
(2021) 07 BOM CK 0021

In the Bombay High Court

Case No : Criminal Appeal No.630 Of 1998

Ramdas Gulab Gangurde

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 05-07-2021

Acts Referred:

Indian Penal Code, 1860 — Section 307, 324, 506
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2021) 07 BOM CK 0021

Hon'ble Judges : Bharati Dangre, J

Bench : Single Bench

Advocate : Ashwini Jadhav, Anita Agarwal, Y.Y.Dabake

Judgement

Bharati Dangre, J

1. The appellant was charged for committing the offences punishable under Sections 307 and 506 of the Indian Penal Code (for short, "the IPC") and came to be tried by the learned Additional Sessions Judge, Pune vide Sessions Case No.270 of 1996. On culmination of trial, he stood acquitted of the aforesaid charge, but stood convicted for the offence punishable under Section 324 of the IPC and sentenced to M.M.Salgaonkar suffer R.I. for a period of six months and pay fine of Rs.5,000/-, in default to suffer imprisonment for one month. The appellant was held entitled for set off for the period he was in jail.

2. The injured is one Vilas Tukaram Chavan (PW 3) resident of 'Baudhavasti' at Dehugaon, where he owned certain house property in the said village and had tenants inducted in the said property. One Navnath Kshirsagar, husband of Janabai (PW 5) was one of the tenants of Vilas. The case of the prosecution is that some brawl had ensued between the son of Navnath and Janabai on one hand and son of the appellant on the other hand, which prompted the appellant to confront Navnath and his son with the same and since it was his belief that his son was injured by son of Navnath and for which act, he wanted some compensation. The incident, resulting in registration of the offence, occurred on

15th April, 1996 at 9.30 p.m. and in the said incident, Vilas was injured at the hands of the appellant and the appellant was charged for the offences punishable under Sections 307 and 506 of the IPC.

3. Heard learned counsel Ms.Jadhav for the appellant and learned APP Mr.Dabake for the State.

4. Learned counsel for the appellant would submit that the impugned judgment, by which the appellant stood convicted under Section 324 of the IPC, does not appreciate the evidence of the prosecution in the right perspective and the prosecution has failed to prove its case beyond reasonable doubt, which it is duty bound to prove. Learned counsel would submit that the variance and the discrepancies about the actual incident and M.M.Salgaonkar particularly, the testimony of PW 5 -Janabai causes a severe dent in the case of the prosecution when she states that the appellant went home and returned with knife within five minutes. Relying upon the testimony of Janabai, the learned counsel would submit that she is not the witness to be relied upon and others are interested witnesses. Further, she would submit that PW 1 is a habitual panch because he had admitted in the cross-examination that he was being regularly called whenever necessary and he had deposed that PW 6, the Investigating Officer had told him that the appellant was to produce a knife from the house of Gotise and had led him there. She would submit that no offence is made out under Section 307 of the IPC as the accused had no intention to cause the injury and that the evidence brought on record by the prosecution does not establish its case beyond reasonable doubt and rather the evidence makes the case improbable and unbelievable.

Per contra, learned APP, would submit that the trial court has appreciated the evidence in its proper perspective and minor inconsistencies in the version of the witnesses would not affect their credibility and in turn, the case of the prosecution. Learned APP would further submit that the appellant has been acquitted of charge under Section 307 of the IPC and his conviction is only for a period of six months, which is the minimum penalty, which could have been imposed on being convicted under Section 324 of IPC. Relying upon the testimony of the medical expert and his opinion, learned APP would submit that looking to the nature of injury and the hospitalization of the injured for 10 days, the act of the M.M.Salgaonkar appellant would clearly fall within the meaning of "hurt" under the IPC and that is how he has been rightly convicted under Section 324 of the IPC. He would, therefore, urge that the appeal deserves to be dismissed.

5. The case of the prosecution about what transpired at the spot has been brought on record through the three witnesses, Rajendra (PW 2), who is the complainant and cousin of injured Vilas, the injured (PW 3) and wife of Navnath Kshirsagar, Janabai (PW 5).

Rajendra, who lodged the complaint, state that at 9.00 p.m. on 15th April, 1996,

he had been to the house of his cousin Vilas for dinner and before the dinner was served, they were chit-chatting. A commotion was heard outside the house and, therefore, the complainant-Rajendra and injured Vilas came out of the house to ascertain its cause. A brawl was going on between Navnath and the appellant and he could gather that it was on account of Navnath's son having broken the hand of the appellant's son and the appellant demanding that Navnath should pay the compensation and arrange for the expenses of his treatment. He threatened Navnath with dire consequences. PW 2 state that his cousin Vilas intervened so that the discord between the two can be resolved and he said that the compensation issue can be sorted out in the morning hours. Thereupon, the appellant told Vilas not to interfere and to leave the place. Vilas, however, refused to move from the place, which infuriated the appellant, who took out the knife from the pocket of his pant and gave a blow on the stomach of Vilas and fled from the spot. Thereafter, the complainant, Sunil, Kisan and Navnath lifted him and took him to the M.M.Salgaonkar dispensary as he was bleeding and came to be admitted in Lokmanya Hospital, Chinchwad. He reported the incident to the police and the investigating machinery was set into motion. Exhibit 17 is the complaint of PW 2. He identified his signature on the complaint.

In the cross-examination, he gave better particulars of the altercation, which was going on between Navnath and the appellant and he mentioned about the presence of Sunil (another tenant of Vilas), Kisan and Navnath at the spot of occurrence. He denied the suggestion, that there is no electric pole at the place where the incident took place and stated that there was an electric pole belonging to Grampanchayat. He deposed that he did not intervene in the quarrel, but his cousin Vilas did and he denied the suggestion that Vilas either abused the appellant or rushed at him or committed any act which enraged him. He specifically deposed that he saw the appellant giving only one blow to Vilas. He also denied the suggestion that while the appellant was being chased, Vilas fell in the gutter.

6. Supporting the complainant is the testimony of the injured Vilas, who was examined as PW 3. He deposed in sync with PW 2 about his presence in the house for dinner, when a commotion was heard. PW 3 has deposed that Navnath agreed that he would pay some compensation, but since it was a day of festival, he expressed that the issue can be sorted out some other time. However, the appellant paid no heed to his request. PW 3 further stated that he intervened with an intention to put an end to the squabble and also offered to pay the compensation on the next day so as to avoid the quarrel. The M.M.Salgaonkar appellant, however, did not listen to him and asked him to stay away. PW 3 deposed that the appellant took out a knife and gave its blow on his stomach, causing a bleeding injury, pursuant to which, he was admitted in the hospital at Chinchwad. He corroborate PW 2 when he state that at the time of incident, Navnath, his wife, Kisan, Rajendra (the complainant) and Sunil Ghogare were present. There is omission about his statement that he had offered to pay the amount of compensation and that the matter would be sorted out after festival.

In the cross-examination, he reiterates his original version in chief and state that the entire incident was over within 2-3 minutes. The injured identified the muddemal knife shown to him.

7. The third witness, who was present on the spot and examined by the prosecution is PW 5-Janabai, who deposed that while she was present in the house at about 9.00 p.m., Mr. and Mrs.Gangurde came to her house questioning them about some mischief being committed by their son. She deposed that the appellant was assured that they are ready to pay medical expenses though their son was innocent. At that time, Vilas came out and he assured that the matter would be sorted out on the next day. PW 5 deposed that the appellant abused Vilas and questioned him about his locus to intervene, which was responded by Vilas by saying that Kshirsagars' were his tenants and were poor. PW 5 deposed that Gangurde (the appellant) then took out the knife and gave its blow to Vilas, who sustained the injury and he ran away. She categorically averred that the blow of knife was given on the abdomen of M.M.Salgaonkar.

She has been cross-examined and the defence was able to extract an omission about the injured being abused by the appellant and questioning about his locus. She reiterate that they had agreed to pay medical charges as per the bills and the subject ended there. Responding to a question that Vilas came there after talk was over, she admit the same, but immediately rectify herself and depose that Vilas came out when the talk was going on and the talk was going on for about 10 to 15 minutes. She deny that Vilas had hurled any abuses at the appellant. She also depose that the appellant went home and brought a knife, by which he gave one blow to Vilas. She give the description of the knife and deny the suggestion that she was deposing falsely.

8. Through the above three witnesses, the prosecution has proved its case to the effect that when a quarrel was going on between Kshirsagars and the appellant, Vilas the land owner of the Kshirsagar, came out and sought to intervene, which upset the appellant and he took out a knife and stabbed him in his stomach. The incident is witnessed by PW 2 and PW 5 and the injured himself give his version about the incident, which is in sync with the evidence of the eye witnesses. The minor discrepancy about the appellant rushing home and bringing the knife in the version of Janabai, which is absent in the version of PW 2 and PW 3, is not of much significance since she clarifies that he came back in five minutes and there is no inconsistency in the most vital portion of the case of the prosecution that it is with this knife, the appellant gave a blow to Vilas, causing a bleeding injury. The prosecution has, thus, M.M.Salgaonkar successfully proved its case that without any provocation at the hands of the injured, the appellant assaulted him by means of a knife and injured him. None of the witnesses present on the spot have attributed any overt act to the injured and the consistent version of the prosecution witnesses is that he attempted to intervene and sort out the issue when the altercation took place in his presence.

9. Turning to the nature of injury sustained by the victim, the prosecution has

examined Dr.Vikas Patil (PW 7), the Medical Officer in the Lokmanya Hospital, who was present on duty on 15th April, 1995 when Vilas Chavan was brought to the hospital. PW 7 had examined him and noted one injury being, penetrating wound 2 cm X 1 cm and issued a certificate where he described the injury as, "penetrating wound in upper abdomen with liver tear and hemoperitoneum". He also issued the certificate on the very same day certifying that Vilas Chavan, who was admitted in the hospital at 10. 00 p.m. on 15th April, 1996 with history of stabbing with knife, is not in a condition to give the statement.

PW 7 deposed that the wound was incised wound but the depth of the injury could not be ascertained due to clotting of blood. He deposed that the patient required admission in Intensive Care Unit and remained in the hospital for 10 days. He further deposed that an emergency exploratory laparotomy of abdomen (surgery) was required to be performed. The doctor opined that the injury might have been caused by any sharp object and when the muddamal (article No.5) mentioned in the property list at Exhibit 18, being knife, was shown to him, he admits that the injury in the abdomen could be caused M.M.Salgaonkar by the said knife. PW 7 also stated before the Court that the injury was a serious injury and if the patient would not have been treated in time, then, the said injury would have resulted into his death. The testimony of the medical expert further strengthen the case of the prosecution that the injury suffered by PW 3 was an incised wound due to which, the injured required hospitalization for 10 days and even the surgery was required to be performed.

10. The knife, which has caused the said injury, came to be recovered under the memorandum panchanama drawn on 16 th April, 1996 and the same has been proved through PW 1, a panch on the memorandum panchanama. The panchanama exhibited as Exhibit 15 reveals that on being arrested, the appellant led to the discovery of the weapon, which was concealed in the house of one Ashok Gotise, in the neighbourhood, beneath the mattress on a bed. The knife came to be seized pursuant to the said discovery and has been identified by PW 2 and PW 3 as well as by the panch witness. The knife is found to be concealed in the house of his neighbour and recovered from a place, which was only known to him and it is the appellant, who led the investigating team to the said knife, which PW 7 opined could cause the injury mentioned by him in his certificate (Exhibit 33).

11. The prosecution has also examined Ashok Gotise from whose house, the knife was discovered at the instance of the appellant as PW 4. He had deposed that on 15th April, he had gone out after dinner and on his return, his wife told him that one person had concealed himself in their house and he found M.M.Salgaonkar the said person hidden in bathroom of the house. Since the person who was hiding himself in the house was his neighbour, he was acquainted to him and on being spotted, the appellant told PW 4 to keep quiet and not to raise any alarm. He also stated that he went to inform the matter to the police-patil of the village, but he could not meet him. The witness also

deposed that the canvass below the mattress was stained with blood, but the police did not seize it. The said witness also lent support to the discovery of knife vide discovery panchanama, which was proved by PW 1.

12. The trial court has disbelieved the prosecution case about discovery of the knife and doubted it on the count that the appellant had chosen the house of his neighbour to conceal the knife and the panch (PW 1) is a habitual panch and he has admitted so in his cross-examination that he had acted as panch on 2-3 occasions and it is Mr.Datar (PW 6), the Investigating Officer, who had told him that the appellant was to produce a knife. On this count, the evidence has been disbelieved.

The said finding rendered by the trial court is not acceptable, since merely because PW 1 has acted as panch on earlier occasion, will not discredit him completely unless on some other count, his credentials appears to be doubtful. If the memorandum panchanama is carefully read, what it records is that on the appellant being arrested in the concerned CR, he has given his statement, which led to discovery of the knife. The panchanama record that the panch and the police accompanied the appellant in the police jeep to 'Baudh Vasti' and he led the panchas and the police to a house and told that M.M.Salgaonkar he had concealed the knife in the said house. The owner of the house was called out and the appellant led them to a room in the house where he had concealed the knife under the mattress on one bed. The Investigating Officer (PW 6) had specifically deposed that while in custody, in presence of the two panchas, the appellant agreed to produce the knife and accordingly, his statement was recorded vide Exhibit 14 and the knife was discovered under the mattress over a cot in the house of Ashok Gotise and it came to be seized. The trial court did not accept the case of the prosecution about the discovery of knife though the panchanama in its preface record that PI Datar had called the panchas as the arrested appellant was to lead them to one person's house and take out something from his house and the panch has to witness the said discovery. True, that the wordings in vernacular in the panchanama, if carefully read, would reveal that it was the Investigating Officer who told the panchas that the appellant is likely to show something from somewhere, but PW 6 who appeared before the Court, stated that while the appellant was in custody, he agreed to produce the knife and, accordingly, his statement was recorded. The said version of PW 6 has not been contradicted, but in the cross-examination, PW 6 reiterate that the knife was below the mattress and he specifically deny the suggestion that the knife was not in the house of Gotise and the appellant did not produce the same. There is no reason why the Investigating Officer would falsely implicate the present appellant. Further, it is also not open for assumption as to why the appellant would conceal the knife in his neighbour's house instead of his own house. It is not for M.M.Salgaonkar the court to assume things when the facts point out otherwise.

13. The appellant came to be examined under Section 313 of the Criminal

Procedure Code where he deny the case of the prosecution and when asked, why the witnesses are deposing against him, he respond by stating that they are doing so at the instance of Vilas, the injured and, particularly, PW 5- Janabai, who is his tenant.

14. It is this framework of the evidence which was laid before the trial court. when the appellant was subjected to the trial and transformed into a convict. However, the trial court acquitted him of the offence punishable under Section 307 of the IPC since the prosecution had failed to prove that the appellant had committed the act with an intention to commit the murder or causing such bodily injury, knowing fully well that it is likely to cause his death. On the basis of the evidence brought on record, the trial court rightly arrived at a conclusion that the appellant had voluntarily caused hurt to Vilas by means of the knife and, therefore, he has committed an offence punishable under Section 324 of the IPC for voluntarily causing hurt by dangerous weapon or means. Considering that the appellant is of young age and the Government servant and the incident being a result of an impromptu act, the trial court, while awarding the sentence has shown leniency and though Section 324 of the IPC prescribes punishment of imprisonment of either description for a term which may extend to three years or with fine or with both, the appellant came to be sentenced to suffer R.I. for a period of six months and pay fine of Rs.5,000/-.

15. Perusal of the judgment by the learned Additional Sessions Judge, Pune does not reveal any perversity. The learned Judge has taken a right path by acquitting the appellant under Sections 307 and 506 of the IPC, but convicting him under Section 324 of the IPC for voluntarily causing hurt to victim Vilas by means of a knife, which is undisputedly a dangerous weapon, which has a blade of 5 ½ inch in length and its total length being 6 ½ inch and is a sharp weapon as can be seen from Exhibit 15. The learned Judge has also imposed a befitting punishment for his conduct though the appellant was shown leniency on the grounds to be found in the impugned judgment. The said judgment cannot be said to be suffering from any legal infirmity and deserves to be upheld. Resultantly, the appeal stands dismissed.