
(1994) 09 BOM CK 0089
In the Bombay High Court
Case No : Criminal Appeal No. 156 of 1991

Madan Gaure

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307

Citation : (1995) CriLJ 1419

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Mrs. K.V. Sirpurkar, for the Appellant; Mrs. Indira Bodade, Assistant Public Prosecutor, for the Respondent

Judgement

1. This appeal filed by Madan Suleman Gaure is directed against the judgment of conviction and sentence passed by the Additional Sessions Judge, Washim on 26-3-1991 in Sessions Trial No. 9 of 1990 State of Maharashtra v. Madan, whereby the said Court has convicted the accused-appellant for the offence u/s 307 of the Indian Penal Code and sentenced him to suffer R.I. for five years.

2. The prosecution case in brief is that on Piru Kanhaiya Gaure lodged the first information report on 14-10-1989 with the Police Station Malegaon to the effect that at about 7.00 a.m. while he was present in his agricultural field the accused Madan Suleman Gaure, resident of Medshi, grazed his cattle heads in his field. When he was taking his cattle heads to the pinfold, he did not allow him to take his total 8 to 10 small and big cattle heads to the pinfold, and while he was returning home at about 8.00 p.m. near the Maharashtra Saw Mill, the accused Madan gave number of Jambiya (dagger) blows one after another resulting in injuries on his shoulder, neck abdomen, head, face and hands. The injured was medically examined and about 20 injuries were found on his person. The injury report shows the following injuries on the person of the injured.

(1) Incised wound on the right tempera occipital region. Vertical about 4" x 1"

skin deep spindle shape.

(2) Incised wound on the front of face on chin just below the lower-lip Horizontal about 1 1/2 x 1/4 x 1/6 approximately spindle shape.

(3) Incised wound in the midline of front of neck at base 2" x 1" x 1" Horizontal spindle shape.

(4) Incised wound on the left lateral side, neck at the base 2" x 1/2" x 1/2" approximately spindle shape.

(5) Incised wound on the left side of neck at base slight oblique about 1" x 1/4" x 1/6" approximately spindle shape.

(6) Incised wound on the right shoulder on front side horizontal about 1 1/2" x 1/6" x 1/6" approximately spindle shape.

(7) Incised wound on the front and right side of chest vertical with suspected ? Puncture of apex of right lung. Vertical in position about 1" x 1/2" x 1" approximately spindle shape.

(8) Incised wound on the front of right arm extending towards axilla oblique about 3" x 2" x 1" approximately. Spindle shape having suspected ? Injury to the vessels.

(9) Incised wound on the lateral side of right arm in the middle of arm vertical about 3" x 2" x 1" approximately spindle shape.

(10) Incised wound on the middle side of right arm oblique about 1/2" x 1/4" x 1/6" approximately spindle shape.

(11) Incised wound on the lateral side of left arm vertical about 1" x 1/4" x 1/6" approximately spindle shape.

(12) Incised wound on the palmar side of left thumb at base about 1 1/2" x 1/4" x 1/6" approximately spindle shape.

(13) Incised wounds on the palmar side of finger left hand.

- Left Index finger on middle phalanx-horizontal.

- Left middle finger third (base) Phalanx-horizontal.

- Left ring finger on middle phalanx-oblique. Each measuring about 1" x 1/4" x 1/6" and spindle shape.

(14) Incised wound on the lateral side of left index finger at base about 1" x 1/4" x 1/6" approximately spindle shape.

(15) Incised wound on the back side left palm of left hand about 1" x 1/2" x 1/2" approximately spindle shape.

(16) Incised wound on the palmar side right hand. Vertical about 3" x 1/2" x 1/2"

approximately spindle shape.

(17) Incised wound on the back of right palm of right hand 1 1/2" x 1/2" x 1/4" spindle shape.

(18) Incised wound lat side of right little finger of right hand about 1" x 1/6" x 1/6" approximately spindle shape.

(19) Incised would on lateral side of right index finger at base 1" x 1/6" x 1/6" approximately spindle shape.

(20) Rt. abrasions on the front of abdomen four in number, two on right side of umbilicus and two on left side. Each about 3 "in length approximately."

3. The investigating officer investigated into the said crime and submitted the challan against the accused appellant before the Chief Judicial Magistrate, who committed the said case for trial to the Additional Sessions Judge, Washim.

4. The prosecution examined Wasudeo Sakharam Bombatkar (P.W. 1), Baban Amruta Bahadule (P.W. 2), Subhani Bhika Gaware (P.W. 3), Jina Bhika Gawai (P.W. 4), Dr. Pundlikrao Chirade (P.W. 5), Piru Kanhaiya Gaware (P.W. 6), Dr. Kamal prasad Sharma (P.W. 7), Laxman Rambhau Tayde (P.W. 8), Subhash Pawanmare (P.W. 9), Bhika Sakru Rathod (P.W. 10), Sheikh Gulab Sheikh Karim (P.W. 11), Yusufkhan Ajikhan (P.W. 12), Ramlachanrai Rambakshrai (P.W. 13) and Kashinath Shankar Rajpoot (P.W. 14). The prosecution also produced and proved number of documents including injury report referred to hereinabove, seizure memo ,spot panchanama etc. The Jambhiya was also recovered at the instance of the accused-appellant.

5. The statement of the accused under Sec. 313 of the Cr.P.C. was recorded and he pleaded not guilty. In support of his defence he examined Sukhraj Raghunandan Chavan (D.W. 1) and Jalikkhan Lalkhan (D.W. 2).

6. The trial Court after considering the entire evidence on record came to the firm finding that the prosecution has been able to prove that the accused had attempted to commit the murder of Piru Kanhaiyya Gaure on 14-10-1989 at about 8.30 p.m. at Medshi and thereby committed an offence u/s 307 of the Indian Penal Code.

7. In this appeal the accused-appellant has filed the joint pursis of compromise between the accused-appellant and the complainant Piru Gaure. It is stated in the said pursis that the appellant and the complainant are cousin and are residents of the same village. The relations between them are now cordial and the complainant Piru Gaure has no grudge or grievance against the accused-appellant. An affidavit of Piru Gaure dated 5-1-1994 has already been placed on record, in which complainant Piru Kanhaiyya Gaure has stated on oath that he has no complaint against the accused-appellant Madan Suleman Gaure and his relations with him are cordial and both of them are living peacefully in the same village and they are cousins.

8. I have heard the learned counsel for the parties. The learned counsel for the appellant has submitted that after the conviction passed by the Additional Sessions Judge, Washim, the complainant and the accused have mutually settled the dispute and they are living peacefully in the same village and are having good relations and in view of the joint pursis filed by them, the aforesaid crime is required to be compounded. In the alternative, the submission of the learned counsel is that since the incident relates to the year 1989 and the parties have already settled their dispute and the accused-appellant has been behind the bars for eighty days and therefore the sentence be reduced to already undergone. The learned counsel for the accused-appellant has not challenged the conviction of the accused-appellant for the offence u/s 307 of the Indian Penal Code in the aforesaid circumstances.

9. The learned A.P.P. appearing for the State submits that the offence for which the accused-appellant has been convicted is u/s 307 of the Indian Penal Code and, therefore is not compoundable. She has submitted that but for providential escape, the complainant Piru Gaure would have died in view of the injuries sustained by him from Jambhiya inflicted by the accused-appellant. However, she has not disputed the correctness of the joint pursis and the affidavit filed by the complainant before this Court.

10. Voluminous evidence which has come on record proves beyond reasonable doubt that the accused-appellant gave number of blows of Jambhiya on the person of the complainant Piru Gaure on 14-10-1991 at about 8.30 p.m. and the accused had attempted to commit murder of the complainant Piru. On the face of such solid evidence which has been duly relied upon by the learned trial court, the learned counsel for the appellant was right in not challenging the conviction of the appellant for the offence u/s 307 of the Indian Penal Code.

11. Adverting to the submission of the learned counsel for the accused-appellant that in view of the pursis filed before this court along with the affidavit of the complainant the matter may be compounded, it may be observed that this submission of the learned counsel for the accused-appellant has no force. Admittedly the offence u/s 307 of the Indian Penal Code is not compoundable and despite any compromise or settlement the same cannot be compounded. Thus this argument of the learned counsel for the appellant has no force.

12. However, no dispute is raised by the learned A.P.P. about the correctness of the pursis and the affidavit filed before this Court that the accused-appellant and the complainant Piru Gaure are cousins residing in the same village and that they are having cordial relations. It is seen from the record that the accused-appellant was arrested for the first time on 16-10-1989 and was enlarged on bail on 20-11-1989. The learned counsel for the accused-appellant has submitted that after the impugned judgment was passed on 26-3-1991, the accused-appellant was arrested on that very day and has been released on bail on 10-5-1991 under the orders of this Court, According to her, therefore, the accused-appellant has undergone the sentence of about 80 days. Though the offence u/s 307 of the

Indian Penal Code is not compoundable, the facts which have been disclosed in the pursis and the affidavit can be taken into consideration while awarding the sentence. There is no adverse material on record to show that the accused-appellant is a previous convict or is hardened criminal. It is also seen from the record that the accused-appellant was a young man of hardly 22 years at the time of occurrence of incident and during the pendency of the trial as well as this appeal he has not misused the liberty given to him under the bail nor has committed any crime during this period. Taking over-all view of the entire matter. I am of the opinion that the interest of justice in the present case would be met in case the sentence awarded to the accused is reduced to already undergone and the compensation is awarded to the complainant Piru Kanhaiya Gaure in view of number of injuries sustained by him which were 20 in number and some of them were grievous. In my view, the just and reasonable compensation for the injuries sustained by the complainant would be Rs. 7,500/-.

13. In the result, this appeal is allowed in part. The conviction of the accused-appellant for the offence u/s 307 of the Indian Penal Code is maintained. However, the sentence is reduced to already undergone. The accused-appellant is directed to deposit in trial court the compensation of Rs. 7,500/- for payment to the complainant Piru Kanhaiya Gaure within three months from today. Order accordingly.

14. Order accordingly.