

(1994) 07 BOM CK 0125
In the Bombay High Court
Case No : Criminal Appeal No. 56 of 1988

Jagannath Narayan Nikam and others APPELLANT
Vs
State of Maharashtra RESPONDENT

Date of Decision : 22-07-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 325

Citation : (1995) 1 BomCR 570 : (1996) 2 MhLj 1857

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : P.P. Hudlikar, for the Appellant; Mrs. Randive, for the Respondent

Judgement

1. The appellants aggrieved by the order dated 14-12-1987 passed by the IIIrd Additional Sessions Judge Thane in sessions case No. 513/1986 convicting them u/s 147 IPC., 148 IPC and 326 read with 149, IPC and sentencing them to undergo a separate sentence of one year's rigorous imprisonment under the first two counts and 4 year's rigorous imprisonment and a fine of Rs. 300/- under the 3rd count, had come up in appeal before me.

2. The prosecution case in brief is that on 27-6-1986, at about 5.30 p.m. all the appellants along with 15 to 20 absconding Adiwasis formed unlawful assembly in village Jawsai, Kathopada, Ambarnath, Taluka Ulhasnagar, District-Thane with the object of committing murders of the complainants Ramanand Ramakamalaprasad Yadav, Jahir Abbas, Dineshsingh, Krishnalal and Sanjay Patil. It is alleged that all the appellants were armed with deadly sticks. It is said that as a result of assault by the appellants Jagganath Narayan Nikam and Suresh Kamlu Makane with stick (sic) one Sanjay Patil was killed and Ramanand (PW 1) Jahir Abbas (not examined) and Dineshsingh (PW 2) sustained injuries. The allegation of the prosecution was that Krishnalal Bodraj Daharia was also injured but Dr. Sunil Kumar Shivchandra Shastri (PW 5) who medically examined him, vide his injury certificate Exhibit 29, found no injury on his person.

3. The first Information Report in the instant case is alleged to have been lodged within 4 1/2 hours of the incident taking place i.e. at 10.45 p.m. on 27-6-1986. The aforesaid FIR was recorded by PW 8 P.S.I. D. R. Gore, of police station Ambarnath. The injuries of the victims were medically examined by Dr. Sunil Kumar Shivchandra Shastri (PW 5) of Ulhasnagar Central Hospital. Doctor examined the informant Ramanand Ramkamal Prasad Yadav on 27-6-1986 at 7.45 p.m. and found on his person the following injuries :-

1. CLW over the scalp region over temporal parietal region on left side dimension 10 cm. long 1 cm. wide and bone deep. Margin were irregular, Bleeding, present.
2. CLW over left side of forehead just in the hair line with the dimension of 2 cm x 1/2 cm bone deep. Margins irregular. Bleeding present.
3. CLW over the right cheek 3 cm. length x 1 cm. breadth subcutaneous tissue deep. Margin irregular bleeding present.
4. Contusion over right hypochondria with the dimension of 10 cm x 4 cm. clinically no evidence of fracture.
5. Bruise over the left medial aspect of hand 4 cm x 5 cm. X-ray was taken for injury no. 5 bearing no. 2064 shown fracture styloid process of ulna bone.

4. On the same day Dr. Sunil Kumar (PW 5) examined the deceased Sanjay Kanha Patil and found on his person following injuries :

1. CLW over right side of temporal region transverse in direction 3 cm x 1/2 x bone deep with irregular margin and bleeding was present.
2. Hematoma on encircled in injury No. 1 of 5 cm diameter.
3. Hematoma over left temporal region 4 cm x 3 cm.

5. The same day at about 1.40 p.m. doctor examined Dinesh Singh (PW 2) and found on his person the following injuries :

1. Hematoma over the posterior 1/3 of left forearm at Upper 1/3 region 7 cm x 3 cm.
2. Whip mark over the left supra scapular region 2 cm x 10 cm.
3. Whip mark over the left infra scapular region 2 cm x 10 cm.
4. Whip mark over the posterior aspect of right calf region 2 cm x 5 cm.

In the opinion of the doctor the injuries of all the aforesaid persons could be caused within 24 hours by hard and blunt object.

6. It is alleged that Sanjay Kanha Patil succumbed to his injuries on 2-7-1986 at 3.30 a.m. The autopsy of his dead body was conducted by Doctor Vyankateshwaran (PW 4). Doctor Vyankateshwaran found on the person of the deceased the following injuries :

1. Well sutured CLW 3 cm. long irregular on the right fronto-parietal region. 2 cm. from midline.
2. Well sutured surgical wound on left fronto-parietal region 15 cm. long.
3. Old healed scar on left thigh anteriorly and medially, oblique suggesting healed incised wound.

All external orifices normal.

According to Dr. Vyankateshwaran, the deceased died on account of traumatic fracture of skull, cerebral laceration and severe cerebral oedema.

The doctor also stated in his cross-examination that there was only one external injury on the person of the deceased.

7. The investigation of the case was conducted by PSI Dilip Ramchandra Gore (PW 8), Shivaji Bapurao Shinde (PW 9) and PI Raja Shivram Gaikwad (PW 10). After completing the investigation, the charge-sheet was submitted in the instant case.

8. In due course, the case of the appellants was committed to the court of session and charges under sections 147 IPC, 148, IPC 307 read with 149, 302 read with section 49, IPC 302 read with 34 IPC and 307 read with 34 IPC were framed against the appellants to which they pleaded not guilty and claimed to be tried. During trial, in all prosecution examined as many as 10 witnesses. It also tendered and proved various exhibits. The learned trial judge acquitted the appellants for offences punishable u/s 302 read with 149 IPC., 302 read with 34 IPC., 307 read with 149, IPC., and 307 read with 34, IPC. It, however, convicted and sentenced them under sections 147, 148 and 326 read with 149, IPC.

9. I have heard Mr. P. P. Hudlikar for the appellants and Mrs. Randive learned Additional Public Prosecutor for the State of Maharashtra at considerable length. I have perused the depositions of the witnesses recorded by the trial court, various exhibits tendered and proved by the prosecution during trial and the impugned judgment. After giving my anxious consideration to the matter, I am of the opinion that, on merits, this appeal has no force and should be dismissed.

10. In the instant case out of 3 injured witnesses, two namely, Ramanand Ramkamal Prasad Yadav (PW 1) and Dinesh Singh Jaysingh Rajput (PW 2) have been examined by the prosecution. I have gone through their depositions and find them to be in consonance with probabilities and medical evidence. Both the injured witnesses deposed the assault by blunt weapons, as is the prosecution case. As mentioned above, corresponding injuries were found on their person as well as on Sanjay Kanha Patil and Jahir Abbas. Assurance is lent to the statements of these two witnesses by a prompt F.I.R. which has been lodged within 4 1/2 hours of the incident taking place. Criminal courts attach great importance to the lodging of a prompt FIR, because the same greatly diminishes the chances of false implication of accused persons as well as that of the

informant being tutored. In my opinion, the conviction of the appellants is based on good evidence and cannot be faulted with and on merits this appeal should be dismissed.

11. Mr. Hudlikar learned counsel for the appellants made 3 submissions before me. His first submission was that the appellants Janardan Narayan Nikam, Ramesh Narayan Nikam and Lahu Baban Waghe have not been assigned the role of assaulting the victims and consequently they should be acquitted. I regret that I cannot accede to his contention because once it is held that there was an unlawful assembly then each and every member of that unlawful assembly who acts in the prosecution of its common object is equally liable. In as much as the aforesaid appellants acted in the prosecution of the common object of the unlawful assembly, they were equally liable. I do not find any merit in the aforesaid contention of Mr. Hudlikar.

12. The second contention of Mr. Hudlikar is that at any rate the conviction of the appellants u/s 326 read with section 149 IPC is legally unsustainable. I find considerable merit in this submission. Section 326 IPC reads thus :

"326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire of any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with (imprisonment for life), or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

The analysis of this section would show that person who causes grievous hurt by means of any instrument for shooting, stabbing, or cutting or any instrument, which used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal. shall be liable to be punished under this Section. In my opinion, in the instant case, there is no evidence to indicate that the appellants are guilty of the offence punishable u/s 326/149, IPC. In my view, the only possible ground of or bringing the act of the appellants within the ambit of this section can be that sticks would fall within the expression "any instrument which, used as a weapon of offence, is likely to cause death". Mere use of sticks, in my opinion, would not satisfy the aforesaid requirements. In my view, some evidence should have been adduced that the sticks were of a lethal type and something like a sharp blade or a sharp point etc. was attached to them. In the absence of such evidence forthcoming from the side of the prosecution on the solitary ground that the sticks used in the instant case were about 5 inches in length, it cannot be said that they would fall within the ambit of "any instrument

which, used as a weapon of offence, is likely to cause death". In my view, the conviction of the appellants u/s 326/149, IPC is unsustainable in law and the proper section to convict the appellants would be Section 325/149 IPC. As the offence u/s 325 read with 149 IPC is a minor offence in relation to the offence u/s 326/149 IPC I acquit the appellants u/s. 326 read with 149 IPC and set aside their sentence on that count. Instead, I convict them u/s 325 read with 149 IPC. Hence, this second submission of Mr. Hudlikar succeeds.

13. The 3rd submission of Mr. Hudlikar is that at any rate the instant is not one of those cases in which a jail sentence should be awarded to the appellants. Again, I find merit in this contention for the following reasons :- (a) the incident took place on 27-6-1986 i.e. more than 8 years ago; (b) 3 of the appellants, namely, Janardan Narayan Nikam, Ramesh Narayan Nikam and Lahu Baban Waghe were aged about 21 years, 19 years and 19 years respectively at the time of the incident; (c) Janardan Narayan Nikam, Ramesh Narayan Nikam, and Lahu Baban Waghe have not been assigned the part of actual assault with sticks; (d) it is not known as to who amongst the appellants were responsible for the two grievous injuries found in the instant case; and (e) there is nothing to indicate that any of the appellants have any criminal history.

In my opinion the ends of justice would be met if the jail sentence of the appellants on various counts (147 IPC., 148 IPC. and 325/149 IPC.) is reduced to the period already undergone by them and in lieu of remaining period they are directed to pay a fine in the manner stated below :-

Appellants Jagannath Narayan Nikam and Suresh Kamlu Mukane should each pay a fine of Rs. 4,000/-. The remaining 3 appellants namely Janardan Narayan Nikam, Ramesh Narayan Nikam and Lahu Baban Waghe should each pay a fine of Rs. 1500/-. This fine shall be deposited within a period of 4 months from today in the trial court. In the event of the appellants depositing the fine, their bail bonds will stand cancelled and sureties discharged. In case the appellants Jagannath Narayan Nikam and Suresh Kamlu Mukane do not pay the aforesaid fine, they would undergo a sentence of two years RI. In case appellants Janardan Narayan Nikam, Ramesh Narayan Nikam and Lahu Baban Waghe do not pay the aforesaid fine, they will undergo a sentence of one year RI.

Out of the fine realised, Rs. 5000/- would go to the heirs of the deceased Sanjay Kanha Patil and, Rs. 2500/- would go to each of the 3 victims, namely, PW 1 Ramanand Ramkaval Prasad Yadav, PW 2 Dinesh Singh Jaisingh Rajput and Zahir Ahmed Siddiki (not examined) as compensation. In case if any of the aforesaid persons are dead, then the amount awarded to them would go to their legal heirs. The trial court would intimate the aforesaid victims and the legal heirs of the deceased Sanjay Kanha Patil regarding this compensation which is being awarded to them.

14. With the aforesaid modification in the conviction and sentences of the appellants, this appeal stands dismissed.

15. Appeal dismissed.