
(2017) 02 BOM CK 0029
In the Bombay High Court
Case No : Criminal Appeal No. 313 of 2015

Shri Bharat Janarao Duryodhan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2017) 2 AIRBomRCri 289

Hon'ble Judges : B.R. Gavai and Kum. Indira Kanahaiyalal Jain, JJ.

Bench : Division Bench

Advocate : None, for the Appellant; Mr. R.S. Nayak, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Amravati dated 17.6.2014 in Sessions Trial Case No. 141/13, thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.10,000/and in default, to suffer further S.I. a period of three months, the appellant has approached this Court.

2. The prosecution story, in nutshell, as could be gathered from the material placed on record is thus :

On 24.2.2013 deceased Sagar Joshi, Gajanan Parise, Dinesh Bhoyar, Ravi Gole, Akshay Bhatkar, Pintu Bele and other boys were playing cricket on open ground near cemetery of village Kalamjapur. PW.3 Dipak Gole also joined them at around 4 p.m. While they were playing cricket at around 5 p.m. accused came on the ground and started abusing deceased Sagar Joshi. There was scuffle amongst them and the boys playing the cricket intervened and rescued them. Thereafter accused proceeded towards the bank of river between Kalamgaon and Kalamjapur and again started abusing Sagar. Sagar Joshi went to beat him.

During the said quarrel, accused gave blow of knife on the neck, chest and stomach of Sagar Joshi and hence Sagar fell down and started shouting. Thereafter accused sat on his back and gave blows of knife. PW.3 Dipak and others then rushed to the spot. Accused ran away with knife while Sagar was lying on the bank of the river. PW.3 Dipak rushed to his house and brought his auto. The deceased was put in the autorickshaw and brought to Rural Hospital, Chandur Railway. After preliminary treatment, he was referred to Amravati. While he was being brought to Amravati, he died in the ambulance.

3. On receipt of the information received by the Police Station, crime was registered bearing No. 27/13 for the offence punishable under Section 302 of the Indian Penal Code. On the basis of First Information Report, investigation was set into motion. At the conclusion of investigation, a charge-sheet came to be filed against the accused in the Court of learned J.M.F.C., Chandur Railway. However, since the case was exclusively triable by the Court of Sessions, the same came to be committed to the learned Sessions Judge, Amravati. The learned trial Judge framed the Charge below Exh. 2 for the offence punishable under Section 302 of the Indian Penal Code. The accused pleaded "not guilty" and claimed to be tried. At the conclusion of the trial, the learned trial Judge passed the order of conviction and sentence against the appellant, as aforesaid. Being aggrieved thereby, the present appeal has been filed.

4. With the assistance of the learned A.P.P., we have scrutinized the entire evidence on record.

5. PW.3 Dipak is the first informant. He states that he knows both the accused as well as the deceased since both are residents of village Kalamjapur. He further states that there is a river between the village Kalamgaon and Kalamjapur. On the day of the incident, he had gone to play cricket on the ground where the deceased, Pintu Bele, Akshay Bhatkar, Gajanan Parishe and Dinesh Bhoir and other 56 persons were already playing the cricket. At around 4 to 4.30 p.m. the accused came on the ground. He started abusing the deceased. There was a quarrel between them and this witness rescued them. Thereafter accused Bharat went to Kalamgaon side and from the bank of river started abusing Sagar Joshi. Thereafter Sagar went to beat him with stone. There was scuffle between them. Accused took out knife and gave a blow of it on the stomach of Sagar. Thereafter accused sat on the back of Sagar and gave blow of knife. While the incident was going on, this witness and others went near the bank of the river. The accused ran away. This witness came to his home, took autorickshaw and took Sagar to Government Hospital at Chandur Railway. At Chandur Railway, he was treated and referred to Amravati. However, when he was put in the ambulance he was found to be dead. Though this witness has been thoroughly cross-examined, nothing damaging has come in his evidence. The First Information Report lodged by him immediately after the incident also corroborates his version.

6. PW.4 Arvind is another eyewitness. He states that while they were playing, the accused came there and thereafter there was quarrel between Sagar and

accused. While they were rescuing the quarrel, Sagar's mother came there. Thereafter accused went towards the bank of the river. From the bank of the river, accused Bharat was abusing Sagar. Therefore, Sagar went near him. Then the accused assaulted Sagar and Sagar had also assaulted him. The accused was having weapon in his hand by which he assaulted Sagar. The accused had given the blows of weapon on Sagar's back, stomach and neck. Thereafter he narrates about PW.3 Dipak going to bring autorickshaw and the deceased being taken to Chandur Railway. Even in case of this witness, in spite of thorough cross-examination, his testimony in so far as the attack on the deceased by the accused is concerned, the same has remained unshattered.

7. PW.6 Ravi is another eyewitness. His evidence is also same as that of the other two eyewitnesses. No doubt that PW.3 Dipak and PW.6 Ravi are interested witnesses since they are related to the deceased. However, merely because the witnesses are interested, cannot be a ground to discard their testimony. The only requirement is that the testimony of these witnesses has to be scrutinized with greater caution and the conviction could be based if their testimony is found cogent, trustworthy and reliable. We find that the testimony of PW.3 Dipak and PW.6 Ravi is cogent and reliable. Apart from that, it is corroborated by independent witness, i.e. PW.4 Arvind.

8. In so far as the recovery under Section 27 of the Indian Evidence Act of the weapon alleged to be used in the crime and the clothes of the accused are concerned, the same are from the place accessible to one and all and as such, we find that no reliance could be placed on the said recoveries.

9. However, we find that since the ocular testimony of three eyewitnesses is found to be trustworthy, reliable and cogent, the prosecution has proved beyond reasonable doubt that it is the present appellant who is the author of the crime.

10. The next question that we will be called upon to answer is as to whether the case would fall under Section 302 or under Part I or Part II of Section 304 of the Indian Penal Code. No doubt that the incident is an outcome of scuffle between the deceased and the appellant. In ordinary course, the case could have come under Part I of Section 304 of Indian Penal Code. However, it is to be noted that the deceased has sustained the following injuries :

- (1) Stab injury 1 inch x 1 inch x 1.75 inch at middle of the left clavicle,
- (2) Stab injury 1 inch x ? inch x 1.5 inch above umbilicus in mid line of abdomen,
- (3) Stab incised wound 2 inch x 1.5 inch x 2.5 inch at 5 inch below the left axillary fold lateral side of chest which is oblique,
- (4) Stab injury 1 inch x ? inch x 1.5 inch at left side of back, 12 inch from shoulder,
- (5) Stab injury 1.5 inch x ? inch x 1.25 inch at left side of back, 14 inch from shoulder,

(6) Stab injury 1.5 inch x ? inch x 1.75 inch in between the scapula,

(7) Stab injury 1 inch x ? inch x 1.05 inch at right scapula,

(8) Stab injury 1.75 inch x ? inch x 2.5 inch at right kidney level.

It could thus be seen that there are eight stab injuries on front as well as rear portion of the body of the deceased. Apart from that, the evidence of the eyewitnesses would show that after the deceased fell down when he was attacked on the front portion, the appellant sat on his back and assaulted the deceased. It thus cannot be said that the appellant has not taken undue advantage or not acted in an unusual manner. Had the appellant stopped the assault after the deceased fell down, may be he would have been entitled to the benefit of Section 304 Part I of the Indian Penal Code.

11. In that view of the matter, we find that no case is made out for interference. The Criminal Appeal is without merit and as such, is dismissed.