body, what can be seen is that the injuries were inflicted in quick succession. The evidence also shows that the deceased was trying to ward off the blows. It is in this process that the dagger did not hit the regions intended to be hit by the appellant. It has also come in the evidence that while warding off the blow received by the deceased at thigh, he had bent down and that thereafter, the appellant had inflicted injuries on the buttocks of the deceased. It is, therefore, clear that in any event, the appellant was determined to eliminate the deceased. He did not want to leave any chance of survival of the deceased. In this regard, it may also be noted here that it is not necessary that the injuries on vital parts only can lead to death. The shock and haemorrhage are mainly because of loss of blood. Multiple injuries on various parts of body had led to loss of blood and hemorrhagic shock and ultimately had resulted into death of the deceased.

20. Even if it is assumed for the sake of arguments that the appellant had no intention to cause death of the deceased, it can safely be said that the manner in which the deceased was assaulted by the appellant clearly indicates that the appellant wanted to cause serious injuries to the deceased. The knowledge of the

appellant that the injuries will result in death is totally irrelevant. What the prosecution is under obligation to establish is that the appellant intended to cause a particular type of injury and that the said injury was sufficient to cause death in ordinary course of the nature. The prosecution is not under obligation to establish that the appellant knew that the injuries intended to be caused by him were sufficient to cause death in ordinary course of the nature. The contention of the learned Counsel for the appellant that the appellant did not know that the injury inflicted by him on back of the deceased would prove to be a fatal injury and therefore, he is entitled for some concession, cannot be accepted. In our view, the appellant cannot be given benefit of either Part I of Section 304 or Part II of Section 304 of IPC.

21. The determination of the appellant and his readiness to face the consequences can be clearly seen from the evidence of PW 8. PW 8 Appasaheb Narhari Dodse was on duty at Sakhar Peth police chowky. The appellant had surrendered before him at 9.30 p.m. The appellant was wearing the clothes which he had worn at the time of incident. He was holding a dagger which was stained with blood. Sakhar Peth police chowky was attached to the Jail Road police station. Immediately after the arrival of the appellant at the police chowky, PW 8 had given intimation to Jail Road police station. PI More had reached the Sakhar Peth police chowky.

22. The determination of the appellant is manifest if one reads the evidence of PW 6 Mehmooda. This lady was sister of the deceased and she was present at the time of the incident. She had attempted and intervened to save her brother. She has sustained injury on her right thumb when the blunt side of dagger held by the appellant hit her. Apart from this, the appellant had pushed her back by inflicting a blow by means of his elbow. It is thus clear that the appellant did not want anybody to intervene till he accomplished his purpose. It is abundantly clear that he was in no way ready to leave any chance of survival of the deceased.

23. In view of the submissions made on behalf of the appellant that the occurrence is not seriously disputed and that the appellant prays for conviction for a lesser offence, we do not find it necessary to discuss other part of the evidence. As already stated, the case of prosecution is mainly based on evidence of PW 3, 4, 6, 7 and 8.

24. In brief, it can be stated here that the case of the appellant is not covered by any exception to Section 302 of IPC. He, therefore, cannot be given any concession u/s. 304 I of IPC.. The case of the appellant also does not fall u/s. 304 Part II of IPC. The manner in which the deceased was assaulted and number of injuries inflicted by the appellant clearly indicate that the appellant had intended to cause death of the deceased or atleast he had intended to cause injuries to the deceased which were sufficient to cause death in ordinary course of the nature. The learned trial court has, therefore, rightly held the appellant guilty for the offence punishable u/s. 302 of IPC for having intentionally caused

death of the deceased Iqbal. The learned trial court has rightly held the appellant guilty of the offence punishable u/s. 324 of IPC for having voluntarily caused injury to the witness Mehmooda by means of dagger which is a weapon used for cutting. We do not find any substance in the appeal. The judgment and order of the learned trial court does not suffer from any infirmity. There was sufficient evidence before the trial court to convict the appellant for the offence punishable u/ss. 302 and 324 of IPC. For all these reasons, we pass the following order :-

Criminal Appeal is dismissed. Two weeks" time is given to the Appellant to surrender before the Trial Court.