
(2013) 03 BOM CK 0186
In the Bombay High Court
Case No : Criminal Appeal No. 898 of 2007

Pannalal Yadav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Income Tax Act, 1961 — Section 148, 263, 48, 55(2), 55(2)(b)(i)
Penal Code, 1860 (IPC) — Section 307, 326

Citation : (2013) ALLMR(Cri) 2022

Hon'ble Judges : V.K. Tahilramani, J;P.D. Kode, J

Bench : Division Bench

Advocate : Anand S. Patil, for the Appellant; M.M. Deshmukh, Assistant Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

V.K. Tahilramani, J.—This appeal is directed by the appellant-original accused against the judgment and order dated 12th April, 2007, passed by the learned 9th Ad-hoc Additional Sessions Judge, Gr. Mumbai, at Sewree, in Sessions Case No. 580 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellant u/s 307 of IPC and sentenced him to suffer imprisonment for life. The prosecution case briefly stated, is as under:

The complainant PW-1 Tejbahadur is the brother of injured witness PW-2 Lalbahadur. Both the brothers were jointly residing at Goregaon, Mumbai. Both of them were working in different stables. On 21st March, 2006, at about 5.00 p.m. Lalbahadur was searching for his latrine utensil. He saw the appellant coming to the spot along with his latrine utensil. He asked the appellant as to why he took his utensil, whereupon the appellant manhandled him. Some persons rescued PW-2 Lalbahadur. At about 7.00 p.m. when PW-2 Lalbahadur was giving water to the animals, the appellant came in front of him, gave abuses and assaulted him on the chest and back with knife. PW-1 Tejbahadur and PW-5 Popat saw the incident. They admitted PW-2 Lalbahadur to the hospital. On medical

examination of PW-2 Lalbahadur, two injuries were found on the body of PW-2 Lalbahadur i.e. on the chest and the back. PW-1 Tejbahadur lodged the F.I.R. After being treated, PW-2 Lalbahadur came to be discharged from the hospital. After completion of the investigation, the charge-sheet came to be filed and the case was committed to the Court of Sessions.

2. Charge came to be framed against the appellant u/s 307 of IPC. The accused pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above. Hence, this appeal.

3. We have heard the learned Advocate for the Appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant assaulted PW 2 Lalbahadur with the knife on the chest and back.

4. The conviction is based mainly on the evidence of injured witness PW-2 Lalbahadur and on the evidence of two eye witnesses i.e. PW-1 Tejbahadur and PW-5 Popat. PW-2 Lalbahadur has stated that on 21st March, 2006, at about 5.00 p.m. Lalbahadur was searching for his latrine utensil. He saw the appellant coming to the spot along with his latrine utensil. He asked the appellant as to why he took his utensil, whereupon the appellant manhandled him. Some persons rescued PW-2 Lalbahadur. At about 7.00 p.m. when PW-2 Lalbahadur was giving water to the animals, the appellant came in front of him, gave abuses and assaulted him on the chest and back with knife.

5. PW-1 Tejbahadur, who is the complainant in the present case and brother of PW-2 Lalbahadur is an eye witness to the incident. He has stated that on 21st March, 2006 at 5.00 p.m. dispute arose between the appellant and Lalbahadur. On the same day at 7.00 p.m. the appellant assaulted Lalbahadur on the chest and back with a knife. He then took his brother Lalbahadur to hospital. The evidence of PW-1 Tejbahadur is corroborated by the evidence of PW-5 Popat. PW-5 Popat has also stated that he saw the appellant assaulting PW-2 Lalbahadur with a knife. We find the testimony of Lalbahadur injured witness and the two eye witnesses i.e. PW-1 Tejbahadur and PW-5 Popat to be trustworthy and reliable, hence, we have no hesitation in relying on the same.

6. The learned advocate for the appellant submitted that no case is made out u/s 307 I.P.C. because no doctor has opined that if PW-2 Lalbahadur had not received proper treatment, the injuries would have sufficient in the ordinary course of nature to cause death. There is no medical certificate or any medical papers produced on record to show how many days PW-2 Lalbahadur was in hospital and what was the treatment received by him. Moreover, the injury certificate at Exh. 29 only states that there is an injury on the left side of the

chest and on the back. In Exh. 29 in column, i.e. Simple/Grievous dangerous to life, we find that there is no remark that the injury was grievous or dangerous to life. Looking to all these facts, we accept the contention of the learned advocate for the appellant that the case would not fall u/s 307 I.P.C. Looking to the nature of the evidence on record, in our opinion, the case would fall u/s 326 of I.P.C. In the result, we pass the following order:-

ORDER

(i) The conviction of the appellant u/s 307 I.P.C. is set aside, instead, the appellant is convicted and sentenced u/s 326 I.P.C. For the said offence, the appellant is sentenced to suffer seven years R.I. and fine of Rs. 1000/-, in default, S.I. for one month.

(ii) Appeal partly allowed in above terms.

(iii) The appellant is entitled to set off as per law.

(iv) Office to communicate this order to the Superintendent of prison where the appellant is lodged and to the appellant-original accused.