
(2015) 09 BOM CK 0217
In the Bombay High Court
Case No : Criminal Appeal No. 364 of 2012

Vasant and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 302, 304, 323, 34

Citation : (2015) 09 BOM CK 0217

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

Bench : Division Bench

Advocate : P.R. Katneshwarkar, Advocate, for the Appellant; M.M. Nerlikar, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

I.K. Jain, J.—This is an appeal preferred by original Accused Nos. 1 and 2 against the judgment and order dated 12th April, 2012, passed by learned Additional Sessions Judge, Latur, in Sessions Case No. 88 of 2011. By the said judgment and order, learned Additional Sessions Judge convicted Appellants for the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentenced each of them to suffer rigorous imprisonment for life and to pay fine of Rs. 1,000/-, in default, to suffer further rigorous imprisonment for six months. Accused Nos. 3 to 6 were however, acquitted of the offence punishable under Section 302 read with 34 of the Indian Penal Code.

2. For the sake of convenience, we shall refer Appellants in their original status as Accused as they were referred before the Trial Court.

3. Prosecution case briefly stated is as under:

i. Informant Machindra Prabhu Kamble was resident of Dnyaneshwar Colony, Bapuji Buwa Nagar (Nakhate-Nagar) Thergaon at Pune. He retired as Store Attendant from Matheron and Plant Company Limited. Machindra had two sons

Santosh and Latesh and two married daughters Sangeeta and Sanghmitra. Latesh was running an orchestra business. It was a joint family. Accused No. 1 Vasant is father of Accused No. 2 and acquitted Accused Nos. 3, 5 and 6 and husband of acquitted Accused No. 4. They reside at village Khandapur. Accused No. 1 Vasant is maternal uncle of deceased Latesh.

ii. According to prosecution Accused No. 1 Vasant had borrowed hand loan of Rs. 40,000/- from Latesh for marriage of his son Accused No. 2 Sachin. Machindra and Latesh asked Vasant many times to return Rs. 40,000/-. There were quarrels on the point of demand of money between informant and Accused. It is further contended that Accused No. 1 Vasant insisted for marriage of his daughter Ashwini (acquitted Accused No. 6) with son of his brother Gahininath Kamble. But he refused. This was another reason causing annoyance to Accused Vasant. It is alleged that he threatened informant to see them.

iii. On 15th May, 2011 marriage of grand daughter of Machindra was to be solemnized at Latur. So on 12th May, 2011 he alongwith his wife, sons, daughter in-laws and daughters went to Latur from Pune. Invitation of marriage was not given to Accused Vasant. It was the third reason to hurt Vasant.

iv. On 16th May, 2011 Prakash Dhavare son-in-law of Machindra invited them for lunch at his house at Mahadeo-Nagar, Latur. Khandapur was at the distance of 3-4 kms from Mahadeo-Nagar. At 04:30 pm Latesh alongwith his cousin Sachin Kamble went to Khandapur for demanding Rs. 40,000/- from Accused No. 1 Vasant. That time he was beaten with iron rod, fists and kicks. Latesh sustained grievous injuries to his head and back. PW-2 Sachin Kamble intervened to rescue Latesh. He was also assaulted with iron rod, fists and kicks. Due to fear PW-2 Sachin Kamble ran away from the house of Accused and went to Prakash Dhavare. He narrated the incident to Prakash and father of Latesh. They went to Civil Hospital, Latur and saw Latesh lying unconscious having injuries to his head. From civil hospital Latesh was shifted to Vivekanand hospital. On the same night he was brought to Kavthale hospital in unconscious condition.

v. On 17th May, 2011 Latesh was shifted to Pune hospital and on 18th May, 2011 to Yashwantrao Chavan Hospital, Pimpri. Latesh succumbed to injuries on 20th May, 2011 at about 11:30 am in the hospital.

vi. PW-6 Head Constable Madhukar Chavan was on duty at YCM Hospital, Police Chowky. Intimation of death of Latesh was given to Police Chowky. Head Constable Chavan went to hospital. He prepared inquest panchanama and sent dead body for postmortem examination. Then he forwarded papers to Police Station, Pimpri. In turn Police Station, Pimpri, forwarded papers to MIDC, Police Station, Latur.

vii. After postmortem dead body was handed over to relatives. Last rights of deceased Latesh were performed. On 24th May, 2011 relatives performed the 10th day ceremony.

viii. Machindra lodged report with MIDC Police Station, Latur on 26th May, 2011. Crime No. 84 of 2011 under Section 302 read with Section 34 of the Indian Penal Code was registered against Accused. Investigation was handed over to PW-9 P.S.I. Raosaheb Gadewar.

ix. Investigating Officer visited spot and recorded spot panchanama. Witnesses were examined. Accused were arrested. Accused No. 1 gave memorandum to discover iron rod concealed in tin roof of his house. At his instance iron rod was recovered. Memorandum of Accused Vasant and recovery panchanama of iron rod came to be drawn. Seized Muddemal was sent to Chemical Analyzer, Aurangabad. On completion of investigation charge-sheet was submitted to Chief Judicial Magistrate, Latur, who in turn committed the case for trial to the Court of Sessions.

4. Charge came to be framed against Accused at Exhibit 24. They pleaded not guilty to the charge and claimed to be tried. Their defence was of total denial and false implication. It was submitted by Accused that at the relevant time Latesh had consumed liquor, he fell down from motorcycle and sustained injuries to his head. It is further submitted that complainant and witnesses have falsely involved them in collusion with Police.

5. Prosecution examined in all 9 witnesses. After going through evidence adduced in the case, learned Additional Sessions Judge convicted and sentenced Appellants as stated in paragraph No. 1 above. Being aggrieved, they preferred this appeal.

6. We have heard the learned counsel for parties. After giving our anxious consideration to the facts and circumstances of the case, submissions made on behalf of Appellants and State, reasonings recorded by the Trial Court and evidence on record, for the below mentioned reasons we are of the opinion that prosecution could not prove offence punishable under Section 302 read with 34 of the Indian Penal Code. However, prosecution has succeeded in proving charge under Section 323 of the Indian Penal Code against Accused No. 1 Vasant. Prosecution has also proved offence punishable under Section 304 Part II of the Indian Penal Code against Accused No. 2 Sachin.

7. Prosecution case mainly revolves round the ocular evidence of PW-2 Sachin Gahininath Kamble and PW-3 Dattu Dhondiba Maske. PW-2 Sachin Kamble is cousin brother of Latesh. It is deposed by PW-2 Sachin Kamble that on 16th May, 2011 he alongwith Latesh had been to the house of Accused No. 1. That time, Accused Nos. 1, 2 and acquitted Accused No. 4 were standing in the door of their house. Latesh went inside. Other Accused followed him and closed the door from inside. He stated that as Latesh did not come out of house, he pushed the door and saw that Accused No. 2 was assaulting Latesh with iron rod on his head. He further stated that Latesh sustained injuries and fell down. According to PW-2 Sachin Kamble on seeing assault on Latesh he rushed towards him but Accused No. 2 gave blow of iron rod on his back and other Accused assaulted him with

kicks and fists. Due to fear he ran away. He went to the house of Prakash Dhavare and narrated incident to Prakash Dhavare and father of Latesh. Thereafter they received a phone call from Accused No. 2 that Police admitted Latesh in Civil Hospital, Latur.

8. PW-3 Dattu Maske was inhabitant of village Khandapur. He was neighbour of Accused. At the time of incident he was at his house. On hearing noise of quarrel from the house of Accused Vasant he came out of his house. He saw Accused No. 2 having something in his hand and other Accused chasing PW-2 Sachin Kamble. He went near house of Accused No. 1 and saw that Latesh was lying unconscious having head injuries.

9. After careful scrutiny of evidence of star witnesses PW-2 Sachin Kamble and PW-3 Dattu, it is apparent that nothing substantial could be elicited in their cross-examination to disbelieve their testimonies.

10. PW-1 Machindra is not an eye witness. He proved FIR Exhibit 57. On motive he fully supports the prosecution. He stated that Accused Vasant had taken Rs. 40,000/- from Latesh for marriage of his son Accused No. 2 Sachin. They demanded Rs. 40,000/- to Accused No. 1 many times but he refused to pay the same to Latesh. Another ground of annoyance as stated by complainant Machindra was that Accused Vasant insisted them for marriage of his daughter with son of brother of Machindra but they refused. Since then their relations were strained. Thereafter, there was marriage of grand daughter of Machindra at Latur on 15th May, 2011. Accused Vasant was not invited for marriage. This caused further annoyance to Accused Vasant. The evidence of Machindra clearly shows that relations between Accused and complainant as well as Latesh were not good.

11. PW-4 Prakash Dhavare is son in-law of complainant Machindra. From his evidence it can be seen that on 16th May, 2011 he invited Machindra and his family to his house for lunch. He stated that Accused Vasant had taken Rs. 40,000/- from Latesh and there were quarrels between them on that count. PW-4 Prakash stated that Latesh and PW-2 Sachin Kamble went to the house of Accused No. 1 as Accused No. 1 telephoned Latesh to come to his house and take Rs. 40,000/-. At about 04:30 pm PW-2 Sachin Kamble came to his house and told that Vasant, Sachin (Accused No. 2) and others assaulted Latesh.

12. From the evidence of PW-4 Prakash it is clear that at the relevant time Machindra alongwith his family members including son Latesh had been to his house for lunch and Latesh had gone to house of Accused No. 1 alongwith PW-2 Sachin Kamble for collecting Rs. 40,000/-. Evidence of PW-4 Prakash corroborates the version of PW-1 Machindra on material particulars. On actual assault evidence of PW-2 Sachin Kamble and PW-3 Dattu is consistent throughout. No material contradictions or omissions could be brought in their cross-examination. On the basis of evidence of these four witnesses, it is evident that Latesh alongwith PW-2 Sachin Kamble went to the house of Accused, he was

assaulted by iron rod, kicks and fists and there was animus for Accused to assault Latesh.

13. Next crucial question is what offence is made out from the evidence of prosecution witnesses and the material established on record. On perusal of evidence of PW-5 Dr. Prakash Rokade who conducted postmortem examination of Latesh, it appears that following injuries were noticed on the body of Latesh:-

"1. Stitched split lacerated wound over scalp extending over left temporoparietal region of the scalp with lacerated margins, 6 cms with 4 intact stitches. It was horizontal.

2. Contusion over the thyroid carriage in the mid aspect, 2.5 cms x 0.5 cms in size of diffuse shape.

3. Contused abrasion over upper limb. Right sided elbow posterior aspect with abraded borders swollen elbow joint and the lower arm, 2 cms x 2.5 cms in size, in diffuse shape.

4. Contused abrasion over upper limb. Left sided palm extensor aspect with swollen wrist joint and the palm irregular small size abrasion, size 0.5 cms to 1.5 cms with swelling around, in diffuse shape.

5. Bed sores over gluteal region of back. Seen more marked over the left sided gluteal region and also right with darkening of skin, 5 cms x 4 cms in size, irregular in shape.

Medical Officer further found following internal injuries.

1. On exploration margins found to be lacerated with early granulation tissue with huge haematoma over the left and right side fronto parietal regions of the scalp and skull vault of size 18 cms anteroposteriorly and 26 cms transversely with both temporalis contused and hemorrhagic .

2. Fissured fracture of the left parietal bone posteriorly 10 cms horizontally with extradural hematoma clots about 100 gms in the middle cranial fossa right.

3. As regards brain, meninges superficial laceration left parietal lobe noted, brain tissue soft edematous with subdural and subarachnoid haematoma seen over the left and right sided posterior parietal occipital region anterior and temporal lobes laterally with cerebellum contused and hemorrhagic."

14. After performing postmortem Medical Officer opined cause of death due to external injuries on head with corresponding internal injuries to skull and brain. According to Dr. Rokade, all the injuries collectively were responsible for causing death in ordinary course of nature.

15. On careful scrutiny of evidence of Prosecution Witnesses-1 to 4 as discussed hereinbefore, role attributed to Accused No. 1 is limited that he beat Latesh with kicks and fists. There is no whisper in the evidence of Prosecution Witnesses that Latesh was assaulted in any other manner by Accused No. 1 Vasant. Therefore,

complicity of Accused No. 1 can be at the most said to be in voluntarily causing hurt to Latesh for which offence punishable under Section 323 of the Indian Penal Code would be attracted.

16. So far as Accused No. 2 Sachin is concerned, on the basis of evidence of PW-2 Sachin Kamble, it is revealed that only one blow of iron rod was given on the head of Latesh. Considering the evidence of PW-2 Sachin Kamble, nature of injuries shown in postmortem report Exhibit 64 supported by evidence of PW-5 Dr. Rokade and an iron rod recovered at the instance of Accused No. 2 proved by PW-9 P.S.I. Raosaheb Gadewar, we are of the opinion that Accused No. 2 Sachin had no intention to cause death of Latesh and it would be a case falling under Section 304 Part II of the Indian Penal Code i.e. culpable homicide not amounting to murder. We are therefore inclined to partly allow the appeal and modify the judgment and order of conviction and sentence as above. In the result, following order:

(i) Criminal Appeal is partly allowed.

(ii) Judgment and Order dated 12th April, 2012 passed by the learned Additional Sessions Judge, Latur, District - Latur in Sessions Case No. 88 of 2011, convicting the Appellants for the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay fine of Rs. 1000/- each, in default, to suffer further rigorous imprisonment for six months, is set aside and modified.

(iii) Appellant No. 1 - Vasant s/o. Kashinath Sonkamble is held not guilty of offence punishable under Section 302 read with Section 34 of the Indian Penal Code but, he is held guilty of offence punishable under Section 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three (3) months.

Appellant No. 2 - Sachin s/o. Vasant Sonkamble is held guilty of offence punishable under Section 304 Part - II of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for Five (5) years.

(iv) Both, Appellant Nos. 1 and 2 - Vasant s/o. Kashinath Sonkamble and Sachin s/o. Vasant Sonkamble shall pay total fine in the sum of Rs. 40,000/- (Rs. Forty Thousand only.) within a period of eight (8) weeks from today by depositing the same with the court of learned Sessions Judge, Latur, District ? Latur. In default, Appellant No. 1 - Vasant s/o. Kashinath Sonkamble shall undergo rigorous imprisonment for three months and Appellant No. 2 - Sachin s/o. Vasant Sonkamble shall under rigorous imprisonment for one year.

(v) Benefit of set-off to the Appellants - accused is given under Section 428 of the Code of Criminal Procedure, for the imprisonment already undergone by them.

(vi) In case, amount of Rs. 40,000/- (Rs. Forty Thousand.) is deposited by way of fine in the court, the trial court shall disburse the said amount of Rs. 40,000/-

by calling Macchindra Prabhau Kamble. R/o. Khandapur, Taluka & District ? Latur, at present R/o. Dnyaneshwar Colony, Bapuji Buwa Nagar, Nakhatenagar, Thergaon, Pune - 33, District ? Pune by way of Cheque/Demand Draft/Pay order.