

Bombay High Court

Sudhakar Pandhari Titirmare (In ... vs State Of Maharashtra Thr. Police ... on 20 October, 2016

Bench: S.B. Shukre

J-apeal374.16.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL No.374 OF 2016

Sudhakar Pandhari Titirmare,

Age about 48 years and
resident of Gunthara, Taluka Lakhani,
District Bhandara (In Jail)

:

...VERSUS...

State of Maharashtra,
Through Police Station Lakhani,
District Bhandara.

:

Shri Shashikant Borkar, Advocate for the Appellant.
Shri V.P. Gangane, Additional Public Prosecutor for the Respondent.

CORAM : S.B. SHUKRE, J.

th DATE : 20 OCTOBER, 2016.

ORAL JUDGMENT :

1. This is an appeal preferred against the judgment and order dated 15.9.2016, passed in Sessions Trial No.60/2011, by the Additional Sessions Judge, Bhandara, thereby convicting the appellant of the offence punishable under Sections 307 of the Indian Penal Code.

2. The facts of the case in brief as under :

The allegation against the appellant is that on 31.3.2011 at J-apeal374.16.odt 2/8 about 8.00 p.m. when the complainant Umesh Sarve was proceeding on bicycle with one Rakesh Meshram occupying a pillion seat of the bicycle, the appellant suddenly came in front of the bicycle of the complainant and Rakesh Meshram and asked them to stop. This spot was situated near a culvert at Kanhalmoha. The complainant, however, did not pay any heed to the move of the appellant and continued to ride the bicycle.

Seeing this, the appellant, carrying a knife in his hand, charged at the complainant and gave its blow on the back portion of the complainant.

The complainant, therefore, alighted from the bicycle and a quarrel between the complainant and the appellant ensued. In the quarrel, the complainant felt that something had pierced his back and soon he realized that the object which had pierced his back was a knife. By that time some other persons had gathered at the spot. They were Sanjay Sarve, Dashrath Jagnade and Devanand Chunorkar. Sanjay Sarve removed the knife embedded in the back of the complainant. According to the complainant, there was also present at that spot, his cousin, Chandu Sarve, who had a grudge against the complainant and his family members because of the land dispute pending between them. The complainant lodged a F.I.R. on the next day and the appellant was arrested. The investigation was carried out. The appellant was prosecuted for an offence punishable under Section 307 of the Indian Penal Code. On merits of the case, learned Additional Sessions Judge J-apeal374.16.odt 3/8 found that the prosecution succeeded in proving beyond reasonable doubt the offence of an attempt to commit murder punishable under Section 307 of the Indian Penal Code with which the appellant was charged and accordingly convicted him for the same. The appellant was sentenced to suffer rigorous imprisonment for five years and also to pay fine of Rs.5,000/- together with default sentence of rigorous imprisonment for three months by the judgment and order dated 15.9.2016. It is the same judgment and order, which are under challenge in the present appeal.

3. I have heard Shri Shashikant Borkar, learned counsel for the appellant and Shri V.P. Gangane, learned A.P.P. for the State.

4. I have gone through the private paper book prepared from out of the record of the sessions case filed on record of the appeal by the learned counsel for the appellant. I have also considered the impugned judgment and order.

5. According to the learned counsel for the appellant, this is a fit case wherein benefit of doubt deserves to be given to the appellant as the key witness, Ramesh Meshram, the only eye witness to

the incident of stabbing has not been examined in this case. Learned A.P.P. for the State submits that the impugned judgment and order are proper as the complainant's evidence is reliable.

6. It is seen from the evidence of the complainant, PW 1, Umesh J-apeal374.16.odt 4/8 that there is a real doubt about as to who stabbed the complainant in his back by means of a knife. The reason being that reaction of the complainant, the PW 1 Umesh after receiving of a stab injury appears unnatural. He has stated in his evidence before the Court that when he did not stop his bicycle inspite of a call given by the appellant for stopping of the bicycle, the appellant stabbed him in his back by means of knife and then, he alighted from the bicycle and a quarrel ensued between himself and the appellant. PW 1 has further stated that Dashrath Jagnade and Deowanand Chunorkar (PW 6 and 7 respectively) came there and intervened in the quarrel by separating both of them and then he realized that something had pierced his back.

7. Learned counsel for the appellant submits that it cannot be accepted that a person who has suffered a stab injury caused by sharp edged weapon like knife would not realize the moment it is caused as it would normally cause severe pain. So, first thing he would do learned counsel submits, is to get down from the bicycle, look at the injury and then do that which he thinks right. He submits that there is also an admission given by PW 1 Umesh that he has no previous dispute with the appellant and there was no enmity in between them. He points out from the F.I.R. (Exh.-12) that the person, Chandu Sarve, with whom admittedly he had a dispute, was also present at the spot, although PW 1 Umesh has not stated so in his substantive evidence before the Court.

J-apeal374.16.odt 5/8 But, he further submits that fact remains that there was a possibility of Chandu Sarve also being present at the spot of incident and against this background, it was essential for the prosecution to have examined the only eye witness available in this case, Rakesh Meshram. He submits that Rakesh Meshram was not examined and, therefore, serious doubt has arisen about the creditworthiness of PW 1 Umesh.

8. Learned A.P.P. submits that it is a fact that Rakesh Meshram was not examined as a prosecution witness. But, he further submits, the evidence of PW 1 Umesh is sufficient to inspire the confidence of the Court.

9. On overall consideration of prosecution evidence, I do not think that the evidence of PW 1 Umesh could be taken as of reliable nature. The reasons are not too far to seek. Admittedly, there has been no enmity between the appellant and the complainant. This would suggest that apparently there was no reason for the appellant to suddenly launch an attack upon the appellant. Rather, admittedly the enmity was with Chandu Sarve, who according to the complaint vide Exh.-12, was already present at the spot of incident. Then, PW 1 Umesh did not realize that he had a serious stab injury in his back immediately after it was caused, it was caused according to his version when he was riding the bicycle, and that he felt it only some time after he had alighted from the bicycle, which appears to be improbable. PW 5 Dr. Gopal Vyas has J-apeal374.16.odt 6/8 deposed that the injury was muscle and lung deep. If such was the nature of injury, it does not appeal to reason that any person who suffers such an injury would not feel the pain of the injury immediately after suffering it. Therefore, as rightly submitted by the learned counsel for the appellant, evidence of Rakesh Meshram, the

eye-witness, has assumed great significance. Unfortunately, he was not examined by the prosecution. His non-examination as a witness, in the facts and circumstances of this case would require this Court to draw an adverse inference against the prosecution and it would be that he was not examined because the incident did not take place in the manner and the way it has been stated to have taken place by the complainant PW 1 Umesh. The prosecution has also not explained anything about the presence of Chandu Sarve, with whom admittedly the appellant had a previous dispute.

10. The prosecution has examined some other witnesses, namely, PW 2 Sanjay Sarve, PW 6 Dashrath Jagnade and PW 7 Deowanand Chunorkar. All of them having not seen the actual assault by means of knife, would not help the case of the prosecution in any manner. Their evidence together with the evidence of PW 1 Umesh would only show that somebody caused stab injury to Umesh in his back and nothing more. As stated earlier, Rakesh Meshram was the only eye witness available so far as stabbing is concerned, and he was not examined in this J-apéal374.16.odt 7/8 case. Therefore, the doubts present in the prosecution case were not removed.

11. Having considered the evidence of the prosecution so, I am of the view that the prosecution has failed to establish beyond reasonable doubt its case that in the night of 31 st March, 2011 at 8.00 p.m. near culvert at Kanhalmoha the appellant assaulted the complainant PW 1 Umesh with an intention to kill him and caused him a stab injury in his back by means of a knife. These aspects have not been considered by the learned Additional Sessions Judge while passing the impugned judgment and order. This is a fit case wherein benefit of doubt deserves to be given the appellant.

12. The appeal is allowed.

13. The impugned judgment and order are hereby quashed and set aside.

14. The appellant be released forthwith, if not required in any other crime.

15. Fine amount, if paid, be refunded to the appellant.

okMksns

J-apeal374.16.odt

CERTIFICATE

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