
(2014) 04 BOM CK 0224

In the Bombay High Court

Case No : Criminal Appeal No. 456 of 1995

Jagannath Pandhari Dhavare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304(II), 307, 324, 34

Citation : (2014) ALLMR(Cri) 2946

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : Jaydeep D. Mane, Advocate for the Appellant; P.P. Shinde, APP, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sadhana S. Jadhav, J.—Appellants herein are original accused nos. 3 & 4 in Sessions Case No. 80/1994. Appellants herein are convicted of the offence punishable u/s 324 r/w. Section 34 of Indian Penal code and sentenced to undergo rigorous imprisonment for term of 2 years. They are also convicted of the offence punishable u/s 304(II) of Indian Penal Code and sentenced to suffer rigorous imprisonment for 2 years. They are also convicted for offence punishable u/s 506 r/w 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for one year by Additional Sessions Judge, Pandharpur vide Judgment and Order dated 24/08/1995. Accused no. 1 & 2 are convicted for offence punishable u/s 302 r/w 34 of Indian Penal Code. Original accused no. 1 & 2 have not challenged their conviction and have undergone the substantive sentence imposed upon them. Such of the facts which are necessary for the decision of this appeal are as follows.

2. It is the case of prosecution that on 03/06/1994, Subhash Navgire lodged a report at the police station alleging therein that he resides with his mother, his brother Prakash @ Kumar Vilas and his sister-in-law Laxmi wife of Babu Navgire. Vilas was working at Modnimb. A month prior to the lodging of the report,

Prabhakar Janrao had behaved indecently with his sister-in-law Laxmi when she was filling water at the hand pump. He had offered 10 rupees and had asked her to accompany him. Laxmi had disclosed the said incident to the family members. They had gone to his house to inquire about the same, however, he had fled not only from his house, but from the village and therefore, they did not approach the police station. On 03/06/1994, his mother Sundarabai had been to visit her son Prakash. She returned along with Prakash. She informed the complainant and her other sons that Prabhakar had returned to the village and therefore, they had decided to go to his house and inquire about his indecent behaviour with Laxmi. They learnt that Anna Navgire had given him shelter and he had concealed himself in the house of Anna Navgire. They therefore, approached Anna Navgire and requested him to call Prabhakar. Anna Navgire had informed the complainant that they should get independent, respectable persons from the village and then they would decide the matter. Complainant returned home. They had approached some persons, however, most of the villagers had been to attend the marriage of the son of Dattu Patil. At about 6.00 to 6.30 p.m., complainant along with brother Prakash went into the village. When they were passing from front of the house of Anna Navgire, at that time, Anna Navgire, Mohan Navgire, Jagannath Davare & Prabhakar Janrao suddenly started shouting that the complainant and his brother should be assaulted and saying so they charged on the person of the complainant. Anna was armed with handle of pickaxe whereas Prabhakar & Jagannath were armed with sticks and Mohan was possessing stone wrapped in a towel. Mohan had thrown chilly powder in the eyes of Prakash and thereafter, Anna had assaulted him on his head with the handle of pickaxe. Prakash fell on the ground. Mohan then assaulted him with stone which was wrapped in a towel. Thereafter, they marched towards the complainant. Mohan had assaulted him with stone. At that time, present appellants were assaulting Prakash @ Kumar with a stick on his back. At that time, Prakash was unconscious. Several people had seen the incident. Thereafter, injured were taken to the hospital. On the same day, Prakash had succumbed to the injuries. On the basis of the said report, Crime No. 114/1994 was registered at Pandharpur Police Station against for offence punishable u/s 302, 307, 324 r/w 34 of Indian Penal Code. Investigation was set in motion and chargesheet was filed against accused persons. On 15/09/1994, case was committed to the Court of Sessions. Prosecution examined 12 witnesses to bring home the guilt of the accused.

3. P. W. 11 Subhash Navgire is the complainant. He has deposed before the Court, that, on 03/07/1994, accused persons were sitting in front of the house of Anna. They had started shouting upon seeing the complainant and his brother and they were instigating each other to beat and kill. He has attributed specific role to Anna & Mohan. He has deposed before the Court that present appellants were armed with sticks. He has stated that after sustaining injuries at the hands of original accused no. 1 & 2, Kumar had fallen down. Thereafter, present appellants had started bearing Kumar with sticks. Thereafter, they had proceeded

towards the complainant and had beaten him down till he fainted and fell down. It is elicited in the cross-examination that when he went to the house of Anna, he had seen that the door of the house of Anna was closed. They were not sure as to whether Prabhakar had concealed himself in the house of accused Anna. They had not caused Anna to call Prabhakar out of the house. He has specifically admitted that he had fallen unconscious after the incident.

4. Prosecution has examined P. W. 9 Doctor Chandrakant Bansode who had performed autopsy on the dead body of Prakash @ Kumar. Doctor has opined that all the injuries are caused by hard and blunt object. The principal cause of death is due to internal haemorrhage in the brain due to fracture of skull bone. Post mortem notes are at Exhibit 49. It is specifically stated that injury of the skull could be caused by article no. 18 i.e. handle of pickaxe and that the rest of the injuries could be caused by sticks and not by stones. Doctor had also noticed particles of chilly powder. It is pertinent to note that according to the Doctor, all the injuries were simple in nature. In respect of injury no. 2 which is reddish swollen band extending from the middle of right scapula towards the lower end of left scapula. Doctor has opined that the said injury could not have been caused, if a stick is forcibly thrust over the chest of the person. However, such injury is caused, if a person falls on stone over his chest. He has also opined that injury no. 3 could not be caused due to fall on a stick and injuries nos. 4, 5 & 6 are possible by a fall. Column no. 17 of the post mortem notes indicate that the deceased has sustained contused lacerated wound over the skull over parietal region and secondly a contusion over the chest right side. Column no. 19 shows that the deceased had sustained fracture of parietal bones and that there was fracture of right parietal bone extending from end of above fracture. Final cause of death is due to internal haemorrhage in the brain due to fracture of skull.

5. The ocular evidence is to the effect that present appellants had not assaulted deceased Prakash @ Kumar before he fell down on the ground. According to ocular testimony of the eye witnesses, present appellants had assaulted the deceased only after he had fallen unconscious on the ground. Hence, in view of the fact that ocular testimony would prevail over the medical evidence, it cannot be said that present appellants are the authors of fatal injuries. There is nothing to indicate that they had shared common intention with the original accused nos. 1 & 2 and had in fact caused the death of deceased Prakash @ Kumar.

6. Section 304(II) of Indian Penal Code Contemplates:

"An act which is done with a knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury, as is likely to cause death."

7. In the present case, Sessions Court has convicted original accused no. 1 & 2 for an offence punishable u/s 302 r/w 34 of Indian Penal Code. In the same stretch, present appellants cannot be convicted for offence punishable u/s 304(II) of Indian Penal Code as they cannot be held liable for assaulting the

deceased with the knowledge that it was likely to cause death. There is no evidence on record to indicate that the present appellants were, in any way, responsible for an act which would result into the death of deceased Prakash. Conviction of the appellants for offence punishable u/s 304(II) r/w 34 deserves to be quashed and set aside. Applicants are also convicted for offence punishable u/s 324 r/w 34 of Indian Penal Code for causing assault of complainant on complainant Subhash Navgire. Medical certificate of Subhash Navgire is at Exhibit 50. Subhash was examined by P.W. 9 Dr. Chandrakant Bansode of Primary Health Centre, Karkamb, Taluka: Pandharpur. Doctor has specifically stated that all injuries are simple in nature and has further opined that they could be caused by stones. The injured witness has categorically stated that he was assaulted by the present appellants. It can be safely inferred that the prosecution has proved the offence punishable u/s 324 r/w 34 of Indian Penal Code. Conviction of the appellants for offence punishable u/s 324 r/w 34 of Indian Penal Code needs to be confirmed. Appellants were in jail for more than 16 months. Hence, following order.

ORDER

(i) Appeal is partly allowed.

(ii) Conviction and sentence of the appellants for offence punishable u/s 304(II) r/w 34 of Indian Penal Code is hereby quashed and set aside.

(iii) Appellants are convicted for offence punishable u/s 324 r/w 34 of Indian Penal Code. Appellants were in jail for more than 16 months, and hence, they are sentenced to the period already undergone.

(iv) Bail bonds of the appellants stand cancelled.

Appeal stands disposed of.