

(1997) 01 BOM CK 0083
In the Bombay High Court
Case No : Criminal Appeal No. 509 of 1984

The State of Maharashtra

APPELLANT

Vs

Hindurao Daulu Charapale

RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377(1), 377(3)
Penal Code, 1860 (IPC) — Section 307, 323, 324, 326, 504

Citation : (1997) BomCR(Cri) 833 : (1997) CriLJ 1649

Hon'ble Judges : Vishnu Sahai, J;Ranjana Desai, J

Bench : Division Bench

Advocate : S.R. Borulkar, for the Appellant; A.Y. Sakhare, for the Respondent

Judgement

Vishnu Sahai, J.—Aggrieved by the sentence of 3 years" R.I. and a fine of Rupees 1,000/-, in default 3 months" R.I. awarded to the Respondent u/s 326 IPC vide the judgment and order dated 21-4-1984 passed by the Assistant Sessions Judge, Kolhapur, in Session case No. 66 of 1983, the Appellant has preferred the present appeal for enhancement of the sentence of the Respondent u/s 377(1) Cr.P.C.

2. Briefly stated the prosecution case runs as under :

On 16-4-1983 the informant Rajaram Balwant Patil (PW-2) was standing at the door of his former house near the main road. At that time one Shivaji Patil came driving a cycle, on which Maruti the brother of the Respondent was also sitting. It is said that Shivaji brought the cycle in the direction of the informant and the same struck his body. Consequently he slapped him. Maruti reprimanded him for slapping Shivaji and threatened him with dire consequences the next day.

On the following day i.e. 17-4-1983, the informant left his house at about 7 a.m. as he wanted to go to his field situated in village Dhamod. He first went to Hanuman Temple and after having Darshan of the Idol proceeded to the office of the Milk Dairy, which is said to be adjoining the temple. The informant was the

Vice-Chairman of the Dairy. He met Ananda Rama Charapale, the Secretary of the dairy and the latter told him that everybody had got adequate supply of milk that day. After telling him that he was going to Dhamod, he came on the road in front of the house of Atmaram Khatik, and of Kirana Shop of Laxmi Dairy. The time was between 7.15 a.m. and 7.30 a.m. At that moment the Respondent and co-accused Maruti came from the door of Kirana Shop. The Respondent reprimanded him for abusing his brother yesterday. Co-accused Maruti caught his waist and arms from behind. Thereupon the Respondent after catching the collar of shirt with his left hand, took out a knife from the pocket of his pant and inflicted a blow with the same on his stomach, by his right hand. The blow was so severe that the shirt of the informant was torn. The informant shouted "Aai Melo". Thereupon Ambutai (PW-3), Ananda (PW-4), Shivaji (PW-8) and some others rushed to his rescue. The informant become unconscious as a consequence of the assault.

3. The evidence shows that after the incident the father of Ambutai and some others carried Rajaram by a S.T. Bus to Kolhapur. While in bus, at about 8 a.m. Rajaram Patil regained consciousness near Bagawati Sugar Factory. Two persons who were near him questioned him as to what had happened and he narrated to them the incident. A little later he again became unconcious. He regained his consciousness at about 10 a.m. in Government Hospital, Kolhapur.

4. At about 8.30 a.m. on 17-4-1983, Dr. Hira Kumbhar (PW-7) medically examined Rajaram in the C.P.R. Hospital, Kolhapur. The Doctor found a penetrating wound of 1 1/2" x 1/2" peritonal deep, on the abdomen, right hypocondriac region, on the person of the informant. In the opinion of the Doctor the said injury was dangerous to life and could have been caused by a sharp pointed weapon, within less than six hours. The Doctor also stated that it was possible by the knife shown. The evidence shows that at about 9 a.m. Dr. Kumbhar informed police Jamadar Nizamuddin Patel (PW-10) who was posted as a constable in the C.P.R. Hospital. The said constable obtained her written report, Exhibit 19. He thereafter recorded the FIR as per the statement given by the informant. The FIR is at Exhibit 24.

5. On the basis of the FIR P. H. C. Bandu Sattu Koli (PW-14) registered an offence u/s 324, 504 IPC etc. as Crime No. Zero at Laxmipuri Police Station. He then sent the papers to Radhanagri Police Station because the place of incident fell within the limits of the said police station. He also sent information to Pandit Trimbak Dani (PW-13) a Special Executive Magistrate for recording the dying declaration of the informant at C.P.R. Hospital, Kolhapur. On receiving the said information the Special Executive Magistrate recorded the dying declaration of the informant Exhibit 34. Since in the dying declaration the facts mentioned are those contained in para 2 we do not propose reproducing them.

5-A. The evidence is that on 17-4-83 the offence was registered at Radhanagri Police Station by P. H. C. Chavan and the same day the investigation was handed over to PSI Neelu Patil (PW 15) of the said police station.

6. On the date of the incident itself PSI Neelu Patil prepared panchnama of the scene of offence, Exhibit 22. The next day (18-4-83) he interrogated 16 witnesses, including eye witnesses Ambutai and Shivaji. On 19-4-1983, he interrogated two eye witnesses and took into possession the blood stained clothes of the informant which were handed over by his uncle. On 25-4-1983, he arrested the Respondent and co-accused Maruti. During the course of the interrogation the Respondent expressed his willingness to get the weapon of assault namely knife recovered. On the pointing out of the Respondent a knife was recovered. However, we are not going into the details of this recovery because for very plausible reasons stated in paragraph 8 of the impugned judgment, the said recovery has been rejected by the trial Court. On 16-5-1983, he handed over the investigation to PSI S. B. Shaikh.

7. After conclusion of the investigation the respondent and co-accused Maruti were charge-sheeted.

8. The case was committed to the Court of Assistant Sessions Judge in the usual manner. In the trial Court the Respondent was charged u/s 307 IPC in the alternative u/s 326 IPC. He was also charged for an offence u/s 307 r/w 34 IPC in the alternative u/s 326 r/w IPC. To the said charges he pleaded not guilty and claimed to be tried.

9. During trial in all the prosecution examined 15 witnesses. Four out of them namely Laxman, Ambutai, Ananda and Shivaji, PWs. 2, 3, 4 and 8 respectively were examined as eye-witnesses. The learned trial judge for very plausible reasons did not accept the testimony of PW-8, Shivaji. He however, accepted the testimony of the remaining three eye witnesses. He convicted and sentenced the Respondent in the manner stated above. He however, convicted co-accused Maruti for an offence u/s 323 r/w 34 IPC but released him on admonition.

10. Feeling aggrieved by the inadequate sentence awarded to the Respondent the appellant has preferred the present appeal u/s 377(1) Cr.P.C. with a prayer that the sentence of the Respondent be enhanced. The contention of Mr. Borulkar learned counsel for the appellant is that looking to the extremely dangerous injury caused by the Respondent to the informant in a premeditated assault the sentence awarded to the Respondent is manifestly inadequate and warrants to be enhanced. We find merit in the said submission of Mr. Borulkar.

11. Before we assign our reasons as to why we find the submission of Mr. Borulkar to be pregnant with merit, we propose examining the question whether the conviction of the Respondent has been rightly recorded by the Assistant Sessions Judge. We are doing this because Section 377(3) of the Cr.P.C. provides that in an appeal for enhancement of sentence it is open to the Respondent to argue for acquittal.

12. We have gone through the testimony of all the three eye-witnesses relied upon by the learned trial Judge namely Rajaram, Ambutai and Ananda, PWs. 2, 3, and 4 respectively. In our judgment the evidence of the said witnesses

inspires confidence. The manner of assault deposed to by these witnesses that whereas co-accused Maruti caught hold of the informant Rajaram, the Respondent assaulted him with a knife is corroborated by the nature of injury found on the person of the informant by Dr. Hira Kumbhar. She stated that the informant had sustained a penetrating wound which was peritoneal deep and was attributable to knife.

All these eye witnesses were subjected to a searching cross-examination but nothing which would erode the meat of their evidence could be extracted. The only so-called infirmity which the counsel for Respondent tried to show in their evidence was that they were interested witnesses. It is too late in the day to reject the testimony of witnesses on this score for the law only requires caution and not mechanical rejection in evaluating such evidence. We have exercised that caution and found their evidence to be implicitly reliable.

13. We would like to emphasise that the incident took place in broad day light and consequently all the three eye witnesses who knew the Respondent and co-accused Maruti for before must have had no difficulty in recognising them.

14. Assurance is also lent to the prosecution case by the circumstance that the FIR of the incident was promptly lodged by the informant at CPR Hospital, Kolhapur. The evidence of Police Jamadar Nizamuddin Patel (PW-10) is that at 9.15 a.m. Dr. Kumbhar (PW-7) came and asked him to write the FIR and consequently he wrote the same as per the version given out by the informant Rajaram. This prompt FIR in our judgment vindicates truthfulness of the prosecution case.

Another circumstance which shows that the prosecution case is true is that the Respondent is the only person who has been assigned the role of assault by knife by the informant. We are not prepared to believe that the informant would have exonerated his real assailant and falsely implicated him.

15. For the said reasons in our judgment the learned trial Judge acted correctly, in accepting the involvement of the appellant in the incident and in further convicting him for the offence u/s 326 IPC.

16. This brings us to the question of enhancement of sentence of the Respondent. We are alive to the warning given by Their Lordships of the Apex Court to the Appellate Court regarding considerations to be borne in mind by the latter before enhancing the sentence. In paragraph 15 of the decision of *Bed Raj Vs. The State of Uttar Pradesh*, the said warning has been couched in the following words :-

"A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate Court should not interfere to the detriment of an accused person except for every strong reasons which must be disclosed on the face of the judgment; see for example the observations in *Dalip Singh and Others Vs. State of Punjab*, and - *Nar Singh and Another Vs. The State of Uttar Pradesh*, .

In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate."

17. The issue on which we have to address ourselves is whether the sentence awarded to the Respondent can be castigated as being manifestly inadequate and whenever the reasons assigned by the trial Court for awarding the said sentence are plausible. In our judgment not only is the sentence which has been awarded to the respondent is grossly inadequate but wholly frivolous reasons have been assigned by the trial Court for awarding extremely lenient sentence to the Respondent. The said reasons are contained in paragraph 26 of the impugned judgment. A perusal of the said paragraph shows that the learned trial Judge fell a prey to the hollow submission of the learned defence counsel namely that the Respondent being 27 years of age at the time of the incident was of a considerable young age. We would like to remind the learned trial Judge that 27 years is not a young age; at any rate not in our judgment.

18. The learned trial Judge should have awarded a more stringent sentence to the Respondent. To our regret he has not given adequate weightage to the extremely serious injury sustained by the informant. To repeat the informant had sustained a penetrating wound of 1 1/2 x 1/2" x peritoneal deep on the abdomen, right hypochondriac region. The said injury was dangerous to life in the opinion of Dr. Hira Kumbhar, PW-7, who had examined him. The trial Court was also oblivious to the fact that the weapon used by the Respondent was a knife, that the incident took place in broad daylight; that the assault on the informant was a premeditated one; and that on account of the injuries the informant was hospitalised for 12 days, had to undergo a surgery, suffer a lot of pain and incur expenditure.

19. Our first impulse was to send the respondent to jail for two years. However, we changed our mind when his learned counsel urged that he had already served his full jail term and it would be indeed very harsh to send him back to the jail after efflux of a decade or more. We thought that in the said circumstances the better course would be to impose a substantial fine on the Respondent and direct the whole of it to be paid as compensation to the informant Rajaram Patil. PW-2 and in case he is not alive to his legal heirs.

20. We reflected over the quantum of the fine and, thereafter reached the conclusion that the ends of justice would be squarely satisfied if in addition to the sentence imposed on the Respondent by the Trial Court a fine of Rs. 20,000/- and two years" R.I. in default is imposed on him.

21. This compensation, in our judgment would compensate at least to some degree the trauma, pain and the expenditure which the informant must have undergone as a sequel to the knife assault made on him by the Respondent. It may also perhaps make him realise that knife is not a weapon to be played with it. And if he uses it recklessly, as is the case here, it may prove to be terribly

expensive and cumbersome for him. We hope the sentence imposed by us would have a chastening effect on him.

22. For the said reasons, the appeal is allowed. The sentence of the Respondent u/s 326 IPC is enhanced from three years R.I. and a fine of Rs. 1,000/- and three months R.I. in default by imposing on him an additional fine of Rs. 20,000/- and 2 years" R.I. in the default of its payment. This fine of Rs. 20,000/- shall be deposited by the Respondent within a period of six months from today in the trial Court. In the event of the Respondent depositing it, the whole of it shall be paid as compensation by the trial Court to Rajaram Balwant Patil, PW-2 and in case he is not alive to his legal heirs. As soon as the fine is deposited the trial Court shall inform Rajaram Balwant Patil (PW-2) about this compensation; in case he is not alive, his legal heirs.

In case the Respondent does not pay the fine of Rs. 20,000/- within the stipulated time, he shall undergo the sentence in default of payment of fine, imposed by us.

Before parting with the judgment we would like to record our appreciation for the assistance rendered to us by the learned counsel for the parties in the disposal of this appeal.

In case a certified copy of this judgment is applied for, the same shall be issued on an expedited basis.

23. Appeal allowed.