
(2017) 10 BOM CK 0080
In the Bombay High Court
Case No : 315 of 2000

Navalchand Motiram Jadhav

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-10-2017

Acts Referred:

Indian Penal Code, 1860, Section 307,
Section 193 - Attempt to murder - Punishment for false
evidence
Evidence Act, 1872, Section 154 -
Question by

Citation : (2017) 10 BOM CK 0080

Hon'ble Judges : Rohit B. Deo

Bench : SINGLE BENCH

Advocate : Pushkar Ghare, H.R. Dhumale

Final Decision : Dismissed

Judgement

1. The challenge is to the judgment and order dated 07-11-2000 in Sessions Case 200/1998, delivered by the learned IInd Additional Sessions Judge, Akola, by and under which the appellant (hereinafter referred to as the "accused") is convicted of offence punishable under Section 307 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years and to payment of fine Rs.1,000/. The accused also faced trial for offences punishable under Section 4 read with Section 25 of the Arms Act and under Section 37(1)(3) read with Section 135 of the Maharashtra Police Act, he is, however, acquitted of the said offences.

2. Heard Shri Pushkar Ghare, learned Counsel for the accused and Shri H.R. Dhumale, learned Additional Public Prosecutor for the respondent.

3. Shri Pushkar Ghare, learned Counsel for the accused submits that the judgment is against the weight of evidence. The prosecution has miserably failed to prove the panchanama of the spot where the incident allegedly took place.

The injured complainant and the other prosecution witnesses are giving different versions of the spot of the alleged incident, is the submission. The learned Counsel for the accused submits that the accused has more than probablised the defence that P.W.1 Vasanta suffered injury since his head dashed against a tin roof. The learned Counsel would then submit that the medical evidence is totally inconsistent with the ocular evidence. The veracity and credibility of the testimonies of the prosecution witnesses is in serious doubt, is the submission.

4. Per contra, the learned Additional Public Prosecutor Shri H.R. Dhumale would submit that the judgment impugned does not suffer from any infirmity, on facts or in law.

5. Concededly, the injured Vasanta Dola Jadhav and the accused are cousin brothers. The informant Chandu Dola Jadhav, is the blood brother of the injured. The gist of the oral report lodged by Chandu on 28-4-1998 is that at 8.00 p.m. on 28-4-1998, he and the injured Vasanta were engaged in conversation in his house. The accused came to Chandu's house and asked injured to lend him Rs.5,000/for constructing a well. The injured Vasanta refused to oblige, the accused physically assaulted Vasanta, the accused pushed and abused Vasanta and both were pacified by the informant Chandu. The accused went home and while the informant was pacifying Vasanta and taking him inside the house, the accused came from behind and inflicted sword blow on the head of Vasanta. The informant snatched the sword from the accused who ran away. The informant took Vasanta to Government Hospital at Pinjar and also brought the sword to the police station, is the recital in the report.

6. The injured Vasanta Jadhav is examined as P.W.1. He has deposed that the accused is his cousin and resides in the adjacent house. P.W.1 states that there is chhapri (varandah) infront of his house and in the night hours his house and the chhapri are illuminated by electric light/s. P.W.1 has deposed, consistent with the first information report lodged by Chandu, that the accused accosted him on 28-4-1998, sought to borrow Rs.5,000/and when P.W.1 expressed inability to oblige, the accused started physically assaulting and abusing P.W.1. The injured further deposes that the accused went to his house, returned armed with a sword, called P.W.1 by name and when P.W.1 turned back to answer, the accused inflicted a sword blow on the head of P.W.1. P.W.1 further states that he suffered bleeding injury and felt unconscious. He has deposed that he and Chandu snatched the sword from the accused and then the accused fled. It is revealed from the crossexamination of P.W.1, that the effort was to demonstrate motive for false implication. However, nothing is elicited from P.W.1 to suggest that the accused is falsely implicated. While appreciating the evidence of an injured witness, the Court must necessarily be alive to the settled position of law that the testimony of any injured witness stands on a higher pedestal. An injured is not ordinarily likely to absolve the guilty and inculpate or falsely implicate the innocent. Injuries further lend an assurance to the presence of the witness on the spot. P.W.1 is suggested that due to loss of balance in the scuffle between

P.W.1 and the accused the tin on the roof of the house of Chandu struck P.W.1 on the head.

7. The trend of the cross-examination and the suggestion given by the defence clearly show that the presence of the accused on the spot and the occurrence of a scuffle between the accused and the injured is the version of the accused himself. The suggestions given by the accused to P.W.1 lend assurance to the prosecution case at least to the extent that the accused was present on the spot and concededly was involved in a scuffle with P.W.1. The defence that P.W.1 lost balance and the tin roof struck his head is not worthy of acceptance. The defence is falsified by the medical evidence on record.

8. P.W.2 Bhausingh Rathod has proved the spot panchanama Exhibit 22. The informant, who is the blood brother of the injured, is examined as P.W.3. He has supported the prosecution to the hilt in the examination in chief. This was done to ensure that he is not declared hostile and the prosecutor is not impelled to seek permission of the Court under Section 154 of the Evidence Act to put questions to Chandu in the nature of cross-examination. Chandu, however, was clearly won over. In the cross-examination, on behalf of the accused, P.W.3 Chandu has admitted every suggestion given and the attempt to help the accused to escape from the clutches of law is too obvious to warrant any serious debate. Chandu is prima facie answerable to the charge of perjury and I shall advert to this aspect at a later stage in the judgment. Chandu has made a crude attempt to pollute the stream of justice and must be held answerable lest dishonest or compromised witnesses render ineffective the justice dispensation system.

9. Sangitabai Jadhav who is examined as P.W.5 is an eyewitness to the incident. She has deposed that at 8.00 p.m. on 28-4-1998 there was exchange of words between the injured and the accused, the accused went home and returned armed with a sword and inflicted a sword blow on the head of the injured Vasanta. She deposes that her house abuts the house of injured Vasanta and when the incident occurred, she was in the osari (varandah) of her house. She has also deposed that she could witness the incident in the light from her osari (varandah) and that of the injured Vasanta. In the cross-examination, P.W.5 admits that her house is behind the house of the injured with an open space of 10 to 15 feet dividing the two houses. She has, however, denied the suggestion that from the osari of her house one cannot see what is happening in front of the house of injured Vasanta. Some omissions and discrepancies are brought on record but then nothing significant is elicited to dent the credibility of Sangitabai. Her testimony is trustworthy and confidence inspiring. She is affirming in her deposition that in view of the illumination due to the electric lights in the osari of the injured Vasanta and her own osari, she could witness the incident in the late evening hours. While she has admitted that her house is situated behind the house of Vasanta, from the said admission it cannot be said that she was in no position to witness the incident.

10. The injured Vasanta and P.W.5 Sangitabai were extensively cross-examined.

However, nothing is elicited in the cross-examination to render suspect the consistent testimony that the accused inflicted sword blow on the head of the injured Vasanta. Au contraire, the suggestion in the cross-examination brings on record that there was an altercation between the injured Vasanta and the accused in the evening of 28-4-1998 and the altercation was both wordly and physically. The inimical terms between the injured and accused are again brought on record by the suggestion given to the injured Vasanta. The evidence of Vasanta and Sangitabai has not been seriously challenged and the only material suggestion given is that during the scuffle, the injured lost his balance and his head struck against the roof tin of the house of Chandu, which suggestion is denied by both the injured Vasanta and Sangitabai.

11. I have already observed that Chandu (P.W.3) is prima facie one over by the accused and the parrot like admissions given in the cross-examination on behalf of the accused do not take the case of the accused any further. However, what is clear from the evidence of even a dishonest witness like Chandu is that he lodged a report with promptitude and produced the sword before the police. Obviously since the report was lodged with promptitude, there was no scope for the accused to lure or induce to subvert the course of justice, at that stage. Chandu P.W.3 was compromised and subverted later on. He must be held accountable and answerable to the offence of perjury/giving false evidence lest the confidence of the common citizens in the sanctity of the justice dispensation system is eroded.

12. On an overall appreciation of evidence, I have no hesitation in holding that the prosecution has established the offence punishable under Section 307 of the Indian Penal Code beyond reasonable doubt and that the appeal is without substance.

13. The appeal is dismissed. Bail bond of the accused shall stand cancelled. The accused be taken into custody forthwith to serve the sentence. Let a notice be issued to Chandu Dola Jadhav (P.W.3) to show cause as to why action should not be initiated against him for intentionally giving false evidence before the learned trial Court and thereby prima facie committing offence punishable under section 193 of the IPC.