IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.187 OF 2024

Sagar s/o Sarangdhar Tembhikar, Age : 32 years, Occ : Saloon, R/o Near Satyanarayan Mandir, Juna Gaon, Buldana, Tq. & Dist. Buldana (Presently in jail)

... APPELLANT

VERSUS

State of Maharashtra, through Police Station Officer, P.S. Buldana City, Dist. Buldana.

... RESPONDENT

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Shri A.J. Thakkar, Advocate for the appellant.
Shri A. Chutke, Addl.P.P. for the State.

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CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
CLOSED ON : 30.04.2024
PRONOUNCED ON : 12.06.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. ADMIT.

2. The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. The sole accused is convicted in Sessions Trial No.81 of 2017 for the offence punishable under Sections 307, 326 and 324 of the Indian Penal Code ('IPC') and sentenced to undergo imprisonment for life along with certain amount of compensation. Being aggrieved and dissatisfied by said judgment and order of conviction, the appellant/accused has approached to this Court for setting aside the judgment of conviction.

4. The prosecution case in nutshell is that, on 07.10.2016, around 9.00 p.m., the informant Sumit along with his friends had been to Jijamata Prekshagar, Buldana for seeing 'Garba Dandiya' arranged on the eve of Navratri Mahotsav. Similarly the accused came to see Garba dance however he started dancing by standing on the chair, which has obstructed the view of backside sitters. The informant Sumit, his friends and other audience asked the accused to step down however the accused got enraged. The accused took out a knife from his pocket and indiscriminately assaulted the informant Sumit and his friends namely Amit, Sk. Mohasin and Sonu causing them bleeding injuries of grave nature.

5. On the basis of report lodged by Sumit, crime has been registered within few hours. After completion of investigation, charge-

sheet has been filed. The defence of the accused is of total denial as well as a faint attempt is made to raise a plea of alibi. The prosecution has examined in all 9 witnesses to bring home the guilt of accused. The Trial Court has fully relied on the evidence of injured eye-witnesses while arriving on the conclusion that the accused has inflicted grave injuries by means of dangerous weapon namely knife. The Trial Court held that the act of the accused amounts to attempt to commit murder and thus, imposed aforementioned sentence.

6. Heard both sides exhaustively. The learned Counsel appearing for the appellant/accused argued that the Trial Court miserably erred in recording the finding of guilt. It is submitted that the evidence of eye-witnesses is inconsistent and unreliable. The seizure of weapon is a farce. No independent eye-witness has been examined. Moreover, the Trial Court has not appreciated the plea of alibi. In the alternative, it is argued that there was total absence of intention of causing death and thus, the offence punishable under Section 307 of the IPC has not been made out. Likewise, it is submitted that the Trial Court has imposed harsh punishment in disregard to the young age and family responsibility of the accused.

7. Though the prosecution has examined in all 9 witnesses,

the entire prosecution case rests on the evidence of PW2 injured informant Sumit (Exhibit 64), PW3 Amit second injured (Exhibit 67) and PW4 third injured Sk. Mohasin (Exhibit 79). The prosecution also relied on the evidence of PW6 Dr. Anil Tarale, who has examined the injured soon-after the occurrence and issued Medicolegal Injury Certificates. During the course of investigation Panchanama of the scene of the offence was drawn in which blood stained knife was seized from the place of occurrence.

8. Since it is a case of direct evidence, it is advantageous to directly go to the evidence of injured eye-witnesses. Informant Sumit has narrated in detail about the happenings. It is his evidence that at the relevant time he himself along with his brother PW3 Amit, PW4 Sk. Mohasin and Sonu went to see Garba dance. They had asked the accused to step down from the chair however the accused got annoyed, took out a knife and inflicted blows on their person. Sumit has detailed about the injuries sustained by he himself and his accompanied friends. The evidence of PW3 Amit and PW4 Sk. Mohasin is on the similar line. They have also stated the same story coupled with specific act of the accused of inflicting the knife blows on their person.

9. The prosecution has examined PW6 Dr. Anil Tarale, who

was attached to the General Hospital, Buldana at the relevant time. He has examined PW2 Sumit on which he noted that Sumit had sustained injury at his right forearm. It was incise injury of size 10 x 5 x 2 cm caused by hard and sharp object. The injury was fresh and of a grievous nature. The patient was referred for further treatment. He has examined PW3 Amit and found two injuries. One at right forearm and second at near left side chest. The size of first injury was 13 x 4 x 2 cm and second injury was 15 x 4 x 2 cm. The injury was inflicted by hard and sharp object. The injuries were fresh and of a grievous nature. He has examined PW4 Sk. Mohasin who was also sustained two incise wounds. First injury was at right side of Abdomen and another was at middle finger nuckle. Size of first injury was 10 x 4 x 2 cm and second was 2 x .05 x .05 cm. The injuries were inflicted by hard and sharp object. The injuries were fresh and of a grievous nature. Accordingly he has issued Medicolegal Injury Certificate (Exhibit 96, 98 and 100). Though Dr. Tarale deposed about examination of fourth injured Sonu however he has not been examined by the prosecution.

10. We have carefully gone through the evidence of three injured eye-witnesses coupled with the evidence of the Medical Officer and injury certificates. The evidence of eye-witnesses is consistent which is strongly corroborated by the injury certificates. It reveals that

within two to three hours from the occurrence, FIR (Exhibit 65) has been lodged along with the name of assailant accused. The Medical Officer has examined all injured within one hour from the occurrence. The aforesaid evidence of prosecution remained intact. Rather the said evidence is quite consistent, natural and reliable. The defence is unable to point material discrepancies so as to discard the evidence of reliable witnesses.

11. The injured and accused were unknown to each other. There was no reason for injured to falsely implicate the accused. The defence has not brought on record inimical terms so as to evolve the possibility of false implication. Moreover, quick lodgment of the police report vouch about the credibility of the entire material. Though the defence made faint attempt of raising a plea of alibi however the said facile plea does not withstand in absence of supporting material. On the other hand the consistent evidence of eye-witnesses falsifies the plea of alibi. The Trial Court has considered the entire material in detail. The Trial Court has also examined the other circumstances like seizure of blood stained knife and clothes. The judgment of the Trial Court is well reasoned on the point of involvement of accused, which calls no interference.

12. It takes us to decide as to what offence has been committed by the accused. In order to convict an accused for the offence punishable under Section 307 of the IPC, the prosecution has to establish all essential ingredients, which are required to prove the offence of murder except the death.

13. To bring a case within the ambit of Section 307, the prosecution has to make out the facts and circumstances envisaged by Section 300. If the ingredients of Section 300 are wholly lacking , there can be no conviction under Section 307 of the IPC. The ingredients of the Section are (i) intention or knowledge relating to commission of murder, and (ii) the doing of an act towards it. An attempt is an intentional preparatory action, which fells in its object in achieving end result. To constitute the offence it is sufficient if the act was one capable of causing death and there was an intention to cause death. All that is necessary to be established is the intention with which the act is done, and if once the intention is established, the nature of the act will be immaterial. In other words, a person commits an offence under this Section when he has an intention to commit murder and in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is penultimate act or not. Though the nature of the injury gives a vital clue to the intention of the accused, but it may

also be adduced from circumstances of the case without looking at the actual injury.

14. The intention is to be gathered from all the circumstances, and not merely from the consequence that ensue. The nature of the weapon used, the manner in which it is used, motive for the crime, severity of the blow, part of the body where the injury inflicted are some of the factors that may be taken into consideration to determine the intention. In case at hand, as we have observed above, the incident occurred at the spur of moment without premeditation. Rather the parties are unknown to each other. The accused was over enthusiastic as he stood on the chair and was dancing while seeing the Garba dance. Because of only the other spectators asked him to step down he got annoyed and reacted in cruel manner by indiscriminately using the knife to all objectors. It is evident that he did not intent to kill particular person as there was no fixed target. He pulled out his knife and waved to all objectors causing bleeding injuries on whatever part which came into contact in the swing of his knife. From all these circumstances it is evident that, he did not intent to kill either of the victim but to create a terror he used deadly weapon in indifferent manner.

15. Apparently, the incident was an outcome of sudden quarrel in between strangers on account of watching garba dance. Obviously, there was neither intention nor motive for the accused since they are the strangers. It is evident that as the accused was asked to step down from the chair, he got annoyed and indiscriminately assaulted all objectors by knife. We have seen the nature of injuries from which it is evident that in anger the accused assaulted to all persons who asked him to step down from the chair. Pertinent to note that, the accused has not targeted a particular obstructor but has gone on causing injury by knife to everyone who tried to ask him to remain silent.

16. Considering the entire incident as a whole, it does not disclose that the accused had intention to cause death or had intention to cause particular bodily injury. Moreover, a knowledge of accused cannot be inferred about the likelihood of causing death by his act. Most of the injuries were at hand coupled with minor injuries at the sides of chest and stomach. The depth of injury was merely 2 cm and thus, it is difficult to conclude that the accused intended to cause death of either of injured or to cause that particular injury.

17. The prosecution has duly established that the accused has caused multiple bleeding injuries by means of knife, which is certainly a

dangerous weapon. It was a big size knife which has caused grievous injuries. The evidence of eye-witnesses is supported by the Medical Officer who had stated that injuries were caused by sharp edged weapon and are of grievous nature. In absence of requisite intention and knowledge the case does not fall under Section 307 of the IPC. Thus, the act of the accused is nothing but an act of causing grievous hurt by dangerous weapon, punishable under Section 326 of the IPC. In the circumstances, instead of Section 307, the accused is convicted for the offence punishable under Section 326 of the IPC. We may clarify that since the accused is convicted under Section 326 of the IPC, the offence punishable under Section 324 being minor offence of Section 326, conviction for Section 324 would not sustain. In view of the above, interference is called to that extent only.

18. As regards to the quantum of punishment is concerned, always it should be in proportion to the atrocities committed by the accused. It reveals that at the time of incident the accused was 22 years of age. It is evident from the judgment of the Trial Court that the accused was only earning member and was shouldering responsibility of his family. The accused was a first offender. However, one should not forget, the gruesome act of the accused and its impact. There was no reason for accused to carry knife while watching the garba dance. The

accused has not only caused isolated injury, but he has indiscriminately gone on assaulting 4 persons causing them bleeding injuries at various parts of the body. Most of the injured were hospitalized for the period more than one week. For no reason, the innocent persons have experienced a horrifying attack by a big size knife, which has shattered their normal life. The act of attacking on the strangers by knife without reason on momentary anger is certainly condemnable.

19. Having regard to all above facts, the term of imprisonment for 7 years would be appropriate to maintain right equilibrium. In view of above, the criminal appeal stands partly allowed. We hereby modify the conviction from the offence punishable under Section 307 of IPC to Section 326 of the IPC and sentence the accused to undergo rigorous imprisonment for 7 years. Rest of the operative order is maintained as it stands. The appeal stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.) (VINAY JOSHI, J.)

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