
(2019) 07 BOM CK 0126
In the Bombay High Court
Case No : Criminal Appeal No. 838 Of 2015

Bhatusing Virangya Ravtale And Ors	APPELLANT
Vs	
State Of Maharashtra	RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304(i), 304(ii), 307, 308, 323, 325, 326, 504, 506
Evidence Act, 1872 — Section 32

Citation : (2019) 07 BOM CK 0126

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : A.S. Savale, S.J. Salgare

Final Decision : Partly Allowed

Judgement

17. Surface wounds and injuries-

Their nature, position, dimensions (measured) and directions to be accurately stated and their probable age and causes to be noted.

If bruises be present what is the condition of the subcutaneous tissues?

(N.B.-- When injuries are numerous and cannot be mentioned within the space available they should be mentioned on a separate paper which should be signed).", "1. Abrasion on neck backside.

2. Contusion on chest.

3. Abrasion on waist.

4. Right arm " contusion.
5. Left arm " contusion.
6. Contusion on left thigh.
7. Contusion on right thigh.
8. Left great toe " contusion.

appellants and that the present appellants were assaulting Vinod with sticks on back of his neck and his hands and legs. They pacified the quarrel and, had rescued Vinod from their clutches. They had taken him to Primary Health Center, Aadgaon, and then Vinod was further referred to Government", Hospital at Mhasawad and from Mhasawad to Government Civil Hospital, Nandurbar. He has also stated that at the time of admission, Vinod was", unconscious. Subsequently, he had regained consciousness on 11.01.2014. His statement was recorded by the Police. The defence has failed to create", any dent in his examination-in-chief. He has denied the suggestions that he is not an eye witness.,

15. Then same is the case with P.W. 9 i.e. Akhiraj Rehatam Ravtale, who along with P.W. 2, had witnessed the incident, rescued Vinod and had", taken him to the hospital. He has denied the suggestion that Vinod had fallen on the ground while running.,

16. Hence, in the present case, the contents of the dying declaration are corroborated by P.W. 2 and P.W. 9.",

17. The learned counsel for the appellants submits that the incident even if admitted to have occurred as stated, it can neither be said that the",

appellants had any intention to cause homicidal death of Vinod nor it can be said that they had knowledge that the assault would be fatal and therefore,",

the offence without addition or subtraction would be under Section 325 of the Indian Penal Code.,

18. The learned counsel for the appellant further submits that there were no blood stains on the clothes of the deceased as he had not sustained,

bleeding injury. The said submission also cannot be taken into consideration for the simple reason that inflicting consecutive blows on the neck and the,

spinal cord would naturally be fatal. The appellants ought to have realized that the blow dealt was on vulnerable part of the body which was likely to,

result in his death. Moreover, there was common intention and the allegation is that all the three accused were assaulting with sticks.",

19. The said submission cannot be taken into consideration for the simple reason that the appellants had given consecutive blows with sticks so much,"

so that there was compression of the vertebra. Moreover, the prelude to the incident and the conduct of the appellant need to be taken into",

consideration. The appellants with an intention to assault Vinod had called him to their house. It was a pre-meditated assault on Vinod and, therefore,"

it cannot be said that the offence would fall under Section 325 or 326 of the Indian Penal Code.,

20. Undue and misplaced sympathy would result into failure in administration of justice in the present case. It cannot be said that there was no,

brutality in the said act as consecutive blows were given on his back of neck thereby causing internal injury.,

21. Learned APP in contra submits that in fact the assault was so brutal that in the eventuality, had the neighbours not rushed to the scene of the",

offence, Vinod would have died an instantaneous death as a result of grievous injury to his neck. This is not a case of a single blow where they only",

intended to teach him lesson or assault him. There was no injury to his forearms, legs and other non-vital parts of the body.",

22. The learned APP placed reliance upon the judgment of the Supreme Court in the case of Dharam and Others Vs. State of Haryana, [2006 AIR",

SCW 6298], wherein, the Supreme court had an occasion to consider similar set of facts wherein, the deceased was assaulted by the appellants who",

happened to be in blood relations. The Apex Court has observed as under :,

â??In the very nature of things, the appellants could not have entertained any intention to cause death of their brother/ uncle and therefore, we are of",

the opinion that the offence committed by the appellants would fall within the ambit of section 304, Part â?" II, IPC.â??"

23. The learned APP has also placed reliance on the decision of this Court in the case of Kaka @ Anil Namdeo Magar Vs. State of Maharashtra,"

[2009 ALL MR (Cri) 3597], wherein this Court was pleased to acquit the accused under Section 302 of the Indian Penal Code and convicted under",

Section 304 II of the Indian Penal code and sentenced to suffer rigorous imprisonment of seven years. However, in that case, there was no pre-",

mediation and a sudden quarrel had ensued.,

24. In the case of State of Rajasthan Vs. Jora Ram, [2005 AIR SCW 2393]. The

Hon'ble Apex Court had sentenced the appellant for offence",
punishable under Section 304-II of the Indian Penal Code. The Hon'ble Apex Court was of the opinion that there was no evidence to prove that the,
injuries inflicted on the deceased were sufficient in the ordinary course of nature to cause death.,

25. In the present case, the doctor has not opined that the injuries sustained by Vinod were not grave to that effect. In view of this, it cannot be safely",
inferred that the appellants had the knowledge that severe blows on the back of the neck would result into death and therefore, it can be said that the",
accused appellants have committed an offence punishable under Section 304 (II) of the Indian Penal Code.,

26. In the case of Mer Dhana Sida Vs. State of Gujarat, [1985 (1) Supreme Court Cases 200,]the Hon'ble Apex court has held that where the",
accused persons simultaneously attacked the deceased with sticks and caused as many as ten injuries, one of them being a fracture of tenth and",
eleventh ribs and rupture of the spleen. All persons participating in such an attack could at least be imputed with the knowledge that they were likely,
to cause injuries which were likely to cause death.,

It was held that the High Court was right in holding that on factual and medical evidence, the accused persons were guilty of committing an offence",
under Section 304 (II) read with Section 34 of the Indian Penal Code.,

27. The appellants are in custody from 13.01.2014. They were under trial persons. It appears from the record that they have undergone a substantive,
sentence of five years. However, there is no specific report that they had misused parole and furlough and, therefore, it appears that they would be",
entitled to remission in due course. Hence, the appellants are convicted for the offence punishable under Section 304-II of the IPC and sentenced to",
suffer rigorous imprisonment for seven years. Hence, the following order :",
Order,

(I) The appeal is partly allowed.,

(ii) The conviction of the appellants for the offence punishable under Section 304 (1) of Indian Penal code is quashed and set aside.,

(iii) The appellants are convicted for an offence punishable under Section 304 (II) of the Indian Penal Code. They are sentenced to suffer rigorous,

imprisonment for seven years. The sentence of fine is maintained.,

(iv) In the eventuality that the appellants have undergone the sentence of seven years along with remission, they be released forthwith.",

(v) Appeal stands disposed off, accordingly.",