
(2016) 01 BOM CK 0036
In the Bombay High Court
Case No : Criminal Appeal No. 290 of 1996

Jalindar Sukhdeo Dalvi and another	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 324, 326

Citation : (2016) ALLMRCri 897 : (2016) 3 BomCR(Cri) 490

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Sandeep Salunk, Advocate, for the Appellant; H.J. Dedhia, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

Sadhana S. Jadhav, J. - Heard respective counsel. Appellants herein are convicted for offence punishable under section 326 r/w 149 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years and fine of Rs. 3,000/- each in default to suffer further rigorous imprisonment for 7 days. Appellants herein are also convicted for offence punishable under section 147 of Indian Penal Code and sentenced to suffer 6 months rigorous imprisonment and fine of Rs. 300/each in default to suffer further rigorous imprisonment for 15 days, they are also convicted for offence punishable under section 148 of Indian Penal Code and sentenced to suffer 9 months rigorous imprisonment and fine of Rs. 500/- each in default to suffer further rigorous imprisonment for 15 days. Appellants further convicted for offence punishable under section 341 r/w 149 of Indian Penal Code and fine of Rs. 100/- each in default to suffer further rigorous imprisonment 7 days. Appellants herein are also convicted for offence punishable under section 427 r/w 149 of Indian Penal Code and sentenced to 1 month's rigorous imprisonment and fine of Rs. 100/- each in default to suffer further rigorous imprisonment for 7 days by 2nd Additional Sessions Judge, Solapur in Sessions Case No. 201 of 1994 vide Judgment and Order dated 14/05/1996.

Hence, this appeal. During the pendency of the appeal, original accused no. 1 Jalinder Dalvi, original accused no. 4 Sukhdeo Dalvi and original accused no. 10 Dhananjaya Dalvi have expired. Hence, appeal stands abated against them.

2. Such of the facts necessary for the decision of this appeal are as follows.

3. On 24/02/1994, Sugreev Parbat was admitted in Civil Hospital at Solapur. That he was in a injured condition. Prior to admission in Civil Hospital, Solapur he was examined at Primary Health Centre, Kurudwadi. It was noticed that he had sustained fracture of Tibia and other injuries. Statement of Sugreev was recorded by Special Executive Magistrate S. G. Tarapure on 24/02/1994 at about 4.45 p.m. Injured had disclosed to the Special Executive Magistrate that on 23/02/1994 at about 5.30 p.m., when he was proceeding towards his village along with his minor daughters Kishkinda and Rajashree on a motorcycle, but he was accosted by 10 to 12 persons who were armed with axes. He was threatened. He dropped his motorcycle, abandoned his two daughters and had attempted to flee. At that time, there were 10 to 12 persons. Jalinder Dalvi (Since deceased) had assaulted him with axe after he fell down. The assault had mounted on his tibia. Thereafter Popat Dalvi had raised his axe to assault Sugreev. He raised his hands to rescue himself and at that time he sustained the blow on his right hand. Tukaram had assaulted him with a stone on his head. Mahadeo had assaulted him with a stick on his forearm. Machhindra had assaulted him with a stone on his tibia. Sunil, Rajaram, Dhananjay, Jaysing had also assaulted him with sticks on his head, hands and legs. He had further disclosed that he was lying still on the ground. The assaults presumed that he had died and therefore, left the scene. Thereafter, his daughter Kishkinda had rushed home and brought other members of the family to the spot. His brother Shripati taken him to Kurudwadi Primary Health Centre Hospital and thereafter he was referred to civil hospital, Solapur. He has further stated that his brother had contested the elections to the Grampanchayat. His brother had defeated Jalindar. Brothers and relatives of Jalinder had presumed that it was because of the efforts of Sugreev that his brother Sugreev got elected and therefore they had nurtured a grudge against him and wanted to eliminate him.

4. P. W. 5 Shripati i.e. brother of Sugreev lodged a report at Kurudwadi police station on the basis of which crime no. 10 of 1994 was registered against the accused for offence punishable under section 147, 148, 149 of Indian Penal Code. Accused were arrested. After completion of investigation charge sheet was filed on 07/03/1994. Case was committed to the court of sessions and registered as sessions case no. 201 of 1994. Prosecution examined 16 witnesses to bring home the guilt of the accused. Accused had also examined two defence witnesses.

5. Perused record and proceedings.

6. P.W. 1 Dr. Ashok Bolde was attached to civil hospital Solapur on 24/02/1994. He had examined Sugreev Parbat who was referred by Primary Health Centre,

Kurudwadi. He had found 6 injuries on the person of Sugreev. According to him, injury nos. 1 to 4 and 6 were grievous in nature, however, none of the injury was sufficient in the ordinary course of nature to cause death. It is elicited in the cross-examination that injury no. 5 was a sutured wound which was in fact a simple injury. It is also elicited that except injury no. 5 all other injuries were on non vital parts of the body. It is also admitted that Sugreev had given the history that he was assaulted on 23/02/1994 by sticks and stones. He was accompanied to the hospital by other relatives. The attention of the witness was drawn to exhibit 46 which was injury certificate issued by him and the same was proved by him.

7. Next relevant witness is P.W. 4 Dr. Dineshkumar Kadam who was attached to primary health centre, Kurudwadi. He was the first person to examine the injured Sugreev. He had noticed that Sugreev had sustained one incised wound on his right shin, mid shin. It was bleeding injury. That Sugreev had sustained three contused lacerated wounds on his shin which were muscle deep. Contusion on left forearm and contused lacerated wound on vertex. He has deposed before the court that injury no. 1 is grievous and injury no. 2, 3 and 4 are simple in nature. It is elicited in the cross-examination that he had not sutured injury no. 1 at primary health centre. Injury no. 1 was on non vital part of the body. He was also of the opinion that none of the injuries were sufficient in ordinary course of nature to cause death. He has proved the fact that although the injured was examined by Dr. Dineshkumar Kadam on 23/02/1994, the certificate was issued on 21/07/1994. Admittedly the said certificate was issued after filing of the charge-sheet and did not form part of the compilation of the charge-sheet. That it has caused grave prejudice to the defence of the accused.

8. The next relevant witness would be P.W. 5 Shripati Parbat who is the first informant in the present case. He has deposed before the court that there are rival parties in the village and that Sukhdeo Dalvi and his son Jalindar belong to rival party. That he won elections of Grampanchayat against Sukhdeo Dalvi and therefore they were annoyed with them. According to him, in the year 1982 also Sugreev was assaulted by present appellants and case was filed against them. It is further contended that on 20/02/1994 Vishwanath Mate brother-in-law of Sukhdeo Dalvi had filed a case against Sugreev alleging therein that Sugreev had assaulted him. Sugreev was arrested. According to him, Dalvi family was annoyed with him and nurtured a grudge against Sugreev. According to him, on 23/02/1994 Kishkinda and Rajashree rushed to him and informed him that their father Sugreev was assaulted. They rushed to the spot wherein Sugreev was moaning in pain. They had rushed to the primary health centre. P. W. 5 has posed himself as an eye witness to the incident and has attributed overt act to each and every accused. He has proved the contents of the F.I.R. which is marked at exhibit 53. It is elicited in the cross-examination that P.W. 5. was Sarpanch of the village since 1992. That there was political rivalry between two groups. It is also admitted by him that since 1988 accused no. 1 Jalindar was in service at Uma Vidyalay Junior College. In the cross-examination he has deposed

that after the incident they had first gone to the police and then had gone to primary health centre along with police report. According to him, doctor at primary health centre, Kurudwadi had informed him that condition of Sugreev is serious and therefore he was taken to civil hospital in an ambulance. Witness had not accompanied his brother to the hospital but the injured was accompanied by some of the relatives. Report was lodged by him. Upon the court question as to whether the first priority is to give medical aid or to lodge the report, witness has stated that it is more important to file a complaint at the earliest. The evidence of the injured witness Sugreev would assume importance. He has deposed before the court in consonance with the statement recorded by the Special Executive Magistrate. It is clear from his testimony that he has blown the incident out of proportion. He has actually attributed specific role to the accused. It is pertinent to note that he has admitted in the cross-examination that when his statement was recorded by Executive Magistrate in the hospital, he was having severe pain and therefore could not recollect as to what he has deposed before the Magistrate.

9. It is an admitted position that Sugreev was injured in an incident of assault. There are inherent discrepancies in the medical certificate issued by primary health centre, Kurudwadi and the medico legal certificate issued by civil hospital, Solapur. Prosecution has not explained as to why the certificates were not obtained from the respective hospital in the course of investigation and prior to filing of the charge-sheet. Learned counsel for the appellant rightly submits that doctors examined by the prosecution had not produced on record the registers to substantiate that the injuries mentioned in the certificates issued in the month of July 1994 corroborating the description of the injuries mentioned in the register. That political rivalry is admitted.

10. Taking into consideration the nature of the injuries and tenor of substantive evidence of the interested witnesses, this Court is of the opinion that it can be safely inferred that accused/appellants had committed an offence under section 324 of Indian Penal Code. More particularly because the medical evidence is to the extent that none of the injuries sustained by Sugreev were sufficient in the ordinary course of nature to cause death. It therefore, cannot be said that appellants had committed an offence under section 326 r/w 149 of Indian Penal Code. Injured had informed Special Executive Magistrate that he was assaulted by sticks and stones. It was only when Popat Dalvi had wielded the axes, injured had attempted to rescue himself and in that course he had sustained incised wounds.

11. Taking into consideration the passage of time of the pendency of appeal, it would be appropriate to record conviction under section 324 of Indian Penal Code. Learned APP submits that appellants have undergone substantive sentence only for a period of 2 months and 8 days. The substantive evidence indicates that incident had ensued at the behest of original accused no. 1 Jalinder against whom the appeal is abated. Appellants deserve to be convicted for offence

punishable under section 324 of Indian Penal Code and sentenced to the period already undergone.

ORDER

(i) Appeal is partly allowed.

(ii) Appeal against appellant nos. 1, 4 and 10 is abated.

(iii) Appellants are acquitted of offence punishable under section 326 r/w 149 of Indian Penal Code.

(iv) Appellants stand convicted for offence punishable under section 324 r/w 149 of Indian Penal Code and are sentenced to the period already undergone.

(v) Since the appellants are convicted and sentenced for offence punishable under section 324 r/w 149 of Indian Penal Code, separate sentence need not be recorded on all other counts.

(vi) Appeal stands disposed of.