

Baldevsingh Vs. State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Mar-14-2013

Judge : K.U. Chandiwal

Appeal No. : Criminal Appeal No.482 of 2012

Appellant : Baldevsingh

Respondent : State of Maharashtra

Judgement :

The appellant impugns conviction recorded in Sessions Case No.87/2011 by learned Extra Joint Ad hoc Additional Sessions Judge, Nanded, for offense under Section 307 of IPC, directing to suffer rigorous imprisonment for five years and to pay fine of Rs.2,000/-; in default, to suffer simple imprisonment for six months; for offense under Section 452 of IPC, to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/-; in default, simple imprisonment for three months, for offense under Section 4 read with Section 25 of Arms Act, to suffer rigorous imprisonment for three months. All sentences were directed to run concurrently.

2. PW No.3 Smt. Anita wife of injured Nihalsingh lodged report to Police Station, Nanded, that the appellant knew her husband, being from same area of Punjab, and used to visit her house and consume liquor. He used to accompany her husband even at Toys Vending shop / cart. Since her husband had substantial earning in the week, appellant demanded money in the night of 1st of July, 2010.

Her husband did not budge, and accede to the demand. Resultantly, appellant felt outraged and annoyed. Altercation ensued, and he assaulted her husband (PW No.1 Nihalsing) with sword, giving several blows with an intent to kill. She screamed and yelled for assistance. Her husband was removed to Civil Hospital in an auto rickshaw in injured, unconscious condition. Based on her FIR, vide Crime No.235/2010, investigation was carried. The sword with bloodstains was taken charge under Panchnama. The material in the house was seen scattered, demonstrating scuffle. The injured (PW No.1) was hospitalized for 26 days, most of the time he was unconscious. His statement under Section 161 Cr.P.C. was recorded on 28.7.2010. It was under observation and presence of Medical Officer. Appellant was searched and arrested from Gurudwara. Muddemal was sent to the office of Chemical Analyzer. Chargesheet was filed against the accused/appellant before the learned Judicial Magistrate, First Class, Nanded, who committed the same to the Sessions Court. Charge below Exh.4 was explained to the accused in vernacular. He denied the same. His defense is of total denial.

3. PW No.3 Anita is wife of the injured. PW No.1 Nihalsing is injured. PW No.2 Dr.Mohini Patil had examined the injured. PW No.4 Shivram Ausekar acted as a Panch for spot panchnama (Exh.20). He has identified the sword (Art.A). PW No.5 Dr.Atish Gujrathi had treated the injured Nihalsing. He found Nihalsing not in a position to communicate. He was disoriented, suffered multiple injuries, cutthroat injuries.

Second injury was on right ear. There was contused lacerated wound behind the ear; one of the injury was at right arm. Another injury was at elbow and wrist. He proved that Nihalsing was indoor patient from 2nd July, 2010 to 28th July, 2010. The discharge card is Exh.24. Original case papers were brought in the Court; copies are at Exh.25. According to him, nature of injuries was such grave, if not treated in time, there was danger to the life of Nihalsing. PW No.6 Ravindrersingh Dhumne, API, Nanded, carried investigation in Crime No.235/2010.

4. Shri Ashtekar, learned Counsel (appointed) for the appellant submits that the evidence of the wife of injured is scanty, not to be believed. She gave age of the appellant as 20 years while the appellant is 50 years old. She quoted the time of

accused intruding between 6 to 7 p.m. while PW No.1 says that accused came at the house at 4 p.m. He says, there was no previous enmity, no proof of money transaction and, hence, no motive to kill Nihalsing. The incident has taken place at 5 a.m. on 2.7.2010, while patient is admitted in the hospital at 8.20 a.m. There was no notification issued and produced under Arms Act and, consequently, there could not be a conviction for offense of possession or carrying of arms.

5. Learned A.P.P. submits that appellant was known to injured. His wife not disclosing his name will not deflate the prosecution case. The gravity of injuries is such, that injured fortunately survived. Spot panchnama established recovery of the sword with blood stains.

6. PW No.1 came in contact with accused whenever he used to visit Punjab. Accused was working as Sevak in Gurudwara, Nanded, and used to sit near him for a while. The accused had demanded money in the evening, however, PW No.1 refused. Accused slept in the house and at such time again, demanded money but PW No.1 refused. At about 5 a.m., accused assaulted PW No.1 by blow of sword. PW No.1's apparels were soaked with blood. He has identified sword (Art.A). Nothing fruitful could be elicited in cross examination.

7. The discrepancies in the evidence of PW Nos.1 and 3 in respect of timing and age are not vital. PW No.3, wife of injured, was in a frightened state of mind, could not be expected to be eloquent and arithmetic in quoting the time with precision. The couple was residing in a temporary room, since four months. Consequently, she was unaware of the name of the landlord or the accused. It will not be stigmatic to castigate her. In fact, evidence of injured (PW No.1) illustrate, he was removed in hospital by one Jogindersing. There were no cross terms with the accused prior to the incident, however, accused had threatened, if his demand of money is not complied, to eliminate. He was unconscious. There is no delay in admission of PW 1, considering the nature of injuries reporting the matter to Police.

8. PW No.2 Dr.Mohini Patil, in her evidence, identified the injured, having examined him on 2.7.2010 at around 8.20 a.m. when he was in serious condition. There was cut injury to his neck. The certificate is at Exh.14.

9. The nature of injuries referred above, particularly, cut injury to the throat suggests that it was grievous in all its character and was sufficient to cause death in ordinary course of transaction. Consequently, framing of charge under Section 307 of IPC, cannot be said to be excessive or illogical. The injury suffered by PW No.1 was such grave, had it not been treated in time, it could have been fatal. Medical Officer has admitted that injury no.1 was possible by sword (Art.A) and rest of the injuries even could be by handle of Art.A, the sword. The injury Nos.1 to 4 explained by PW No.2, are related with ear, nose and throat; Orthopedic Surgeon and E.N.T. Surgeon had also attended PW no.1.

10. The account of injuries suffered due to assault, is succinctly explained by PW No.1. He has identified the appellant in the Court. There is no mistaken identity. The scuffle was writ large to demonstrate anger in the mind of the appellant. It is also a fact, that injured asked his wife PW No.3 to bring a sword to retaliate; however, that does not mean, PW No.1 was aggressor. Non examination of the person carrying the injured to hospital will not diminish theory of assault. It cannot be said that somebody else has assaulted PW No.1 and appellant is falsely booked. The appellant was known to the injured since long. He had stayed with injured and PW No.3 in their house, had liquor and dined, attended PW 1 to his vending place. Consequently, there is no question of mistaken identity. PW No.3, being feeble, credulous, completely depressed due to fear of fatality to her husband, could not be expected to highlight name of the suspect in the first breath. She too has identified the appellant in the Court. Her substantial evidence carries credence. Spot panchnama display violence in the room suggesting scuffle.

11. Learned Judge has convicted the appellant for infraction of Section 4 read with Section 25 of Arms Act, however, there was no Government notification produced, prohibiting possessing lethal weapons. The appellant deserves its benefit. The appellant, without any reason, barged in the house of the injured, brutally assaulted, consequently, invited infraction of Section 452 of IPC. Survey of evidence illustrate, the appellant, knowing full well consequences of assault by sword, inflicted injuries to the neck, arms, elbow, and ear of the injured PW No.1 which made injured to be hospitalized for 26 days; most of the time, to remain unconscious.

12. In the situation, conviction under Sections 307 and 452 of IPC does not call for interference.

ORDER

(a) Appeal is partly allowed. Conviction under Sections 307 and 452 of IPC is maintained. The conviction for offense under Section 4 read with Section 25 of the Arms Act is quashed and set aside.

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