
(2002) 07 BOM CK 0126
In the Bombay High Court
Case No : Criminal Appeal No. 261 of 1997

Jamil Ahmed

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-07-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 224, 307, 332

Citation : (2003) CriLJ 3663

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : Pratibha Patil, for the Appellant; Shringarpure, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—Smt. Pratibha Patil for the appellant and Shri Shringarpure, A.P.P. for the prosecution. Both of them have been heard at length with reference to the evidence on record.

2. The appellant is hereby assailing correctness, propriety and legality of the order of conviction and sentence passed by the Additional Sessions Judge, Greater Mumbai in Sessions Case No. 1197 of 1992 whereby the appellant has been convicted for the offences punishable under Sections 224, 332 and 307 of Indian Penal Code and has been sentenced to undergo following term of sentences. He has been sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default to suffer rigorous imprisonment for one month for the offence punishable u/s 224 of Indian Penal Code. He has been sentenced to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 1000/-, in default to undergo further rigorous imprisonment for three months for the offence punishable u/s 307 of I.P.C. He has been sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 700/-, in default to undergo further rigorous imprisonment, for two months. The substantive sentences are directed to run concurrently.

2A. The prosecution case, in brief, is that the appellant was wanted in context with Cr. No. 101/92, Cr. Nos. 119/92, 152/92 of Neharu Nagar Police Station. On 18-4-1992 P.S.I. Vinayak Kautik Saindane of Antop Hill Police Station got the information while he was on duty that the appellant-Jamil Ahmed Badlalu was drinking liquor at but situated at Gate No. 5, Shahid Bhagatsingh Nagar Hutment under Pakija Medical Store. Then he along with P.S.I. Londhe (P.W. 8) and staff members proceeded to the said spot. P.S.I. Saindane and Londhe were having with each of them their service revolvers and six cartridges. They surrounded the hut where the appellant was drinking liquor. They asked him to surrender but the appellant instead of doing so, started pelting soda water bottles, glasses etc., on them and thereafter he assaulted them by pelting chopper which was to land on the head of P.S.I. Saindane but he warded off the said blow. In the process, he was injured on his hands. He then fired a bullet which caused injury to the appellant on his leg. He could not run away and was thus caught by the members of raiding party, P.S.I. Saindane as well as appellant were medically examined by the Medical Officer on duty. Investigation resulted in the trial wherein the appellant was convicted and sentenced as mentioned above.

2B. Smt. Patil appearing for the appellant submitted that the evidence adduced by the prosecution is suspicious in nature and is very much insufficient to prove the guilt of the appellant. According to her, the learned trial Judge did not notice the infirmities in prosecution evidence and, therefore, he landed in error of recording the findings of guilt against the appellant in respect of the offences punishable under Sections 224, 332 and 307 of Indian Penal Code. According to her the appellant should have been acquitted and as it was not done by the trial Court, this Court be pleased to acquit him. In the alternative she submitted that the sentence is too severe and it be reduced.

3. Shri Shringarpure appearing for the prosecution justified the order of conviction and sentence by pointing out the evidence and submitting that it was above board. He submitted that the evidence of P. W. Saindane has been corroborated by the evidence of P.S.I., Londhe, Mustakin Allabux Qureshi, medical evidence and seizure of blood stained clothes from the person of the appellant. He submitted that the order of conviction and sentence is correct, proper and legal and the appeal deserves to be dismissed and it be dismissed.

4. After appreciating the evidence on record in context with the submissions advanced by the counsel for the rival parties and after perusing the judgment which has been put to challenge, this Court comes to the conclusion that the order of conviction and sentence is correct, proper and legal and this appeal deserves to be dismissed for the reasons stated hereunder.

5. The evidence of P.S.I. Saindane has been well corroborated by P.S.I. Londhe and Mustakin Qureshi, though there has been small variance of evidence of Mustakin and evidence of Police Officer Shri Saindane and Londhe. The discrepancy is of minor nature. Initially the police officers were at a distance, therefore, they might not have seen the appellant eating "Dal Chawal," which

has been stated by Mustakin Qureshi. The evidence has to be appreciated as a whole and if that is done it spells out one thing that the appellant was surrounded when he was sitting in the said hut of Jagtap, he pelted soda water bottles, glasses and thereafter assaulted P.W. Saindane by chopper. The injury sustained by appellant also corroborates the evidence of P.S.I. Saindane and Londhe. Furthermore, it is important to note that he was apprehended on the spot by these police personnel and thereafter he was taken to police station and from police station to concerned Medical Officer. There was no reason for Mustakin Qureshi to give false evidence against him because there is nothing on record to suggest that this witness has an axe to grind against the appellant. The same thing can be said in respect of prosecution witnesses P.S.I. Saindane and Londhe. Those police officers do not have any reason to tell falsehood against the appellant. The medical evidence proves that the appellant sustained injuries in the said scuffle. The seizure of the chopper also corroborates the evidence of above mentioned prosecution witnesses.

6. The trial Judge happens to be correct in coming to the conclusion that had the said blow been not warded off by P.S.I. Saindane, it could have landed on his head and would have resulted in a serious injury which would have resulted in his death and, therefore, the appellant would have been guilty of committing his murder. Fortunately, P.S.I. Saindane did not suffer such an injury on the head and survived. It is important to note that in view of the maxim "act us facit non reum nisi mens sit rea" the act by itself is not to be seen; the intention behind it is to be seen. Therefore, the intention which the appellant was having while giving a blow with a heavy chopper on the head of P.S.I. Saindane has to be gathered from surrounding circumstances. The intention is to be spelled out from the way in which the blow was attempted and the direction of the blow assumed importance. Therefore, the fact that the appellant attempted to commit the murder of P.S.I. Saindane has been amply proved by the prosecution.

7. P.S.I. Saindane and P.S.I. Londhe were on duty and the appellant assaulted them. Therefore, he has committed the offence which is punishable under provisions of Section 332 of I.P.C. The said squad of police officers wanted to apprehend the appellant who resisted them by such attack and, therefore, he has also committed the offence punishable u/s 224 of Indian Penal Code.

8. The way in which the learned trial Judge has appreciated the evidence on record is consistent with the normal rules of appreciation of evidence. The conclusions drawn by him are consistent with the evidence on record. He has committed no error whatsoever in recording the finding against the appellant and holding him guilty of offence mentioned above.

9. The appellant happens to be a person wanted in number of crimes. His criminal antecedents have to be seen. Therefore, sentences awarded to him cannot be said to be severe on any count and, therefore, this Court rejects the prayer made in that behalf by the learned counsel appearing for the appellant.

10. The order of conviction and sentence is correct, proper and legal and, therefore, the appeal will have to be dismissed. The appeal stands dismissed. The appellant to undergo the sentence which has been inflicted on him appropriate person.

The parties are directed to act upon the copy of this order duly authenticated by the Sheristedar of this Court.