
(2022) 05 BOM CK 0003

In the Bombay High Court

Case No : Criminal Appeal No.916 Of 2019, Interim Application No.1863 Of 2021

Narayan Mhasu Pithe

APPELLANT

Vs

State Of Maharashtra & Another

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Indian Penal Code, 1860 — Section 307, 452

Code Of Criminal Procedure, 1973 — Section 357, 428

Citation : (2022) 05 BOM CK 0003

Hon'ble Judges : S. S. Shinde, J;Sarang V. Kotwal, J

Bench : Division Bench

Advocate : S.P. Dighe, V.B. Konde Deshmukh, Rupesh A. Zade

Final Decision : Partly Allowed

Judgement

Sarang V. Kotwal, J

1 The Appellant has challenged the judgment and order dated 29.1.2019 passed by the Additional Sessions Judge, Niphad, District-Nashik in Sessions Case No.36/2012. By the impugned judgment and order, the Appellant was convicted for commission of offence punishable under Section 452 of the Indian Penal Code and was sentenced to suffer R.I. for five years and to pay a fine of Rs.5,000/-; and in default of payment of fine to suffer S.I. for six months. The Appellant was convicted for commission of offence punishable under Section 307 of IPC and was sentenced to suffer life imprisonment and to pay a fine of Rs.7,000/-; and in default of payment of fine to suffer R.I. for one year. Both the sentences were directed to run concurrently. The Appellant was in custody from 23.3.2012 to 26.6.2012 and since 12.9.2018 till 29.1.2019 during pendency of the trial and for that period he was granted set off under Section 428 of Cr.P.C.. Out of the fine amount, Rs.10,000/-were directed to be paid to the first informant Gangubai Wagh towards the compensation under Section 357 of Cr.P.C..

2 We have heard Shri S.P. Dighe, learned counsel for the Appellant, Shri V.B.

Konde-Deshmukh, learned APP for the State and Shri Rupesh Zade, learned counsel appointed for Respondent No.2.

3 The prosecution case is that on 22.3.2012 in the midnight, the Appellant entered the house of the first informant Gangubai Wagh at Ozar, Taluka-Niphad, District-Nashik and assaulted Gangubai and Baburao with a chopper on their heads and other parts. They became unconscious. While leaving, he latched the door from outside. On the next day morning, the neighbours rescued them and shifted them to the hospital. Thereafter the FIR was lodged. The Appellant was arrested. The investigation was carried out. The charge-sheet was filed and the case was committed to the Court of Sessions.

4 During the trial, the prosecution examined eight witnesses. PW-1 and PW-2 were the injured witnesses. At the conclusion of the trial, the Appellant was convicted and sentenced as mentioned earlier.

5 Learned counsel for the Appellant submitted that the evidence of eye witnesses is not free from doubt. There is nothing to show that from where the murder weapon was brought. The motive was not established. The offence under Section 307 of IPC is not made out. In any case, extreme punishment of life imprisonment is extremely harsh; and if it is held that the offence is proved, the sentence be reduced.

6 Learned APP as well as learned counsel for Respondent No.2, on the other hand, submitted that the evidence of eye witnesses is sufficient to prove guilt of the Appellant and the sentences awarded are proper. The conduct of the Appellant shows that he deserves no sympathy.

7 We have considered these submissions and with the assistance of learned counsel we have perused the evidence.

8 The main evidence, of course, is of the injured eye witnesses. PW-1 Gangubai Wagh was the first informant. She has stated that she was residing with her son Baburao at Ozar. On the day of the incident in the midnight, she herself and her son were sleeping in the house. Someone knocked the door from outside. She opened the door. She saw the present Appellant. She knew him as her distant relative. The Appellant asked for food. Then he told PW-1 to transfer her house at Koliwada in his name. PW-1 refused. He requested PW-1 to allow him to sleep in the house. He asked her to switch off the light. However, PW-1 refused. Then the Appellant assaulted PW-1 and her son Baburao with chopper. Both of them were assaulted on the head and hands. After that he went away. While going, he latched the door from outside. PW-1 and her son became unconscious. They regained consciousness in the morning at around 6.00 a.m.. They called their neighbours. The neighbours came there and rescued them. The police were informed. PW-1 and her son were shifted to the Government Hospital at Ozar. The police recorded her statement. It was treated as FIR. The FIR is produced at Exhibit-31. After that, she was shifted to Civil Hospital at Nashik.

In the cross-examination, she was asked about the exact relation of the Appellant with her. He was a distant relative. PW-1 and her brother-in-law Chindhu Charoskar owned a house at Ozar which they had sold. The Appellant's sister was daughter-in-law of said Chindhu Charoskar. A suggestion was given that because of the dispute between Chindhu Charoskar and PW-1; the Appellant was falsely implicated by PW-1. In the cross-examination, she has deposed that the neighbours resided at a long distance. She was hospitalized for about fifteen days.

9 PW-2 Baburao Wagh is the son of PW-1. He has narrated the incident in exactly the same manner as deposed by his mother PW-1. He identified the Appellant in the Court. His cross-examination was not conducted by the Appellant's counsel and the Appellant himself only put one suggestion that the Appellant used to visit their house. This suggestion was accepted by PW-2. There is practically no challenge to the evidence of this witness PW-2.

10 PW-3 Mahesh Pandav was a pancha for spot panchnama. The spot panchnama is exhibited at Exhibit-34. During spot panchnama, blood on the spot was collected for sending it for chemical examination. The clothes of PW-1 were also produced in his presence under panchnama at Exhibit-35. He was also a pancha when the Appellant had made voluntary statement of showing the place where the chopper was concealed by him. The Appellant led the pancha and the police party near Amrut Nagar. The chopper was hidden below the garbage in a ditch. It was seized. The panchnama is produced on record at Exhibit-37.

11 PW-4 Manoj Pandav was a neighbour. His mother heard shouts at 6.45 a.m. on that day after the incident. She informed this witness and then everybody rushed there. The door was latched from outside. This witness opened the door. There were blood stains inside the house. PW-1 and PW-2 were seen in injured condition in the house. PW-1 narrated the incident to this witness.

Then police were informed. They reached there. The injured were taken to hospital. This witness was not cross-examined.

12 PW-5 Alka Hermade was the daughter of PW-1. She had rushed to PW-1's house on hearing the news telephonically through one Shailesh Jadhav. She handed over clothes of the injured to the police.

13 PW-6 Shailesh Jadhav was another neighbour. He has deposed in the same manner as PW-4.

14 PW-7 Dr. Vaibhav Patil had examined both the injured. Gangubai had suffered the following injuries :

'1. CLW on forehead – 10 cm x 5 cm. It was grievous in nature and must be inflicted by sharp cutting weapon, age of injury was fresh.

2. CLW on right thumb, size 5 cm x 3 cm. It was grievous in nature and must be inflicted by sharp cutting weapon, age of injury was fresh.

3. CLW on left occipital region size 8 cm x 5 cm, must be caused by sharp cutting object, it was grievous in nature and it was fresh.

4. CLW on right parital region. It was grievous in nature and must be caused by sharp cutting object and it was fresh.”

. PW-2 Baburao had suffered the following injuries :

“1. CLW on right parietal region size 10 cm x 3 cm. It must be caused due to sharp cutting object. It was fresh and grievous in nature.

2. CLW on forehead, size 10 cm x 3 cm. It must be caused due to sharp cutting object. It was fresh and grievous in nature.

3. CLW on right forearm, size 4 cm x 3 cm. It must be caused due to sharp cutting object. It was fresh and grievous in nature.”

. The injury certificates were produced on record.

15 PW-8 Mahesh Bhortekar was the investigating officer. After C.R. No.32/2012 was registered at Ozar police station, this witness had conducted the investigation. He had recorded the statements and had conducted the spot panchnama. He had arrested the Appellant on 23.2.2012. He had recovered the chopper at the instance of the Appellant.

16 Learned Judge, based on this evidence; convicted and sentenced the Appellant as mentioned earlier.

17 The evidence of PW-1 and PW-2 is important in this case. PW-2 was not cross-examined by the Advocate of the Appellant. The Advocate was not present. Therefore leaving aside this evidence, the evidence of PW-1 can be considered seriously against the Appellant. She has deposed the incident in detail. She has attributed the exact role to the Appellant, who was known to her as a distant relative. There was some property dispute, as is suggested in her cross-examination, which was the reason for this assault. There is no reason for PW-1 to implicate the Appellant falsely. She was assaulted on her head. Her son was assaulted on his head and the medical evidence shows that both of them had suffered grievous injuries on vital parts. Therefore, this evidence is sufficient to prove the guilt of the Appellant. The ingredients of Section 307 of IPC are also proved. There is hardly any scope to raise doubt about the prosecution evidence in respect of involvement of the present Appellant. It is further corroborated by recovery of chopper at the instance of the Appellant.

18 The neighbours’ evidence also corroborates PW-1’s version that in the morning on hearing their shouts they had gathered at the spot and had removed the latch to find PW-1 and PW-2 inside the house in injured condition. This gives sufficient corroboration to their depositions.

19 In this view of the matter, we are satisfied that the prosecution has proved its case beyond reasonable doubt. However, we find that there are certain mitigating

circumstances in favour of the Appellant as far as sentencing part is concerned. Both the injured were at his mercy. He was carrying the deadly weapon. Both of them had become unconscious. However, the Appellant did not cause more assault resulting in their death. Though he had latched the door from outside, he had ample opportunity to cause more injuries and to cause their death. The incident is dated 22.3.2012. The Appellant was on bail for some period during the trial. There are no allegations about his misusing the liberty. Therefore, there is scope to believe that a reformatory approach in Appellant's favour can be adopted in this case. The impugned judgment itself mentions that the Appellant had aged parents, wife and children at the time of passing of the impugned judgment. Today after about three years from the date of impugned judgment, the position must not have changed.

20 Under Section 307 of IPC the maximum punishment provided is for life imprisonment. However, the maximum sentence is awarded only in cases deserving maximum punishment. However, we find this to be a case where leniency in sentencing can be shown to the Appellant by reducing the life imprisonment to a shorter term and at the same time imposing higher fine so that the victims can be compensated reasonably to some extent. We are informed by learned counsel for the Appellant that the Appellant has already paid the fine amount.

21 Hence the following order :

:: ORDER::

i. The Appeal is partly allowed.

ii. The conviction and sentence of the Appellant under Section 452 of IPC are maintained. He is already sentenced to suffer R.I. for five years and to pay fine of Rs.5,000/- and in default of payment of fine to suffer S.I. for six months, for the offence punishable under Section 452 of IPC. This conviction and sentence is maintained.

iii. The Appellant was convicted for commission of offence punishable under Section 307 of IPC and he was sentenced to suffer life imprisonment and to pay a fine of Rs.7,000/- and in default of payment of fine to suffer R.I. for one year. The conviction under Section 307 of IPC is maintained. However, the sentence of life imprisonment is altered to that of R.I. for a period of ten years. In addition to the fine amount which was imposed as Rs.7,000/-, the Appellant is directed to pay further fine of Rs.1,00,000/- (Rupees One Lakh only); in default of payment of the fine amount of Rs.1 Lakh, the Appellant is directed to suffer further R.I. for two years.

iv. Both the sentences are directed to run concurrently.

v. The Appellant was in custody since 23.3.2012 to 26.6.2012 and since 12.9.2018 till 29.1.2019 as an undertrial prisoner. He shall be given set off for said period under Section 428 of Cr.P.C..

vi. If the fine amount of Rs.1 Lakh is deposited, the victims i.e. PW-1 Gangubai Wagh and PW-2 Baburao Wagh shall be paid Rs.50,000/- (Rupees Fifty Thousand) each towards the compensation, in view of section 357 of Cr.P.C..

vii. The Appeal is disposed of in the aforesaid terms. In view of disposal of main Appeal, nothing survives in Interim Application No.1863/2021 and same stands disposed of accordingly.