

Shankar Vs. State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Jan-29-2013

Judge : K.U. Chandiwal

Appeal No. : Criminal Appeal No.369 of 2012

Appellant : Shankar

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

Heard. The appeal is admitted on 23rd May, 2012. Since the appellant is in custody, priority is given to the appeal, pursuant to order of this Court dated 19th June, 2012.

2. The appellant impugns conviction recorded in Sessions Case No.14/2011 by learned Additional Sessions Judge, Bhokar, District Nanded, for an offence under Section 307 of IPC, directing to undergo R.I. for seven years and also to pay fine of Rs.1,000/-, in default, R.I. for three months by order dated 15th May, 2012.

3. The complainant - Bhagwan Maroti Pimpale resides at Balegaon, Tq.Umri while the accused is also resident of the same village. In the wee hours on 8.10.2010 at around 3.00 a.m., when the complainant Bhagwan was sleeping in court-yard with his wife PW No.2 -Smt. Satyabhama Pimpale, the accused sneakily barged and

brutally assaulted the complainant with bamboo stick by 5-7 strokes. In fact, the presence of the accused/appellant was sensed owing to barking of the dogs, resultantly, PW No.1 and PW No.2 woke up and saw the accused hitting with a stick in his hand. Neighbour (PW No.3 Gundewar) though witnessed the event, did not support the prosecution.

4. In order to establish guilt against the accused, the prosecution has led evidence of ten witnesses. P.W.No.3 is the neighbour (turned hostile); PW No.4 - Rukmaji Sambhaji Panchal is another witness, did not support the prosecution; PW No.5 - Sahebrao also did not support the prosecution; PW No.6 - Rajesh Pimpale acted as a panch in respect of seizure of cloths of PW No.1 through panchanama (Exh.25); PW No.7 -Sunil Pallewad is the Medical Officer. He examined the injured PW No.1 Bhagwan on 8.10.2010 and recorded the injuries; PW No.8 Dr. Ruturaj is a Neuro Surgeon attached to Yashoda Hospital, Nanded, had examined PW No.1 - Bhagwan on 8.10.2010 and recorded injuries on his person. PW no.9 -Balaji Ladekar carried the seized muddemal property to the office of Chemical Analyzer under a forwarding letter (Exh.37); PW No.10 Ashok Mairal is police inspector attached to police station Umari, carried the investigation.

5. The defence of the accused during the trial was, in order to avoid repayment of money by father of PW No.1, the accused/appellant is falsely implicated. The another limb is, father of PW No.1 was engaged in black-magic and, therefore, somebody thrashed the PW No.1.

6. The spot panchanama (Exh.23) proved by the panch witnesses and indicated by PW No.10 Investigating Officer, illustrate, blood-stains were found on the Baniyan and the shawl. Panchanama of apparels (Exh.25) indicates blood-stains on the white-sando Baniyan of the injured. Even the stick had blood-stains, confirmed by C.A.

7. The evidence of PW No.1 - complainant; PW No.2 his wife Satyabhama, even if is branded and complained of to be interested witnesses, however, in the wee hours, there could not be an independent availability of the witnesses and unfortunately, the available witnesses PW No.3 or PW No.4 did not support the prosecution. The affairs of bloodstains to PW No.1 are cemented in the

panchanama, as stated earlier (Exh.34).

8. The FIR (Exhibit-17) of PW No.1 is in tune to what he has stated in the court. The testimony of PW No.2 - Satyabhama has cemented her husband's narration. The cross-examination of these two witnesses, in fact, brought on record, visibility at the material time due to an electric bulb and barking of the dogs.

9. Apart from the evidence of PW No.1 and PW No.2, the substantial corroboration can be seen in the evidence of PW No.7 - Dr. Sunil and PW No.8 Dr. Raturaj. The injuries recorded by PW No.7 on the person of PW No.1 are as under :

"(1) CLW over scalp frontal area 2 x 2 cm fresh caused by sharp with blunt object nature simple;

(2) CLW over upper lip border in midline 1 cm x 1 cm fresh, caused by sharp with blunt object nature simple;

(3) Contusion with right eye conjunctivitis over right eye 3 cm x 3 cm fresh, caused by blunt objectionable;

(4) blunt trauma over head over head scalp ear bleed fresh, caused by blunt object;

(5) Blunt trauma over abdomen fresh, caused by blunt object;

(6) CLW over face 3 cm x 3 cm fresh, caused by sharp and blunt object nature simple"

10. The injuries recorded by PW No.8, on examination of PW No.1, are in juxtaposition to what PW No.7 has stated. But, PW No.8 had elaborated the same in the light of CT Scan Orbit and Maxilla face fracture and other details. The injuries indicated, the CT scan of lateral walls of left orbit and anterior and posterior wall of left and right zygomatic arch are found contusion. X-ray of right hand showed there was comminuted fracture of proximal phalanx of the 2nd digit or right hand. Head of 3rd metacarpal and proximal phalanx. The CT scan of maxilla also showed both the fracture with displaced and depressed fracture fragment with soft tissues swelling. The evidence illustrate that the injuries were

fresh and could be caused by a hard and blunt object. The injuries were grievous in nature and injury No.9 and 10 was sufficient to cause death in ordinary pursuit.

It also revealed that PW No.1 was hospitalized from 8.10.2010 to 27.10.2010. Thus, he was in hospital for 20 days. The Medical Certificate (Exh.33) is proved by PW No.8.

11. The CA report (Exh.52) shows sandow-baniyan and shawl of the complainant were stained with human blood of blood group "A". Dhotar (Dhoti) of the accused was also stained with blood group "A". The presence of blood group "A" on the Dhotar of the accused has not been explained by him, on the other hand, it corroborates his presence at the spot and to the factum of the incident.

12. Thus, evidence of PW No.1, PW No.2 coupled with PW No.3 and 8 with spot panchanama and CA report establish that the accused/appellant, with an intention or knowledge and under the circumstances, had hit PW No.1, consciously knowing that by such act of hitting, there could be death of PW No.1. Consequently, the accused/appellant is found guilty for an offence under Section 307 of the Indian Penal Code. The conviction recorded by the learned Sessions Judge, therefore, does not call for interference. However, the learned Additional Sessions Judge has convicted the appellant to undergo rigorous imprisonment for a period of 7 years with fine, indicated above.

13. The appellant was 55 years at the material time and is said to be old infirm, without any criminal antecedent/record. Considering the liabilities and manner in which the alleged incident having taken place, instead of sentence of seven years, it needs to be reduced to five years. Hence, order.

14. The Criminal Appeal is partly allowed. The conviction is confirmed, however, the sentence is reduced from the period of seven years to five years. Fine amount to remain unaltered. Set off under Section 428 of Cr.P.C. be given to the appellant.

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