

(2009) 04 SC CK 0188
In the Supreme Court Of India
Case No : Criminal Appeal No. 1312 of 2007

Baban Bandu Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (2009) 2 ACR 1923 : (2010) AIRSCW 154 : (2009) 57 BLJR 2328 : (2009) 13 JT 662 : (2009) 6 SCALE 6 : (2009) 12 SCC 685 : (2009) 6 SCR 172 : (2009) 2 ShimLC 127 : (2009) 6 Supreme 689 : (2009) 6 UJ 2687

Hon'ble Judges : P. Sathasivam, J; Lokeshwar Singh Pantaa Panta, J; Arijit Pasayat, J

Bench : Full Bench

Advocate : Sudhanshu S. Chaudhary and Naresh Kumar, for the Appellant; Ravindra Keshavrao Adsure, for the Respondent

Final Decision : Disposed Of

Judgement

Arijit Pasayat, J.—Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court, Aurangabad Bench, upholding the conviction of the appellant for offence punishable under Sections 302 and 324 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'), while directing acquittal of two co-accused persons who had faced trial for the alleged commission of offences punishable under Sections 302 and 324 read with Section 34 IPC. All the three accused persons were found guilty of the aforesaid charges by learned II Additional Sessions Judge, Dhule.

2. Background facts in a nutshell are as follows:

First Information Report was lodged by one Krishnaji at Dhule Police Station on 7.7.2001 at 0030 hrs. It was alleged by him in the report that on 06.07.2001 he was with his father in the thrashing floor. One Bandu Rambhau Patil is his uncle. Partition between his father and uncle Bandu took place prior to the lodging of

the report. Despite partition, the agricultural lands were standing in the name of his father Vithoba. In the evening of 06.07.2001, at about 7.00 p.m. a calf which was tied in his thrashing floor, untied itself and went to the thrashing floor of his uncle Bandu. Krishnaji followed the calf to the thrashing floor of his uncle Bandu, caught hold of it and brought it back to his thrashing floor. At that time his uncle Bandu, Accused No. 1 Baban and Accused No. 2 Navnath were present. They scolded him on account of the calf entering their thrashing floor. He explained that calf had un-tied itself and that it was not a deliberate act on his part. He returned to his thrashing floor along with the calf.

After some time, his uncle Bandu and Accused No. 2 Navnath and Accused No. 1 Baban came to their thrashing floor and hurled abuses at them. A-1 assaulted his father with an axe. The stroke was given on the head of Vithoba. His uncle Bandu assaulted Krishnaji and his father with a stick. Accused No. 2 Navnath also assaulted him and his father with a stick. The assailants after noticing the injuries, left for their house. He along with his father Vithoba returned to his house. On the way to their house, they were also accompanied by one Prakash Bhandane - husband of his aunt.

At about 7.15 p.m. his mother Sindhubai was also abused by Accused Nos. 1 and 2 and other co-Accused, who are acquitted by the trial Court. At that time Prakash (PW 5) requested them not to scold Sindhubai. Accused No. 2, Accused No. 1 and other Accused persons assaulted his mother Sindhubai as well as Prakash (PW 5). At that time Accused No. 1 assaulted Prakash (PW 5) with sword, at his neck. Sindhubai was also beaten by other lady accused persons by fists and blows. This beating was witnessed by Meerabai, Nadarbai, Sadashiv etc. and these witnesses have rescued Sindhubai and Prakash (PW 5). Thereafter, Krishnaji, in an auto-rickshaw went to Dhule for lodging the report and for treatment.

On 06.07.2001 PSI Hiralal (PW 11) was on duty at Dhule Taluka Police station. Krishnaji's report was registered by Police Station Officer at Cr. No. 169 of 2001, under Sections 147, 148, 149, 307, 324, 504, 506 of IPC. Investigation was taken over by PW 11 Hiralal. He registered the offence on 07.07.2001 at 00.30 hrs. At about 1.30 a.m. on 07.07.2001, he arrested Accused Nos. 1 to 6. In the morning of 07.07.2001, he drew panchanama of the scene of offence (Exhibit 80) with the assistance of PW 8 Shantilal, a panch witness. At the time of drawing spot panchanama ordinary soil as well as soil mixed with the blood was seized, kept in a packet and packet was sealed. Along with Shantilal (PW 8), one more panch witness Gopichand was present. Hiralal (PW 11), thereafter, interrogated some witnesses and recorded their statements. Thereafter, he handed over the investigation to API Deepak Gotmare (PW 12).

API Deepak (PW-12) held inquest over the dead body of Vithoba in the presence of two panchas and recorded a panchanama to that effect, which is at Exhibit 47. He also recorded statements of Sindhubai, mother of PW 1 Krishnaji.

On 10.7.2001 Accused No. 4 showed readiness and willingness to disclose certain informations. API Deepak (PW-12) called two panchas, namely; Ravindra and Aba. Information given by Accused No. 4 Bandu was recorded in the presence of panch witnesses u/s 27 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). This memorandum of panchanama is at Exhibit 93, which led with the discovery of weapon is proved in the evidence of PW 3 Aba as well as in the evidence of API Deepak (PW 12). In pursuance of the information disclosed, the panch witness and Police Officers were led by Accused No. 4 and the weapon alleged to have been used in the commission of crime i.e. stick was discovered at the instance of Accused No. 4. Said weapon was attached and seized under panchanama Exhibit 94. API Deepak (PW 12) also seized a steel bucket at the instance of Accused No. 2 from his house. He also seized the stick at the instance of accused No. 2 from his house.

According to API Deepak (PW 12) Accused No. 1 Baban made a disclosure statement regarding an axe. Said statement was recorded under panchanama in the presence of panch witnesses. According to the information received and at the instance of Accused No. 1, said axe was discovered by API Deepak (PW 12). This panchanama is at Exhibit 83. This panchanama is proved in the evidence of API Deepak (PW 12). Under this panchanama Exhibit 83, two weapons had been discovered at the instance of Accused No. 1, namely; axe (Article 17) and blade of harrow (Article 18). To prove this panchanama, Exhibit 83, prosecution relied upon the evidence of Aba (PW 3) as well as Deepak (PW 12). API Deepak (PW 12) also clarified in his evidence that xerox copy of the panchanama is placed on record since the original copy of page No. 2 of the panchanama was found missing at the time of the trial. This xerox copy was exhibited in the evidence of API Deepak (PW 12). This witness also caused the examination of accused and collected blood samples. He, thereafter handed over investigation to API Satish Jadhav.

API Satish (PW 13) recorded statements of two witnesses. He arrested Accused No. 8 Kamlabai on 03.08.2001.

Clothes of the deceased were seized, after the post mortem under seizure panchanama. Investigation was undertaken. API Satish PW-13 filed charge sheet against the accused persons. On committal of the case of the Court of Sessions, charge was framed by the learned Additional Sessions Judge, Dhule.

It is to be noted that in all seven accused persons faced trial and out of them four persons were acquitted by the trial Court. The trial Court noticed that the case of prosecution primarily rested on the ocular evidence of PWs 1, 5 and 9. Placing reliance on their evidence the trial Court found the accused persons guilty while directing acquittal of four of the accused persons before it. The matter was carried in appeal before the High Court which as noted above confirmed the conviction of the appellant while allowing the appeal filed by the co-accused persons. It did not accept the plea of accused appellant that a case relatable to Section 302 IPC is not made out as single blow was given.

3. In support of the appeal learned Counsel for the appellant submitted that the factual scenario clearly shows that over petty matter the dispute arose and in course of sudden quarrel the blow was given.

4. Learned Counsel for the respondent-State on the other hand supported the judgment of the High Court.

5. It is to be noted that Krishnaji (PW 1), Prakash (PW-5) and Swaroopchand (PW9) had stated about the assaults made. Though their evidence was attempted to be shown as tainted because of their apparent relationship with the deceased we find no substance in such plea. Further, all the three witnesses did not speak about the assaults on the deceased by the accused. PW-5 did not witness the assault on the deceased as well as PW-1's evidence is relevant so far as assault on himself is concerned. PW- 9's evidence is of considerable importance. According to him while he was returning to his house he saw quarrel and the manner of assault by the appellant.

6. For bringing in operation Exception 4 to Section 300 IPC it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

7. The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case

within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. These aspects have been highlighted in *Dhirajbhai Gorakhbhai Nayak Vs. State of Gujarat*, , *Prakash Chand Vs. State of H.P.*, , *Byvarapu Raju Vs. State of Andhra Pradesh and Another*, and *Byvarapu Raju Vs. State of Andhra Pradesh and Another*, (SLP (Cri.) No. 1515/2008 disposed of on 15.1.2009).

8. Considering the background facts it would be appropriate to convict the appellant for offence punishable u/s 304 Part I IPC. Custodial sentence of 10 years would meet the ends of justice.

9. The appeal is allowed to the aforesaid extent.