
(2017) 01 BOM CK 0037
In the Bombay High Court
Case No : Criminal Appeal No. 1260 of 2008

Mohammed Hasan Mehendi Hasain Sheikh	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, Section 34

Citation : (2017) 2 AIRBomRCri 175 : (2017) ALLMRCri 829

Hon'ble Judges : A.M. Badar, J.

Bench : Single Bench

Advocate : Mr. Bhavesh Thakur I/b. Sudeep Pasbola with Mr. Rahul Arote, Advocate, for the Appellant; Mr. A.R. Kapadnis, APP, for the Respondent/State

Final Decision : Allowed

Judgement

A.M. Badar J. (Oral)—By this appeal, appellant/accused is challenging the Judgment and Order dated 24/10/2008 passed by the learned Adhoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No.447 of 1998 thereby convicting the appellant/accused of the offence punishable under Sections 307 read with Section 34 of the Indian Penal Code (In short, "the IPC") and sentencing him to suffer rigorous imprisonment for three and half years and to pay fine of Rs.3000/- in default to undergo further rigorous imprisonment for ten months. However, the appellant/accused was acquitted of the offences punishable under Section 353 and 506 read with Section 34 of the IPC and under section 25(1B)(a) of the Arms Act, by the said Judgment and Order.

2. Briefly stated background facts are thus :

(a) On 08/10/1995, the Additional Commissioner of Police, Mumbai received a secret information that notorious criminals of Dawood gang were going to visit Hotel Krishna Punjab located at Andheri (East) for kidnapping a builder from Andheri for the purpose of extorting huge amount from him. This information was then passed over to P.W.No.3 Ambadas Pote Senior Inspector of the North-

West Special Squad for taking appropriate action of apprehending those criminals. Accordingly, P.W.No.3 Ambadas Pote formed two teams of his officers for nabbing the culprits. He himself was heading one of the two teams of police officers, whereas P.W.No.2 Fatesing Gaikwad, the then API was heading the another. The two police teams by means of two vehicles went near Krishna Punjab Hotel situated at service road of Andheri. Police officials noted suspicious movements of three persons in front of that hotel. Within a short period of time a Maruti car bearing registration No.MH04H6034 came and stopped near Hotel Krishna Punjab. Those three persons immediately boarded that car. One of them occupied front seat adjacent to the driver whereas the another two sat on the back side of the Maruti car. It proceeded towards Goregaon side. Both teams of police officers started chasing that Maruti car in their vehicles. After crossing two signals, one team of the police officers succeeded in overtaking the car near Chacha Nagar, Jogeshwari (East). Signal was given to stop that Maruti car.

(b) According to the prosecution case, driver of the Maruti Car attempted to kill police personnels who were attempting to stop that Maruti car by ramming the Maruti car against them. He attempted to ram over the Maruti car on persons of police officers trying to stop the said car. Three passengers travelling in the Maruti car jumped out. They were armed with pistols/revolvers. Shortly thereafter even the driver of the Maruti car jumped out of that Maruti car. The Maruti car then fell near a canal.

(c) Police officers chased occupants of the car and they were successful in nabbing accused Shakoore Khan and Dilawar Hussain. Both of them were found to be possessing fire arms with live cartridges. The appellant/accused is stated to be a person driving that Maruti car. He was successful in evading his arrest and ran away. Another accused Salim Rehman Darveshi also escaped from the spot.

(d) Taking the apprehended accused with them, the police squad then came to Jogeshwari Police Station where API Pille, who was one of the member of police team lodged report against accused persons.

(e) Accordingly, Crime No.145 of 1995 came to be registered for offences punishable under Sections 307 and 506(ii) read with Section 34 of the IPC and Sections 3 and 25 of the Arms Act, 1959.

(f) After due investigation such as inspection of the spot, seizures from the spot of the incident etc., accused persons were charge-sheeted. Accused Shakoore was separately tried vide Sessions Case No.1126 of 1999 whereas the appellant/accused, who had absconded, on his arrest came to be tried vide Sessions Case No.447 of 1998

3. In order to bring home the guilt to the appellant/accused, the prosecution has examined in all five witnesses. Ballistic expert Nandkumar Rokade is examined as P.W.No.1. Police officers Fatesing Gaikwad, Ambadas Pote and Prashant Bagade, who were members of the police teams deputed for nabbing the culprits are examined as P.W. Nos.2 to 4 respectively. Investigation Officer Suryakant

Patade of Jogeshwari Police Station is examined as P.W.No.5. After hearing the parties, by the impugned Judgment and Order, the appellant/accused was convicted of the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and was sentenced as indicated in the opening paragraph of the Judgment.

4. I have heard the learned Advocate appearing for the appellant/accused. He argued that allegations against the appellant/accused are to the effect that he attempted to dash the Maruti car to police personnels attempting to stop that car. Case of the prosecution reveals that all accused persons were armed with pistols and revolvers. The learned counsel further argued that even pistols with live cartridges stated to be found in the dashboard of the Maruti car allegedly driven by the appellant/accused. In such situation when all accused persons are stated to be armed with fire arms, it does not stand to reason that the appellant/accused would attempt to commit murder of police officers by dashing the car against him. The learned counsel argued that intention is not proved by the prosecution and, therefore, the appellant/accused is entitled for acquittal.

5. As against this, the learned Additional Public Prosecutor supported the impugned Judgment and Order by stating that evidence of police officers do show that the appellant/accused was driving the Maruti car and he had attempted to dash that Maruti car against police officers. According to the learned Additional Public Prosecutor this reflected intention of the appellant/accused to commit murder of police officers.

6. I have carefully considered the rival submissions. Perused the record and proceedings. The charge which is said to have been proved against the present appellant/accused is to the effect that on 08/10/1995 at about 4.15 p.m., at Chacha Nagar locality of Jogeshwari, Mumbai, he along with co-accused had attempted to commit murder of police personnels who attempted to intercept the car driven by him by ramming that Maruti car against those police personnels. Now let us examine whether it is proved by the evidence of the prosecution that the appellant/accused along with co-accused had made an attempt to overrun police personnels attempting to stop them with such intention or knowledge and under such circumstances that if they by that act cause death of any police personnels, they would have been guilty of murder. P.W.No.2 Fatesing Gaikwad, P.W.No.3 Ambadas Pote and P.W.No.4 Prashant Bagade are police officers, who were members of the police squad who attempted to intercept the Maruti car and tried to apprehend accused persons including the present appellant. As such, evidence of these eye witnesses is crucial in order to determine whether the appellant/accused along with co-accused had done any act with an intention to commit murder of police personnels who were on duty of apprehending them. Evidence of these witnesses to the effect that on the basis of secret information received by the Additional Commissioner of Police, two teams were formed for nabbing gangsters, who were intending to abduct a builder from Andheri for the purpose of extortion of amount is inconsistent. Similarly, they are unanimous in

stating that after forming two groups of police personnels by separate vehicles they reached near Hotel Krishna Punjab at Andheri. All these three witnesses congruously stated that three persons who were moving suspiciously at that hotel then boarded a Maruti car and started travelling further towards Jogeshwari area. Let us now see as to how each individual witness is describing the actual incident which according to the prosecution case amount to an attempt to commit murder of police personnels by the appellant/accused.

7. Evidence of P.W.No.2 Fatesing Gaikwad shows that Maruti car was being chased by two vehicles of police teams and after crossing some distance, P.W.No.3 Ambadas Pote, Senior Police Inspector asked accused persons to stop the car by giving his identity. P.W.No.2 Fatesing Gaikwad further stated that Maruti car was intercepted after crossing two signals near Chacha Nagar. The driver of that Maruti car rammed that car against P.W.No.3 Ambadas Pote, Senior Police Inspector, but P.W.No.3 Pote saved himself by jumping on the side of the road. He further deposed that three occupants of the said Maruti car pointed firearms towards the police officers and all four occupants of the Maruti car jumped out from the running car after crossing some distance. They then started running towards Chacha Nagar area. P.W.No.2 Fatesing Gaikwad further stated that police officers were successful in apprehending accused Dilawar Shaikh and accused Shakoor Khan by chasing them, whereas rest of two accused persons including the present appellant/accused were successful in running away.

8. As against this eye witness account of the incident given by P.W.No.2 Fatesing Gaikwad, P.W.No.3 Ambadas Pote Senior Police Inspector has stated that when the Maruti car was being chased by vehicles of police teams, his car had overtaken the Maruti car and at that time driver of the Maruti car had taken out the firearm. P.W.No.3 Pote further deposed that when they tried to stop the Maruti car, the driver of the Maruti car tried to dash that Maruti car against police officials. Then three occupants of the Maruti car alighted from the car and ran towards Chacha Nagar hutment area. According to P.W.No.3 Pote after crossing some distance even the driver of Maruti car jumped out from the running Maruti car which ultimately went towards a canal.

9. P.W.No.4 Prashant Bagade ? another member of the police team has stated that on instruction of Senior Police Inspector Shri. Pote (P.W.No.3), they chased the Maruti car and when his vehicle reached near the Maruti car, P.W.No.3 Pote asked the driver of the Maruti car to take the vehicle by the side of the road. Thereafter by their vehicle, the Maruti car was blocked and they all alighted by their vehicle. As per version of P.W.No.4 Bagade then they noted that all occupants of Maruti car was having weapons in their hands and those four occupants of Maruti car went towards hutment area after crossing the canal.

10. These are three different versions about the same incident given by three eye witnesses, who are police officers. They are not at all consistent in their versions about the incident in question even in examination-in-chief which is narrated in foregoing paragraph. P.W.No.2 Fatesing Gaikwad is stating that driver

of the Maruti car had attempted to ram that car against Senior Police Inspector Pote (P.W.No.3). His evidence gives an indication that P.W.No.3 Pote had alighted from his car to give his identity to occupants of the Maruti car. He evaded the attempt on his life by jumping by the side of the road. However, this alleged victim of the crime i.e. P.W.No.3 Pote Senior Police Inspector is not supporting such version of P.W.No.2 Fatesing Gaikwad. That apart, cross-examination of P.W.No.2 Fatesing Gaikwad goes to show that he did not remember whether P.W.No.3 Pote was outside the car or was sitting inside the car. P.W.No.3 Pote is not claiming to have alighted from the car for directing the driver of the Maruti car to stop the vehicle. P.W.No.3 Pote is not claiming that there was an attempt to run over the car on him. On the contrary, as per version of P.W.No.3 Pote driver of the Maruti car did not stop the Maruti car and had attempted to give dash to police officials. Who were they is not explained by P.W.No.3 Pote. P.W.No.3 Pote has not claimed in his evidence that those police officials were sitting in the running car or had alighted from the car. P.W.No.4 Prashant Bagade has not spoken about attempt on the part of the driver of the Maruti car to ram the car driven by him against either P.W.No.3 Pote or other police officials. He has similarly stated that upon seeing police officials, occupants of the Maruti Car alighted from the car and had gone towards hutment area by crossing canal. In the wake of this inconsistent, lame and infirm evidence adduced by police officers, who claimed to have witnessed the incident of attempt to commit murder by the appellant/accused, it cannot be said that the prosecution has proved the fact that the appellant/accused attempted to commit murder of police officials by ramming the car driven by him against police officials. This inconsistent evidence of P.W.No.2 to P.W.No.4 entitles the appellant/accused for benefit of doubt regarding the incident in question.

11. Be that as it may, even according to the prosecution case, occupants of the Maruti car including the appellant/accused were holding firearms such as pistol and revolver. P.W.No.3 Pote has categorically stated in his evidence that when the car in which he was chasing the Maruti car driven by the appellant/accused had overtaken the car of the appellant/accused, the appellant/accused had taken out a fire arm. It is seen from evidence of P.W.No.5 Suryakant Patade, police inspector and investigating officer of this Crime that while conducting spot inspection, two loaded revolvers and three magazines were found in the dashboard of the car driven by the appellant/accused. Those weapons were seized by police. Apart from this, according to the prosecution case, two accused persons were apprehended on the spot itself and firearms were recovered from them. In the wake of this factual background, none of the prosecution witnesses, who are police officers, are stating that any of accused persons including the appellant/accused had used the firearm by firing a shot at the police party. It does not stand to reason that though appellant/accused was having a firearm while driving the Maruti car, instead of using that firearm he would attempt to commit murder the police personnels by ramming the car against them. In view of foregoing discussion, it cannot be said that the prosecution has proved that

the appellant/accused was having an intention to commit murder of police personnels and with such intention he attempted to ram the car driven by him against police officials.

12. Considering the nature and quality of evidence adduced by the prosecution in order to bring home the guilt of the appellant/accused is certainly entitled for benefit of doubt. Therefore, I hold that prosecution has failed to prove the offence punishable under Section 307 read with Section 34 of the IPC against appellant/accused. Therefore, the order :

(i) The appeal is allowed.

(ii) The impugned Judgment and Order of conviction and sentence for offence punishable under Section 307 read with Section 34 of the Indian Penal Code passed by the Adhoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No.447 of 1998 on 24/10/2008 is quashed and set aside.

(iii) The appellant/accused is acquitted of the offence punishable under Section 307 of the Indian Penal Code.

(iv) He be set at liberty if not required in any other case.

(v) Fine amount, if paid by him, be refunded to the appellant/accused.