

(2012) 11 BOM CK 0116
In the Bombay High Court
Case No : Criminal Appeal No. 1551 of 2004

Balasaheb Ranoji Shinde, Convict No. C-2567, Kolhapur
Central Prison, Kalamba

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 323

Citation : (2013) 2 ABR 488 : (2013) 3 BomCR(Cri) 192

Hon'ble Judges : V.K. Tahilramani, J; A.R. Joshi, J

Bench : Division Bench

Advocate : A.Z. Mookhtiar, for the Appellant; P.P. Bhosale, APP for the State, for the Respondent

Judgement

A.R. Joshi, J.—Heard rival submissions on this Criminal Appeal preferred by the appellant/orig. accused against the judgment and order of conviction dated 28th April, 2004 passed by the Adhoc Additional Sessions Judge, Kolhapur in Sessions Case No. 52 of 2003. For the offence punishable u/s 302 of IPC, the appellant was sentenced to suffer imprisonment for life and to pay fine of Rs. 5000/- in default to suffer RI for one year. Further, for the offence punishable u/s 323 of IPC, the appellant/accused was sentenced to suffer RI for six months. Both the sentences were directed to run concurrently. The case of the prosecution, in nutshell, is as under:-

Appellant/accused and victim Ratanbai were acquainted to each other. Ratanbai was running a tea-stall in the locality of Powar Colony on Panchgaon Road, Kolhapur. Accused was also working there as a building labour. Accused and one of his friends wanted the meals on daily basis and they were introduced to one Suman Naik PW-3. Suman Naik was doing the business of providing food on mess-basis. As such accused started taking food at the place of Suman Naik PW-3. Apparently, according to the case of prosecution appellant/accused and Ratanbai (since deceased) were very well knowing each other. However

apparently there was some dispute as in the afternoon of 5th December, 2002 as there was an incident in that locality during which appellant/accused assaulted Ratanbai when they were proceeding from the road. That time appellant/accused was accompanied by one more woman. According to the case of prosecution, there was some quarrel between appellant/accused and victim Ratanbai and during that quarrel appellant/accused lifted one bamboo stick which was lying by the side and hit Ratanbai on her head. After such blow, Ratanbai fell on the ground. Thereafter also appellant/accused inflicted 2-3 blows and thereafter he along with another woman ran away from the spot. Also according to the case of prosecution said assault was witnessed by PW-10 complainant Yemanappa and PW-3 Suman Naik. Said PW-10 Yemanappa was also one of the building construction labourers and he was doing the work along with his wife at the same site near the scene of offence. He was knowing appellant/accused by face, however was not knowing his name. He was knowing the victim Ratanbai and was also well acquainted with her as she was running a tea-stall in the same locality. On that afternoon of 5th December, 2002 complainant PW-10 Yemanappa witnessed the assault and thereafter saw that the accused left the spot and ran away. PW-3 Suman Naik also witnessed the incident when she was near the spot. As she was knowing appellant/accused and also victim Ratanbai, she tried to intervene. However, appellant/accused pushed her away by pulling her hairs and also assaulted her with bamboo stick. On this, Suman went away, but still did witness the incident as to assault on victim Ratanbai.

2. Without going into much details of the stages of investigation, suffice it to say that PW-10 Yemanappa lodged the complaint to the police after attending the police station. That time, he did not give the name of appellant/accused. However, stated that he would identify the accused and he was knowing him by face. During investigation, spot panchnama was conducted. Victim Ratanbai died on the spot. Inquest panchnama was conducted. Dead body was sent for postmortem. Initially search for the accused was conducted and he was arrested on the next day i.e. on 6th December, 2002 and his blood stained clothes were taken charge of. After completion of investigation, the matter was committed to the Court of Sessions and was tried and ended in conviction, as detailed above, which is under challenge in the present Appeal.

3. At the threshold it must be mentioned that during the arguments, learned Advocate for appellant/accused did not much emphasized the aspect as to clear acquittal. In other words, it is submitted that present appellant/accused is in custody since the date of his arrest and nearly ten years are already over for his jail imprisonment. Considering this fact, it is further submitted that the present case may be brought down from the offence of 302 IPC to the offence of 304 (Part II) IPC so far as the main offence of murder is concerned. The arguments were advanced only on this count and the main points of arguments canvassed before us are as under :

Firstly it was a sudden fight and there was no premeditation and as such present

matter can be taken under exception-4 to Section 300 of IPC.

Secondly appellant/accused had not prepared himself for even the assault much less for murder of the victim, inasmuch as he had picked up bamboo stick which was lying aside as building construction material was scattered in that area and was available and which is fortified by the substantive evidence of prosecution witnesses.

Thirdly there was no premeditation to commit any offence, and Fourthly that though it is accepted that he had assaulted the victim Ratanbai, he had no intention to kill her as he used a bamboo stick as the weapon of offence and gave only one or two blows on the victim in a sudden fight.

4. We have considered the above arguments and we have gone through the substantive evidence of main prosecution witnesses PW-10 complainant Yemanappa and PW-3 Suman Naik. Also we have gone through the documentary evidence available on record and it must be said that there was sufficient material to establish the homicidal death of victim Ratanbai and that the accused had caused the death. As such, there is no doubt in our mind that appellant/accused was involved in the assault. Now the only question remains whether the facts and circumstances of the matter do spell out the commission of offence punishable u/s 302 of IPC or whether the matter can come under exception 4 to Section 300 of IPC, thus bringing down the offence to section 304 (part II) of IPC. On the above aspect, considering the exception 4 to section 300 of IPC which reads thus

Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation-It is immaterial in such cases which party offers the provocation or commits the first assault

it must be said that there was a sudden quarrel/fight between appellant/accused and the victim, and as such the arguments advanced on behalf of the appellant that there was no premeditation or no intention to kill, is probable. In other words, considering the specific circumstances as listed above, we are of the considered view that the present matter is required to be viewed in different perspective thus diluting the offence from Section 302 of IPC to Section 304 (Part II) of IPC. In that event the present appeal is partly allowed with following order :

:: ORDER ::

I. Criminal Appeal No. 1551 of 2004 is partly allowed.

II. The conviction of the appellant/accused for the offence punishable u/s 302 of IPC imposed vide judgment and order dated 28th April, 2004 passed by the

Adhoc Additional Sessions Judge, Kolhapur in Sessions Case No. 52 of 2003 is set aside and in stead he is convicted for the offence punishable u/s 304 (Part II) of IPC and his sentence of life imprisonment is reduced to imprisonment for ten years. Fine of Rs. 5000/- is also imposed on appellant/accused, in default RI for six months.

III. Conviction and sentence for the offence punishable u/s 323 of IPC is confirmed and shall sustain.

IV. Present order be communicated to the concerned jail authorities where the appellant/accused is presently lodged.