

(2018) 01 BOM CK 0085
In the Bombay High Court
Case No : 469 of 2002

Khushal s/o. Gujaram Raipure

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-01-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 307](#) - Acts done by several persons in furtherance of common intention - Attempt to murder

Citation : (2018) 01 BOM CK 0085

Hon'ble Judges : Rohit B. Deo

Bench : Division Bench

Advocate : R.B. Gaikwad, ?A.V. Palshikar

Final Decision : Allowed

Judgement

1. The appellants seeks to assail the judgment and order dated 23.8.2002 passed by the 7th Adhoc Assistant Sessions Judge, Nagpur, in Sessions Trial 619 of 2000, by and under which the appellants (hereinafter referred to as "the accused") are convicted for offence punishable under section 307 of Indian Penal Code (" IPC " for short) and are sentenced to suffer rigorous imprisonment for period of ten years and to payment of fine of Rs. 200/- each.

2. Heard Shri R.B. Gaikwad, the learned counsel for the accused and Shri. A.V. Palshikar, the learned Additional Public Prosecutor for the respondent State.

3. One Chandrashekhar Mukunda Raipure lodged oral report at the Jaripatka Police Station on 8.11.1999 (Exh. 24), the gist of which is thus:

The informant, a student of standard X is residing at Naragaon within the jurisdiction of Jaripatka Police Station, Nagpur with his family owned buffaloes. The informant was proceeding towards Hanuman Temple at 7.00 p.m. in the evening to engage a band party for the customary procession of buffaloes. However, his younger brother Nandkishor came searching and told the informant that two persons entered the house with sticks and are abusing and beating the family members. The informant rushed to his house. The accused were abusing and beating his parents. The informant snatched a stick from the hands of accused Khushal Raipure. The mother of the informant snatched the stick from the hands of the informant. Accused Khushal Raipure whipped out a sword stick which was stuck near his waist. He was threatening the family members of the informant and was moving in the reverse direction. The cousin of the informant Sandip caught Khushal Raipure from behind. Khushal turned back and stabbed with the sword stick and ran away. Sandip collapsed due to the injury. The informant, his mother Usha Raipure, uncle Prakash Raipure, Mrs. Krishnabai Raipure and one Shalik attempted to stop the flow of blood by tying a dupatta around the injury. Injured Sandip was taken to Police Station on a two wheeler and as instructed by the police, injured Sandip was taken to Meyo Hospital. The report states that the injured Sandip is the first cousin of the informant and is a neighbour. The accused Khushal and Pravin and the family members of the informant are distant relatives. 1 ? years ago, Gujaram Raipure administered poison to the informant's cow. The cow died and a report was

lodged. Gujaram and others are facing trial. The accused Khushal Raipure and Pravin Gajanan Raipure grievously injured Sandip to take revenge.

4. The Jaripatka Police registered offence punishable under section 307 read with section 34 of IPC. The investigation ensued and upon completion thereof, charge sheet was filed in the Court of Chief Judicial Magistrate, Nagpur who committed the proceedings to the Sessions Court. The learned Sessions Judge framed charge under section 307 read with section 34 of IPC, the accused abjured guilt and claimed to be tried in accordance with law. The defence is of false implication.

5. The injured Sandip Raipure is examined as PW 1.

Injured Sandip states that at 7.00 p.m. on 8.11.1999 he was on the way to temple. The informant Chandrashekhar had gone to arrange a band. One Dinesh informed PW 1 that a quarrel was going on in his house. Dinesh informed that accused Khushal and Pravin are quarreling, PW 1 returned to his house and saw that Khushal had raised a stick to beat Chandrashekhar. The mother of PW 1 was also present. When PW 1 approached the accused, accused Pravin caught PW 1, accused Khushal whipped out a gupti and stabbed PW 1 in the stomach. PW 1 collapsed and the accused fled. The intestine came out due to the injury, Sharma and Chandrashekhar tied dupatta around the injury and took PW 1 to Police Station and then to the hospital. PW 1 states that a month prior to the incident, he disclosed to his uncle Gulabrao that Pravin was habituated to liquor and Pravin had threatened PW 1 of consequences.

Certain statements as regards the earlier incident of disclosure made about Pravin consuming liquor, are brought on record as an omissions. PW 1 admits that Chandrashekhar

snatched stick from accused Khushal in his presence. PW 1 does not accept that it was thereafter that Pravin showed the weapon and was going in a reverse direction to save himself. He denies the suggestion that PW 1 caught hold of Pravin and since Pravin turned back PW 1 suffered accidental injury. He denied the suggestion that the accused were falsely implicated.

6. The informant Chandrashekhar Raipure is examined as PW 2. He states that upon coming to know from his brother Nandkishor that the accused had entered his house with sticks and were quarreling with his family members, he reached home and saw both the accused abusing Sandip and his family members. This was taking place opposite the residences of PW 2 and the injured Sandip. PW 2 confronted Khushal who raised stick to beat PW 2. The stick was snatched from Khushal by PW 2. Khushal whipped out a sword stick from waist to assault PW 2, who side stepped to save himself. Accused Khushal thereafter stabbed injured PW 1 and the accused fled.

PW 2 admits that when Khushal was brandishing the weapon, he was proceeding in reverse direction in order to save himself. PW 2, however, denies the suggestion that Sandip came from behind and caught Khushal. PW 2 denies the suggestion that Sandip sustained accidental injury since Khushal turned back.

7. PW 3 - Ushabai, the mother of PW 2 Chandrashekhar is examined as an eye witness. She has deposed that the accused came to her house and started abusing, then Chandrashekhar came and Khushal raised the stick to beat Chandrashekhar. Chandrashekhar snatched the stick from Khushal who then took out a gupti from his waist. Sandip reached the scene. Accused Pravin caught Sandip and accused Khushal stabbed Sandip in the stomach by the sword stick (Gupti) and then both fled.

The statement that Pravin caught hold of Sandip and Khushal assaulted Sandip by Gupti is an omission. She denies the suggestion that Khushal was backing of in a reverse direction, Sandip came from behind and caught Khushal and Khushal turned back and Sandip sustained injury. She states that portion marked A in her 161 statement is incorrect.

8. PW 4 - Ashok Chaudhari is examined to prove the seizure of the clothes and the knife at the instance of accused Khushal. Seizure panchanama is Exh. 28.

In the cross examination, it is admitted that the witness was standing outside the house of Khushal and Khushal and two others entered the house and came out after 10 minutes. PW 4 states that he and others returned to the Police Station at 10.00 p.m. and that it did not happen that he and others went to the house of accused Khushal between 5.00 to 5.30 p.m.. This evidence assumes significance since Exh. 28 panchanama is shown to have been recorded between 5.15 p.m. and 7.00 p.m. on 11.11.1999.

9. PW 5 - Suresh Sharma is the other eyewitness to the seizure of the knife and the clothes who admits signature on Exh. 28. PW 5 also states in the cross examination that he went to the Police Station between 10.30 to 11.00 a.m. and returned from the Police Station at 11.30 a.m..

10. PW 6 Narayan Barapatre, who was then attached to Police Station Jaripatka recorded the First Information Report and registered offence against the accused.

11. PW 7 - Gjanan Mhatre is the Investigating Officer who recorded the statement of witnesses including that of the injured Sandip. The omissions which are brought on record in the evidence of the prosecution witnesses are proved in the cross-examination. He denies that panchanama Exh. 28 was recorded in

the Police Station and the signatures of the witnesses were obtained in the Police Station.

12. The injury certificate which is exhibited on admission (Exh. 42-A) is issued on 20.7.2002 which purports to record that the injured was admitted on 8.11.1999 and discharged on 18.11.1999. The nature of injury is described as stale wound of size 3 cm x 2 cm. The depth of the injury is not mentioned.

13. A close scrutiny of evidence would reveal that the finding recorded by the learned Sessions Judge is that accused Pravin caught hold of injured Sandip who was then stabbed by accused Khushal. The finding of the learned Sessions Judge that accused Pravin shared a common intention with accused Khushal to cause injury to Sandip is predicated on the finding that Pravin caught hold of injured Sandip who was then assaulted by accused Khushal. The evidence of PW 3 Ushabai that accused Pravin caught hold of injured Sandip and then accused Khushal inflicted the sword stick blow, is an omission. It is true that injured Sandip does depose on similar lines, but then the informant PW 2 Chandrashekar has categorically stated that accused Khushal was backing of while brandishing knife, he was caught by the injured Sandip from behind, accused Khushal turned and inflicted the blow. PW 2 has not attributed any role to accused Pravin. PW 2 has not stated that accused Pravin caught hold of the injured and accused Khushal then inflicted the knife blow. Such a role is not attributed to accused Pravin in the First Information Report which was lodged with promptitude. The conscious of this Court is satisfied that there is no cogent evidence on record to convict accused Pravin for offence punishable under section 307 of IPC even with the aid of section 34 of IPC. The evidence on record is not cogent enough to record a finding that accused Pravin shared

a common intention with accused Khushal to cause injury to Sandip. Accused Pravin deserves to be acquitted.

14. In so far as accused Khushal is concerned, even if the evidence on seizure of knife is kept out of consideration, since the evidence is suspect, there is clinching ocular evidence that he assaulted injured Sandip causing injury. However, the burning question is whether the evidence on record is sufficient to hold that accused Khushal intended to cause death or to cause such bodily injury as is to the knowledge of the accused, likely to cause death or which injury is sufficient in the ordinary course of nature to cause death. The evidence of the informant PW 2 is to the effect that accused Khushal was brandishing knife and was backing off in the reverse direction to save himself. The injured Sandip came from behind and caught hold of accused Khushal who turned and inflicted a sword stick blow on the injured Sandip. The injury certificate Exh. 42-A is issued on 20.7.2002 while the incident occurred on 8.11.1999. It is true that the injury certificate is exhibited on admission. However, there is no contemporaneous record to throw light on the nature and extent of injury and the treatment received. The injury certificate records that the injured Sandip was admitted in the hospital for 10 days. However, the depth of the injury is not mentioned in the injury certificate. It would be unsafe, in the state of evidence, to record a finding that accused Khushal intended to cause death or to cause such bodily injury as to his knowledge is likely to cause death. The prosecution has further failed to establish by cogent evidence that the injury was a grievous injury within the meaning of section 320 of IPC. The accused Khushal is however, liable to be convicted under section 324 of IPC.

15. The incident occurred more than 17 years ago.

Accused Khushal was in custody for more than two months as under trial prisoner and then as convict. Khushal was then 28 years old. Concededly, the accused and the injured are relatives. I am inclined to alter the sentence to imprisonment already undergone. In the result, I pass the following order:-

(i) Accused Pravin son of Gajanan Raipure is acquitted of offence punishable under section 307 read with section 34 of IPC.

(ii) His bail bond stands discharged and fine paid, if any, shall be refunded.

(iii) Accused Khushal son of Gujaram Raipure is acquitted of offence punishable under section 307 read with section 34 of IPC and is instead convicted for offence punishable under section 324 of IPC and is sentenced to imprisonment already undergone.

(iv) The appeal is partly allowed and disposed of in the above terms.