
(2016) 02 BOM CK 0240
In the Bombay High Court
Case No : Criminal Appeal No. 231 of 2009

Raju	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, Section 325, Section 34

Citation : (2016) 02 BOM CK 0240

Hon'ble Judges : V.K. Tahilramani, Actg. C.J. and Dr. Shalini Phansalkar Joshi, J.

Bench : Division Bench

Advocate : Rebecca Gonsalves, Advocate, for the Appellant; H.J. Dedia, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, Actg. C.J.

1. This appeal is preferred by the appellant -original accused against the judgment and order dated 07.07.1999 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No. 339 of 1997. By the said judgment and order, the learned Session Judge convicted the appellant for the offence punishable under Section 302 r/w 34 of IPC and sentenced him to suffer imprisonment for life and fine of Rs. 10000/-, in default R.I. for six months.

2. The prosecution case briefly stated, is as under:

(a) The deceased in the present case is Pradip Devlekar. The complainant -PW 1 Laxman was the cousin brother of Pradip. The incident occurred on 18.12.1996. At about 7.00 p.m., as there was no power, Laxman went to the wooden cabin where the electricity meters were installed and he found that cut out of the fuse was missing. Deceased Pradip was helping him at that time. While he was checking the fuse, Pradip was attacked with choppers and swords. According to PW 1 Laxman, there were four persons whom he saw in the torch light. One of them was the appellant. The appellant was armed with sword. The appellant was

known to Laxman. The appellant was known in their locality as "Miranda". The appellant used to extort money from the residents in the locality. If anyone resisted to give money, the appellant and others with him used to threaten those persons. Pradip was taken to the hospital where he was declared dead. Laxman then lodged F.I.R. Thereafter, investigation commenced. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant and other accused under Section 302 read with 34 of IPC. It may be stated that prior to framing of charge, original accused No. 2 -Shankar Premji Parmar expired and original accused No. 1 -Mithalal Premji Parmar and original accused No. 3 -Prakash @ Chati Chandrasingh were absconding, hence, the trial went on in relation to the appellant. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence was 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 preferred by the appellant against his conviction and sentence.

4. 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 is involved in the murder of Pradip.

5. There are two eye witnesses in the present case. They are PW 1 Laxman and PW 2 Pinki. Laxman was the cousin brother of deceased Pradip. Laxman has stated that on 18.12.1996 at about 7.00 p.m., there was no power, hence, he went to wooden cabin where the electricity meters were installed. With the help of torch, he found that the cut out of the fuse was missing. At that time, deceased Pradip was helping him. While Laxman and Pradip were checking the fuse, Pradip was attacked with choppers and swords. On account of this, Pradip fell on Laxman. Laxman has stated that he saw four persons in the torch light. One of them was the appellant and the appellant had sword with him. Laxman has stated that the appellant was known to him. The appellant was known in their locality as "Miranda". The appellant used to extort money from the residents in the locality. If anyone resisted to give money, the appellant and others with him used to threaten those persons. Pradip was taken to the hospital where he was declared dead. Laxman then lodged F.I.R. Thus, the evidence of PW 1 Laxman shows that the appellant was known to him even prior to the incident.

6. The second eye witness is PW 2 Pinki. Pinki was the niece of deceased Pradip. Pinki has stated that at about 7.30 p.m., she was returning back from tuition. She saw four persons attacking one man with swords and choppers. She saw them in the street light, hence, she called her aunt Savitra (PW 4). Savitra then

shouted whereupon the assailants ran away. Pinki then noticed that the person being assaulted was her uncle Pradip.

7. Learned counsel for the appellant submitted that the evidence of PW 2 Pinki cannot be relied upon because Pinki has stated that she came to know later on that the person who had been assaulted was her uncle Pradip. Pinki has stated that she came to know that the person being assaulted was her uncle on arrival of her aunt at the spot. Learned counsel for the appellant submitted that if Pinki could not make out the identity of the person being assaulted, there is no chance of Pinki observing the assailants and correctly identifying them later on. It was not possible for Pinki to immediately come to know that the person being assaulted was her uncle Pradip because Pradip was surrounded by four assailants. Pinki has stated that on seeing the assailants, she called her aunt. Her aunt then reached the spot whereupon the accused persons ran away. It was only when the assailants ran away, Pinki was able to observe the injured. Moreover, from the record, it is clear that Pinki did not see the appellant for the first time when the incident occurred because Pinki has clearly stated that she knew the appellant who was known in the locality as "Miranda" and she had seen the appellant and co-accused Prakash coming to the house of co-accused Shankar and Mitha who are her neighbours. Thus, it is not as if Pinki had seen the appellant for the first time at the time of the incident. Pinki knew the appellant even prior to the incident. Moreover, Pinki has clearly stated that she witnessed the incident in the street light. Thus, as far as identification of the appellant by Pinki is concerned, we find that the same can be safely relied upon.

8. Thereafter, learned counsel for the appellant tried to make capital of the fact that Pinki has stated in her cross-examination that she came to know at the Police Station that the appellant is known as Miranda @ Raju. Learned counsel for the appellant, based on this averment, tried to contend that this shows that prior to the incident, Pinki did not know the name of the appellant. However, we find that this is not so. The averment of Pinki shows that she came to know at the Police Station that Miranda was also known as Raju.

9. In addition to the evidence of two eye witnesses i.e PW 1 Laxman and PW 2 Pinki, the prosecution is also relying on the evidence of PW 4 Savitra who was the mother of deceased Pradip. Savitra has stated that at about 7.00 p.m., she was preparing food at her residence. At that time, PW 1 Laxman and her son Pradip were near the electric cabin because the light had gone off. Pinki (PW 2) who was her granddaughter started shouting, hence, Savitra came running and found her son Pradip lying in a pool of blood. On seeing her, all the four accused i.e Shankar, Mithya, Chati and Miranda ran away. Savitra has stated that she knew the appellant Miranda even prior to the incident as he used to visit their neighbour's house and they used to refer to him as Miranda. The evidence of Savitra further shows that though she did not witness the actual incident, she saw that the appellant was holding a sword in his hand and she witnessed this fact in the street light which was falling on the spot.

10. Learned counsel for the appellant submitted that there were four accused persons and no witnesses have specifically stated that the appellant assaulted Pradip. We find that this contention is incorrect. PW 2 Pinki has clearly stated that all the four accused were attacking with swords and choppers. Learned counsel for the appellant placed reliance on the decision of the Supreme Court in the case of Shri Kishan & Ors. Vs State of U.P. , (1972) 2 SCC 537. She placed reliance on the observations in the said judgment wherein it is stated that the prosecution evidence did not indicate as to which of the accused / appellants had given the fatal blow. It was further observed that the evidence does not indicate as to which one of the accused-appellants inflicted the fatal blow on the head of Seru. As such, none of the accused can be held to be personally liable for the fatal injury. The liability can only be vicarious under Section 34 of IPC. Observing thus, the accused persons therein were convicted under Section 325 r/w 34 of IPC.

In the case of Shri Kishan (supra), it is seen that the deceased had sustained five injuries. The said five injuries are as under:-

1. Contused wound 1" x 1/2" bone on top of head with swelling on the forehead;
2. Contused wound 3/4" x 1/2" bone, front of right leg middle;
3. Interrupted abrasion 2" x 3/4" front of right leg;
4. Ecchymosis on right upper and lower eye lid 1/2" x 3/4""
5. Swelling on-left temporal region 2 1/2" x 2".

In the said case, according to the Doctor, the death was due to shock and hemorrhage as a result of the head injury. In the case of Shri Kishan (supra), all the four accused were armed with lathis and they assaulted Seru (deceased), Sadaphal and Nandlal. Learned counsel for the appellant submitted that in the present case also, death was caused on account of head injury. Learned counsel submitted that there is no material to show that the appellant assaulted the deceased on the head and hence, the appellant cannot be held liable under Section 302 of IPC.

11. In the present case, PW 3 Dr. Patil conducted the postmortem on the dead body of Pradip. In all, he noticed 36 injuries. Out of 36 injuries, 32 injuries are incised wounds on various parts of the body. The remaining injuries are contusions or contused lacerated wounds. The incised wounds were found on the head, chest and abdomen. Several incised wounds were found all over the body of Pradip. The cause of death in the present case is not only the head injury but it is due to multiple injuries. In view of the fact that the cause of death is due to head injuries and multiple injuries, we find that the decision relied upon by the learned counsel for the appellant cannot be made applicable to the facts of the present case.

12. On going through the evidence on record, we find that there is sufficient

evidence to show the involvement of the appellant in the murder of Pradip. Thus, we find no merit in the appeal. The appeal is dismissed.