

(2004) 01 BOM CK 0103
In the Bombay High Court
Case No : Criminal Appeal No. 198 of 2000

Chandrakant Baburao Wadkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428

Evidence Act, 1872 — Section 27

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

Citation : (2004) 01 BOM CK 0103

Hon'ble Judges : V.G. Palshikar, J; P.V. Kakade, J

Bench : Division Bench

Advocate : Rahul Kate, for the Appellant; P.H. Kantharia, APP, for the Respondent

Judgement

P.V. Kakade, J.—The appellant has preferred this appeal against the Judgment and Order dated 14.3.2000 passed by the Sessions Judge, Satara in Sessions Case No. 155 of 1998 convicting the appellant for commission of offences punishable under Sections 302, 452 and 449 of the Indian Penal Code and sentencing him to suffer life imprisonment for offence u/s 302 of the Indian Penal Code, R.I. for 2 years and to pay fine of Rs. 1000/= in default to undergo R.I. for one month for offence u/s 452 of I.P.C. and R.I. for two years and to pay fine of Rs. 1000/= in default to undergo R.I. for one month for offence u/s 449 of I.P.C. The appellant however was acquitted of the offences punishable under Sections 323, 504, 506 r/w 34 of the Indian Penal Code. It may also be noted that the accused No. 2 involved in the trial was acquitted of all the charges by the learned trial judge.

2. The facts giving rise to the present case, in short, are thus -

3. The complainant Ravindra, his father deceased Tukaram, his mother Shalan used to live jointly. The appellant is distantly related to them and he is the uncle of the complainant. All the parties belonged to Kamothi community and used to sale utensils by visiting villages in the area. There used to be quarrels between

them frequently but were patched up by other people.

On 20.4.1998 Kisan, a distant relation died due to old age, and therefore, the appellant, deceased and other people had gone to the house of deceased Kisan. At that time appellant started washing his Chappals with the water kept for religious rites and by which bat was to be given to the dead body of Kisan. The deceased Tukaram questioned the appellant as to why he was washing his Chappals by the said water, however, the appellant threatened him that he would see Tukaram in the evening. Thereafter the dead body was taken to funeral and last rites were preformed. The appellant was also abusing the deceased Tukaram in his absence. All the people thereafter returned to their home from funeral ground. At about around 00.36 hrs. during the night of 21.4.1998 the appellant suddenly went to the house of Tukaram and started knocking the door loudly. He challenged Tukaram and said that he should come out. There as a gap in the door and complainant and his three aunts along with Tukaram and his wife were sleeping in the house. They did not open the door, however, the appellant inserted his hand from the gap of the door and opened it and then he scuffled with Tukaram as well as Complainant and his mother. Appellant caught hold Tukaram by his neck and dragged him outside the house in the courtyard. Then he took out Gupti and stabbed Tukaram on the left side of his stomach. There was a commotion at the time of incident and the people gathered; the appellant ran away.

The complainant Ravindra and his mother rushed to the Police Station, Satara and lodged the FIR (Ex.28) at 1.45 hours in the night. On the basis of which the offence came to be registered at C.R.No. 129/98 under Sections 362, 452, 504, 506 of the Indian Penal Code. Tukaram was taken to Civil Hospital, Satara where he succumbed to the injuries. Inquest panchanama was prepared and dead body was sent for post mortem. Clothes of the accused were seized under panchanama. The post mortem report was received in due course, which is part of the record. According to the medical evidence the probable cause of death was haemorrhagic shock due to stab injury.

P.I. Survey, who took up the investigation, in which course the appellant was arrested under panchnama. At that time one Gupti was found which was kept under the full-pant of the accused, which was also seized as per seizure panchnama, which as drawn in the presence of panchas. Clothes of the appellant were also seized under panchanama. Panchanama of the spot of incident was duly prepared. The incriminating articles seized in the course of investigation were sent to Chemical Analyser for examination. Report was received and is part of record. The statements of several witnesses came to be recorded including the eye witnesses to the incident. On completion of the investigation the charge-sheet was sent to the court of law. The learned Magistrate committed the case to the Court of Sessions.

4. The learned Sessions Judge framed the charge for the commission of offences against the appellant and other accused. They pleaded not guilty tot he charge

framed against them. The prosecution led its evidence at length on which basis the learned trial judge came to the conclusion that the appellant was guilty of the offence of murder after entering into the house of the deceased during the night time with intention to commit the said offence and consequent convicted and sentenced the appellant in the aforesaid manner. The other accused, however, was found not guilty for want of sufficient evidence against them.

Hence the appeal.

5. We heard Mr. Kate, the learned Counsel for the Appellant and Mrs. Kantharia, the learned APP for the State.

6. As can be seen from the evidence on record it is a case based on direct evidence, i.e. ocular testimonies of complainant P.W.1 Ravindra son of the deceased and P.W. 2 Vilas, who is said to have rushed to the scene of incident after hearing the commotion from neighbouring house.

In his evidence witness Ravindra has given a background of the earlier altercation between the accused and the deceased and has stated that at about 12 midnight the appellant started knocking the door challenging his father and asking him to come out and then started abusing Tukaram. Finally he inserted his hand and removed the latch and entered the room. He again started scuffling with his father. The complainant and his mother tried to intervene but they were slapped by the appellant and thereafter he assaulted Tukaram with hands, then he caught hold the neck of Tukaram and dragged him in the court yard and then at the time he took out Gupti and stabbed Tukaram on left side of his stomach. Tukaram shouted. On hearing the commotion the neighbours had arrived as the scene including witness Vilas. Seeing them the appellant ran away after stabbing Tukaram. Tukaram had sustained bleeding injuries and his clothes were blood stains. He was taken to the hospital. The complainant with his mother went to the Police and lodged a complaint. In the meantime Tukaram had succumbed to his injuries.

The ocular account given by witness Vilas is totally corroborating complainant's evidence. Witness Villas had gone to the temple for sleeping at about 11 in the night at which time they heard shouts and therefore they rushed to the house of the Tukaram. He saw that appellant had dragged Tukaram in the courtyard and was assaulting. At that time in the courtyard the appellant stabbed Tukaram with Gupti in stomach. The complainant deceased Tukaram; his wife and appellant and himself were present at that time. He stated that appellant ran away after the assault on Tukaram, due to which Tukaram had sustained bleeding injuries and therefore, was taken in hospital in autorickshaw.

7. Perusal of the evidence of both the witnesses leaves no doubt whatsoever that they were present at the scene of incident and have witnessed that the appellant has stabbed Tukaram with Gupti, as a result of which he succumbed to the injuries. The FIR Ex.28 which is proved by the complainant was filed immediately after the incident at the police station on which basis the offence came to be

registered against the appellant at 1.45 a.m. The FIR gives the details of the assault and corroborates the version given by the complainant and witness Vilas in toto, therefore, there is no doubt whatsoever that they are eye witnesses. It is also to be noted that all the witnesses belonged to the same community. The complainant himself is the son of deceased Tukaram. Witness Vilas is a distant relative. However, there is absolutely no reason why he would implicate the appellant falsely in the case leaving the true culprit aside. Moreover, witness Vilas has no animosity against the appellant to involve him falsely in the case. These aspects definitely shows that the ocular testimony of both the witnesses, duly corroborated by the FIR as well as other circumstantial evidence on record, is sufficient to bring home the guilt in order to hold that at the relevant time and place appellant stabbed Tukaram with Gupti, as a result of which he died.

8. The medical evidence on record also duly supports the ocular version given by both the eye witnesses so far as factum and location of injury are concerned along with the fact that the injury was caused with sharp and edged weapon as contemplated u/s 27 of the Evidence Act whereunder it is duly established that the weapon of offence i.e. Gupti was recovered at the instance of the accused. Mr. Kate, the learned counsel for the appellant urged that it is a prosecution case that the gupti was recovered from the person of the accused but there were no blood stains on the clothes of the accused. However, it is clear enough from the evidence on record that the gupti was kept in a sheath and obviously therefore, no blood stains were found thereon. It was submitted on behalf of the appellant that the panchanama of the scene of incident did not show that there were blood stains on the ground and therefore, the scene of offence is doubtful. However, the medical evidence on record is clear enough to show that Tukaram died due to internal damage and the spleen was ruptured as well as two litres of blood had accumulated in his abdomen, which was seen at the time of post mortem examination. If it was so, then the fact that there was no blood stains on the ground is properly explained and hence this aspect cannot bring the prosecution in doubt in any manner.

Therefore, we have no hesitation to hold that the appellant has committed the impugned offence by stabbing Tukaram with gupti, as a result of which he died.

9. Now the question comes, in view of the surrounding circumstances revealed from the record, whether offence committed by the appellant is that of murder as contemplated u/s 300 of the Indian Penal Code or the facts on record to show that the case comes within the lesser offence i.e. Section 304(firstly) of the Indian Penal Code. The provision of Section 304(1) is required to be invoked if the act by which the death is caused is done with the intention of causing death, or causing such bodily injury as is likely to cause death. In the present case the evidence on record is sufficient to show that the appellant had definite knowledge that his act would cause such bodily injury as was likely to cause death but the fact that only one stab injury was given in the course of the incident would show that assault was not with definite intention to cause death.

In view of these aspects we are inclined to give limited benefit of doubt to the appellant to the extent that his impugned act would be covered by Section 304 (firstly) of the Indian Penal Code instead of Section 362 of the Indian Penal Code. The charge for the offences u/s 452 and 449 of the Indian Penal Code would remain proved from the facts proved on record.

10. Hence, the appeal is partly allowed, the order passed by the learned Sessions Judge in Sessions Case No. 155 of 1998 recording the conviction against the appellant u/s 302 of the Indian Penal Code and consequent life imprisonment is hereby set aside and the appellant is acquitted of the charge of murder. However, he is convicted for commission of offence punishable u/s 304 (firstly) of the Indian Penal code and sentenced to suffer R.I. for seven years.

The conviction and consequent sentence for commission of offence u/s 452 and 449 of the Indian Penal Code passed against the appellant shall stand confirmed.

The appellant is in prison and shall be entitled to set off u/s 428 of the Criminal Procedure Code as directed by the learned Sessions Judge.