

(2015) 09 BOM CK 0205

In the Bombay High Court

Case No : Criminal Appeal Nos. 276, 345/2012 and Criminal Appeal No. 16/2013

Shankar and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 307, 34, 342

Citation : (2015) 09 BOM CK 0205

Hon'ble Judges : A.B. Chaudhari and I.K. Jain, JJ.

Bench : Division Bench

Advocate : Sanghamitra Wadmare, Advocate, for the Appellant; K.S. Patil, APP, for the Respondent

Judgement

A.B. Chaudhari, J.—Being aggrieved by the judgment and order dated 7.3.2012 passed by the IVth Additional Sessions Judge, Nanded, by which three appellants namely [1] Shankar s/o Malappa Palnoor, [2] Bhaskar s/o Vasantrao Matange and [3] Pochiram s/o Maroti Kumor in Criminal Appeal No. 276/2012 were convicted for offence punishable u/s 307 r/w 34 and 120-B of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for seven years and fine of Rs. 10,000/-, so also u/s 342 r/w 34 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for six months, the Criminal Appeal No. 276/2012 was filed by the appellants in this Court.

2. Criminal Appeal No. 345/2012 was filed by the State for enhancement of the sentence.

3. Criminal Appeal No. 16/2013 was filed by the victim in the case namely Dhananjay Laxmanrao Deshpande also for enhancement of the sentence.

FACTS :

4. Briefly stated, it is the case of the prosecution that on 12.3.2010, the complainant Jayant Ramchandra Deshpande lodged a complaint at Shivajinagar Police Station, Nanded, stating that he was working with Dr.Dhananjay

Laxmanrao Deshpande on monthly salary for running Shriram Medical Stores, Pawadewadi Naka, Nanded. There is another medical shop by name "Sanket Medical and General Stores" run by appellant no. 1 -Shankar beside the doctor's clinic since before five to six years. Dr.Dhananjay Deshpande used to send the patients for purchasing medicines from his shop but since the dispute arose between them, Dr.Dhananjay Deshpande opened his shop with effect from September, 2009 thereby the appellant no. 1 -Shankar getting enraged. On 12.3.2010, as usual, Dr.Dhananjay Deshpande at about 9-30 p.m. was going after finishing his work when the appellants caught hold of him, pulled him in the medical shop of the appellant no. 1 -Shankar, brought down the shutter of the shop and then inside the medical shop of the appellant no. 1, all the appellants started assaulting him by means of scissor, screw driver and a wooden pestle. Dr.Dhananjay Deshpande started shouting for help in the name of Jayant. Jayant raised hue and cry and ultimately informed the Police, which visited the shop and upon opening the shop, found Dr.Dhananjay Deshpande lying in the pool of blood with injuries on his person. The FIR was registered vide Crime No. 47/2010 and investigation was conducted by Police Inspector Shri V.B. Kamble. The Investigating Officer, as usual, collected the evidence, prepared a charge-sheet and filed in the Court for offence punishable u/s 307 r/w 34, 120-B and 342 r/w 34 of the Indian Penal Code. The trial was held. The trial Court convicted the appellants as above and hence the present appeals.

ARGUMENTS :

5. In support of the Criminal Appeal No. 276/2012, the learned counsel for the appellants submitted that the evidence of PW1 Jayant Deshpande and PW6 Dr.Dhananjay Deshpande was liable to be rejected since both of them are interested witnesses and having the relationship of master and servant. It is submitted that PW1 Jayant was getting the regular salary of Rs. 3,000/- per month from his master i.e. Dr.Dhananjay Deshpande and, therefore, the testimony of the interested witnesses should not have been accepted by the learned trial Judge. She then submitted that the locality is a crowded locality and the time viz. 9-30 p.m. was such that many were closing their respective shops and many neighbouring shop owners were present, but then the prosecution did not examine any independent witness to prove its case and on the contrary chose to tender the evidence only of the interested witnesses, as stated above. She then submitted that non-examination of the independent witnesses throws doubt on the truthfulness of the prosecution case. The learned counsel for the appellants then submitted that the evidence of doctors namely PW9 Dr.Balasaheb Masare and PW10 Dr.Ruturaj is also required to be scanned carefully since they had obviously favoured or obliged PW6 Dr.Dhananjay Deshpande being of their profession. The learned counsel for the appellants continued her arguments and invited our attention to the evidence of PW9 Dr.Balasaheb Masare and submitted that there were only four minor injuries as described by the said witness and, therefore, in no case offence u/s 307 of the Indian Penal Code i.e. of attempt to commit murder, would be said to have been proved by the prosecution and,

therefore, alternatively she submitted that the conviction u/s 307 of the Indian Penal Code deserves to be modified so also the sentence as a sequel.

6. Per contra, in support of the Criminal Appeal No. 345/2012, the learned APP supported the impugned judgment and order, and submitted that the evidence of PW1 Jayant and PW6 Dr.Dhananjay corroborates each other. The fact that the Police party was required to open the shutter of the shop for taking out PW6 Dr.Dhananjay Deshpande, who was lying in a pool of blood in the shop of the respondent no. 1 - Shankar is a very strong circumstance about the commission of crime. That the respondents -accused are the authors of the crime is evident from the evidence of PW1 Jayant and PW6 Dr.Dhananjay, whose evidence is consistent without any blemish, and it is trustworthy. There is no infirmity whatsoever in the evidence of these witnesses and, therefore, the judgment of the trial Court cannot be faltered in accepting their testimony. He submitted that the conviction and sentence recorded by the trial Court is correct, proper and cannot be interfered with. The learned APP alongwith learned counsel Shri Ajay Deshpande appearing for the victim in Criminal Appeal No. 16/2013, prayed for dismissal of the Criminal Appeal No. 276/2012 filed by the respondents -accused and for enhancement of the sentence.

7. In Criminal Appeal No. 345/2012 filed by the State, the learned APP, and in Criminal Appeal No. 16/2013 filed by the victim, learned counsel Shri Ajay Deshpande, submitted that the sentence awarded by the learned trial Judge is only of seven years, which is too less in the circumstances of the case and looking to the nature of injuries caused by the respondents -accused to the victim Dr.Dhananjay Deshpande. The manner in which Dr.Dhananjay Deshpande was assaulted by the respondents - accused by pulling him in their shop with deadly weapons like scissor, screw driver and wooden pestle and the manner in which the injuries were caused on the vital part of the body namely head on which some fractures have been found so also the presence of hematoma shows that there was a concrete intention to commit murder of Dr.Dhananjay Deshpande and, therefore, the sentence of seven years awarded by the learned trial Judge is wholly illegal and ought to be enhanced to the highest sentence prescribed by the provision of Section 307 i.e. imprisonment for life and, therefore, they prayed for allowing their appeals.

8. The learned counsel for the appellants -accused in the Criminal Appeal No. 276/2012 opposed the appeals preferred by the State as well as Dr.Dhananjay Deshpande, and submitted that the accused persons do not have any criminal background and looking to the injuries namely only four which are also superficial and simple, the question of awarding any sentence more than seven years does not arise and, therefore, both the appeals i.e. Criminal Appeal Nos. 345/2012 and 16/2013 are required to be dismissed.

CONSIDERATION :

9. We have heard the learned counsel for the rival parties at length in all these

three appeals. We have perused the entire evidence and the entire record in this case. We have gone through the reasons recorded by the learned trial Judge for making the order of conviction u/s 307 of the Indian Penal Code. We have given our conscious thought to the entire material on record carefully. Perusal of the evidence of PW1 Jayant and PW6 Dr.Dhananjay, to our mind, clearly shows that the evidence of both these witnesses has not at all been shaken in their cross-examination. Their evidence is corroborative to each other and fully consistent as per the prosecution case. There is no infirmity whatsoever in their evidence. PW1 Jayant in paragraph nos. 5 and 6 of his evidence has stated as under:-

"5. At about 09.15 p.m., doctor came out of his dispensary and went somewhere, therefore, I came from medical shop and stood in front of the dispensary. I saw the shutter of Sanket Medical Stores was down and heard the shouts of Dr.Deshpande from inside the Sanket Medical Shop. Doctor was saying like, "he Jayanta these three persons are assaulting me and save me." I tried to open the shutter, however, it was closed from inside. Then I went to Vijay Tailor and Ashtavinayak medical shop. I told them that three persons are assaulting Dr.Deshpande in the medical shop. Therefore, asked for police phone number. I could not get telephone number from them. Then I go to Shivaji Nagar Police Station on my scooter, narrated the incident that three persons are assaulting Dr.Deshpande in Sanket medical shop. Then myself and police returned to Sanket Medical shop. I shown the shutter to police of medical shop. Thereafter I go to inform the brother of Dr.Deshpande who resides by the side and returned back.

6. By that time police had opened the shutter of Sanket medical shop. I saw Dr.Deshpande in the pool of blood. Police took the Doctor Deshpande in the hospital. Then I closed the medical shop and go to Shivaji Nagar police station and lodged the complaint. Complaint now shown to me is the same, it bears my signatures, its contents are true and correct. It is at Exh.25. The accused before the Court are the same."

PW6 Dr.Dhananjay Deshpande has stated in paragraph nos. 5 and 6 of his evidence thus:

"5. On 12.3.2010 as usual till 9 to 9.15 p.m. I examined the patients and during that time I came out of my clinic in corridor. At that time accused Bhaskar by pushing me took to his Sanket Medical Stores. Thereafter he put down the shutter of the said medical. Shankar Palnoor was also in the medical stores and one unknown person was there. Bhaskar was also there. Then I gave loud call to Jayant. Then Shankar told me that, "Doctor Tula Sodnar Nahi" at the same time he told that Tu Maza Band Padles Tula Khattam Kelyashivay Sodnar Nahi. Thereafter he dealt scissor blow on my head and shoulder, as such the blood was oozing from the wound. Bhaskar and the unknown person were not leaving me. Shankar was assaulting me with scissor and screw driver. Shankar dealt screw driver blow on my right parietal region. As the blood was oozing from my wound I was giving repeated calls to Jayant. Thereafter Shankar dealt Pistal blow on my

head. As such I fell down became unconscious. When I opened my eyes, at that time I was at Yeshoda Hospital. I was indoor patient at Yeshoda Hospital Nanded for about 28 days. On account of assault my right eye is completely damaged. I learnt from police about the name of third unknown person that he is Pochiram. The accused before the court Pochiram is the same at the same time accused Shankar and Bhaskar before the court are the same. At the same time my middle finger of the left hand was fracture in the said assault, wiring operation was operated on the same. At the time of incident I was wearing sky blue pant and white shirt. At the same time I was wearing Sando Banian. The clothes were soaked in the blood. I can identify those clothes if shown to me. Article No. 8 Pant, Article No. 10 Banian before the court are the same, article No. 9 Shirt before the court probably is the same as the same is soaked with blood. Shankar was wearing light checks shirt. Article No. 11 shirt before the court is the same. Article 12 shirt before the court was on the person of Pochiram. Bhaskar had also big check shirt. Article No. 15 before the court is the same.

6. I can identify the weapons with which I was assaulted. Article No. 1,6 to 7 before the court are the same."

10. Perusal of the evidence of both these witnesses quoted by us above in terms show that the prosecution has proved everything that is required to be proved. We are fully satisfied that these two witnesses have proved the case of the prosecution to the hilt and there is no infirmity whatsoever in their evidence. Upon perusal of the cross-examination of both these witnesses, we have seen the omissions, which were brought on record in the evidence of both these witnesses, but we find that one or two omissions brought in the cross-examination are not at all material and have nothing to do with the incident proper about which there is no inconsistency or infirmity whatsoever. It is submitted that no neighbour or independent witness was examined by the prosecution and it only chose to rely on the interested witnesses, does not appeal to us. It may be true that PW1 Jayant and PW6 Dr.Dhananjay are the interested witnesses, but then PW6 Dr.Dhananjay is the victim i.e. a person who was seriously injured and he would not allow the real assailants to go scot free. There is no reason why he should speak untruth before the Court. The caution that is to be taken for examining the evidence of the interested witnesses has been undertaken by us and looking to the contemporaneous evidence of both these witnesses and particularly when the Police party was called by making telephone call and had arrived on the spot and were required to enter the shop run by the appellants by opening the shutter of their shop to find Dr.Dhananjay Deshpande lying on the floor in a pool of blood. The fact that he was lying in the pool of blood in a shop run by the appellant -accused -Shankar is a very strong circumstance against the appellants. PW6 Dr.Dhananjay Deshpande has identified all the accused persons before the Court and also specified the role of particular accused persons.

11. Next submission that there are only four injuries on the person of PW6

Dr.Dhananjay as deposed by PW9 Dr.Balasaheb Masare also does not impress us. The reason is that he is the doctor who immediately examined the injured PW6 Dr.Dhananjay on the external and parietal examination. The detailed examination was carried out by PW10 Dr.Ruturaj and we quote his evidence from paragraph nos. 2 and 3, which reads thus: "2] On arrival of patient was unconscious. There was history of nasal breathing and vomiting. Accordingly, I examined him and found following injuries.

1. CLW over right occipital region 3 cm x 1 cm oblique.
2. CLW over right occipital region 3 cm x 1 cm oblique.
3. Sutured wound over right parietal region 5 cm oblique.
4. CLW over mid parietal region 5 cm x 1 cm oblique.
5. CLW over mid parietal region 3 cm x 1 cm oblique.
6. CLW over left fronto parietal region 7 cm x 1 cm oblique.
7. Two sutured wounds over right frontal region 3 cm x 2 cm oblique.
8. Bilateral peri-occipital edema.
9. CLW over left cheek 2 cm x 1 cm oblique.
10. Nasal bleeding.
11. Abrasion over right leg anterior surface upper 3rd 2 cm x 2 cm.
12. Left middle finger deformity fracture proximal phalynx 13 C.T. scan brain suggestive multiple cerebral contusions.
13. bilateral frontal parietal temporal region with multiple small intra cerebral hematoma. Same region micro in right frontal region with left fronto parietal thin sub-dural hematoma with subarachnoid hemorrhage with gross pneumocephalus with diffuse edema with multiple fractures right lateral orbital bone with right fronto parietal bone with depressed and displaced fracture fragments.

Two were sutured injuries rest were fresh. May be caused by hard and blunt object. Injury Nos. 12 and 13 are of grievous nature. Rest are of simple nature. Accordingly, I issued the medical certificate. Now shown to me is the same. It bears my signature. Its contents are true and correct. It is at Exh.52. The patient was discharged on 9.4.2010.

3] If the patient could not have been treated in time the injury Nos. 12 and 13 would have caused his death. There was no vision in right eye of the patient. These injuries were possible with the help of scissor, pistol or screw driver. These injuries are possible by the weapons before the Court pistol, scissor and screw driver."

Perusal of the above evidence of PW10 Dr.Ruturaj, to our mind, clearly shows

that a fracture was caused on the left middle finger. That apart, the injury was caused on the head and he found depressed and displaced fracture fragments due to the fracture right to the fronto parietal bone, right lateral orbital bone so also sub-dural hematoma with subarachnoid hemorrhage with gross pneumocephalus with diffused edema. It clearly appears from the above injuries that the appellants had given him blows by means of deadly weapons like pestle, scissor and screw driver. The injury on the head caused by them is so serious that PW10 Raturaj has described the same in paragraph no. 3 that had the patient not received the medical aid in time, the injury nos. 12 and 13 would have caused his death. Looking to the medical reports and the entire material, we are satisfied and we agree with the conclusion recorded by the doctors since we find from the injury nos. 12 and 13 that the displaced fracture fragments were made because of the blow given on the head by hard object. The hematoma had gathered inside the frontal parietal temporal region and could have been very dangerous. We are, therefore, satisfied that the appellants - accused had with full intention and knowledge assaulted PW6 Dr.Dhananjay Deshpande, who would have died if he would not have received the medical help at proper time. We are, therefore, fully satisfied with the reasons recorded by the trial Judge that the conviction u/s 307 of the Indian Penal Code was correctly recorded. We concur with the findings of the learned trial Judge in that behalf.

12. The next question is about the sentence of seven years awarded by the learned trial Judge. We find that the manner in which the incident had taken place and the injuries caused to PW6 Dr.Dhananjay Deshpande by the appellants -accused, the assault was of brutal nature. The appellants - accused thought that they would themselves teach a lesson to PW6 Dr.Dhananjay Deshpande and had a courage to pull him inside the shop, put down the shutter and then assault him with deadly weapons and then leaving him the pool of blood. The learned trial Judge, in our opinion, has correctly awarded the sentence of seven years and fine, and we do not find any error in the said finding recorded by the learned trial Judge as to the award of sentence.

13. We, however, find that the learned trial Judge has recorded conviction of the appellants -accused for offence u/s 120-B of the Indian Penal Code. Upon perusal of the entire evidence tendered by the prosecution, we are satisfied that there is absolutely no evidence on record whatsoever to infer any conspiracy contemplated u/s 120-B of the Indian Penal Code. The conviction u/s 120-B of the Indian Penal Code appears to have been recorded mechanically and without considering the import of the said provision. We are, therefore, inclined to reverse the said finding of conviction u/s 120-B of the Indian Penal Code. In that view of the matter, as a sequel, we have come to the conclusion that there is no merit in these appeals and the same will have to be dismissed, which we do hereunder.

14. Criminal Appeal Nos. 345/2012 and 16/2013 by the State and Dr.Dhananjay Deshpande - the victim, were filed for enhancement of sentence i.e. for award of

sentence above seven years for the conviction u/s 307 of the Indian Penal Code. We are satisfied that the sentence of seven years awarded to the accused persons, which is rigorous, alongwith the fine of Rs. 10,000/-, is an enough lesson to the appellants -accused and there is no reason for us to substitute the view about sentence taken by the learned trial Judge. There is no special ground made out in any of these two appeals for sentencing them to the imprisonment for life as claimed by the appellants in these appeals. There is no criminal background to any of the appellants - accused and it clearly appears that it is out of their anger and rage, they assaulted PW6 Dr.Dhananjay Deshpande. But then the criminal jurisprudence does not believe in the theory of eye for an eye. We are, therefore, not inclined to entertain the Criminal Appeal Nos. 345/2012 and 16/2013 and, therefore, we dismiss both these appeals accordingly.

15. In the result, we make the following order :-

[A] Criminal Appeal No. 276/2012 filed by the appellants namely Shankar Malappa Palnoor; Bhaskar Vasantrao Matange and Pochiram Maroti Kumor is dismissed.

[B] Criminal Appeal No. 345/2012 filed by the State for enhancement of sentence is dismissed.

[C] Criminal Appeal No. 16/2013 filed by Dr.Dhananjay Laxmanrao Deshpande, the victim, for enhancement of sentence over and above imprisonment of seven years awarded by the trial Court, is dismissed.