
(2015) 09 BOM CK 0293
In the Bombay High Court
Case No : Criminal Appeal No. 260 of 2013

Motiram	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 307

Citation : (2015) 09 BOM CK 0293

Hon'ble Judges : B.R. Gavai and P.B. Varale, JJ.

Bench : Division Bench

Advocate : Y.B. Mandpe, Advocate, for the Appellant; K.S. Joshi, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

B.R. Gavai, J.—The appeal challenges the Judgment and order passed by the learned Additional Sessions Judge, Chandrapur, in Sessions Case No. 31 of 2012, thereby convicting the appellant/accused for the offence punishable under section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 50,000/- in default to suffer rigorous imprisonment for six months.

2. The prosecution case, in brief, as could be gathered from the material placed on record, is thus:--

"That deceased Giridhar had given an amount of Rs. 100/- as hand loan to the accused. It is the prosecution case that on 16.1.2012 at around 12.30 p.m. deceased Giridhar was sitting in his courtyard at Kharbi. At that time, he was having conversation with the accused regarding hand loan. The accused disputed about the loan and said "Kayache Be Tuze Paise". Thereafter, the accused picked up a piece of wood (Zilpi) and gave it's three blows on the head of Giridhar, due to which, Giridhar sustained bleeding head injuries. After the incident, the accused fled away from the spot leaving the piece of wood on the spot. Giridhar

was taken to the Rural Hospital, Nagbhid. From there, he was taken to Medical Hospital, Nagpur, wherein he died on 17.1.2012."

3. On the basis of the oral report of P.W. 1 Madhukar, the brother of the deceased, First Information Report came to be registered for the offence punishable under section 307 of the Indian Penal Code. After the death of the deceased, the same was converted into for the offence under section 302 of the Indian Penal Code. At the conclusion of the investigation, the charge sheet came to be filed in the court of the learned Judicial Magistrate, First Class, Nagbhid. Since the case was exclusively triable by the Court of Sessions, the same was committed to the Court of Sessions, Chandrapur.

4. The learned trial Judge framed charge against the accused for the offence under section 302 of the Indian Penal Code. The accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned trial Judge passed the order of conviction and sentence as aforesaid. Being aggrieved thereby, the present appeal.

5. Shri Mandpe, the learned counsel appearing for the appellant, submits that the witnesses are the interested witnesses. He further submits that the testimony of the witnesses is not reliable. He further submits that from the testimony of P.W. 1 Madhukar and P.W.3 Geeta, it would reveal that they are not the eye witnesses and they are brought up witnesses. He submits that if the evidence of the eye witnesses is left, there is no other evidence to establish the complicity of the appellant. The learned counsel, therefore, submits that the appeal deserves to be allowed and the order of conviction be set aside.

6. Per contra, Mrs. Joshi, the learned APP submits that merely because the witnesses are the interested witness, cannot be a ground to discard their testimony. She further submits that the evidence of these witnesses is cogent, trustworthy and reliable and as such no interference is warranted.

7. With the assistance of the learned APP and learned counsel for the appellant, we have scrutinized the entire evidence on record.

8. From the evidence of P.W. 9 Dr. Jaydeo and post-mortem report which is at Exh. 31, we find that no interference is warranted with regard to the finding of the learned trial Judge that the death of the deceased is homicidal. In that view, we will have to consider the question as to whether the accused can be said to be an author of the crime.

9. P.W.1 Madhukar is the brother of the deceased. According to the prosecution, his house is adjoining to with that of the deceased. He states that on the day of the incident, he had gone to attend the funeral of one Mainabai Kamdi. He returned house at around 11.00 a.m.. After taking bath, he went to the pan shop. Giridhar was sitting in his courtyard. Accused was also there. Giridhar and accused were talking about an amount of Rs. 100/-, which the accused had taken as loan from the deceased. He further states that while taking kharra from

the pan shop, when he was looking towards the accused and Giridhar, he saw the accused giving blow of Zilpi (thin wooden plank) thrice on the head of Giridhar. He went there running. After beating Giridhar, accused had ran away. Giridhar had fallen unconscious. He was bleeding profusely. He was taken to the Hospital at Talodhi. Since no Doctor was available, he was taken to the Government Hospital, Nagbhid. Oral report was lodged in Police Station, Nagbhid. Giridhar was treated at Nagbhid and thereafter he was referred to Nagpur Hospital. Though, this witness has been thoroughly cross examined, nothing damaging has come on record. The testimony of this witness is corroborated by the First Information Report, which is lodged immediately. In the said report, the P.W.1 Madhukar has clearly implicated the accused.

10. P.W.2 Haridas is another witness. He states that at around 12 to 12.30 hours on the day of the incident he was coming towards the pan shop, which is situated near the place of the incident. He states that the house of Giridhar is situated near that pan shop. He states that a commotion was going on between the accused and Giridhar in the courtyard of Giridhar. Giridhar was asking the accused as to when he would return Rs. 100/- which was given to him by Giridhar. Accused told Giridhar that "Tuze Kayche Be Paise". Thereafter, accused picked up a Zilpi and gave three blows of that Zilpi on the head of Giridhar. Thereafter, he ran away from the spot leaving Zilpi there. Though, this witness has been thoroughly cross examined, he has stuck up to his version regarding the accused beating the deceased.

11. Next witness is P.W.3 Geeta, the wife of the deceased. She states that at around 12.00 on the day of the incident, she and her husband were sitting in the courtyard after having meal. Accused came there. He had talk with Giridhar. She also narrates regarding the conversation regarding the loan amount. Thereafter, the accused picked up a Zilpi from the pile of wood, which was nearby and gave three blows of it on the head of Giridhar, due to which, Giridhar fell on the ground. This witness is thoroughly cross examined. She was put a question as to when she was there, did she try to intervene and hold the stick which was in the hand of the accused. She has promptly answered that the accused gave three successive blows immediately. She rushed to her husband as soon as he fell down. Nothing damaging has come in her cross examination.

12. By now, it is a settled law that merely because the witnesses are the interested witness, that cannot be a ground to discard their testimony. The only requirement is that their testimony should be scrutinized with greater caution. We find that the evidence of P.W.1 Madhukar and P.W.3 Geeta is cogent, reliable and trustworthy. It is further corroborated by the First Information Report, which is immediate in point of time and the evidence of P.W.2 Haridas, who is an independent witness. In that view of the matter, we do not find that any interference is warranted with the finding that the present appellant is an author of the crime.

13. That leaves us with the question, as to whether the conviction under section

302 of the Indian Penal Code needs to be maintained or altered to some other lesser offence. From the evidence of P.W.2 Haridas, it would clearly reveal that there was commotion going on between the accused and Giridhar. Giridhar was asking the accused when he would return Rs. 100/-, which was given to him by Giridhar. He states that thereafter accused picked up a Zilpi and gave three blows of Zilpi on the head of Giridhar. P.W.3 Geeta, the wife of the deceased, also states that after the altercation was going on between the deceased and accused, accused picked up a zilpi from the pile of wood which was nearby and gave three blows of it on the head of Giridhar. It could, thus, be seen that taking evidence of the prosecution as it is, the incident took place in a sudden fight. There could not have any premeditation inasmuch as the accused had not brought any weapon with him. As a matter of fact, even according to P.W.3 Geeta, the wife of the deceased, the accused picked up a Zilpi from the pile of wood which was lying there. It is also not the prosecution case that the offender has taken any undue advantage or acted in a cruel or unusual manner. It could, thus, be seen that the assault was committed by the accused without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and he has not taken any undue advantage or acted in cruel manner. We, therefore, find that the present case would fall under exception 4 of Section 300 of the Indian. Hence, the following order.

The appeal is partly allowed.

The conviction under Section 302 of the Indian Penal Code is altered to one under Section 304 Part I of the Indian Penal Code. The life sentence is reduced to 9 (nine) years rigorous imprisonment. Rest of the order is maintained.