
(2004) 02 BOM CK 0064
In the Bombay High Court
Case No : Criminal Appeal No. 211 of 2000

Devappa Keshav Nayak

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

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

Citation : (2004) CriLJ 1940

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

Bench : Division Bench

Advocate : D.M. Shah, for the Appellant; V.R. Bhosale, APP, for the Respondent

Judgement

V.G. Palshikar, J.—Being aggrieved by the judgment and order of conviction and sentence passed on 8-12-1999 by II Additional Sessions Judge, Kolhapur in Sess. Case No. 100/99 the appellant named above has preferred this appeal on the grounds mentioned in the memo of appeal and as verbally canvassed by the learned advocate appearing on behalf of the appellant before us.

2. With the assistance of the learned counsel for the defence and the prosecution we have scrutinized the record and reappreciated the evidence.

3. The facts as disclosed on reappreciation of evidence on record stated briefly is that the accused was husband of the deceased and there used to be frequent quarrels between the two. On the fateful day i.e. 19-3-1999 the accused hit one blow on the head of victim and realising that he has hurt the wife which may be serious took her to the hospital. Then the local doctor to whom she was taken advised examination by Neuro Surgeon and therefore he took the wife to a Neuro Surgeon. But ultimately she died. The accused had injured his wife and so admitted to several persons that he had hit the wife. The prosecution arrested the accused and on completion of investigation he was tried before the learned trial Judge who on appreciation of evidence of eight witnesses examined by the prosecution for this purpose came to the conclusion of guilt as aforesaid. It is this

order which is challenged before us on behalf of the appellant. The evidence in this case is very clear. There is ample corroboration to the depositions of material witnesses and there can be no doubt that the accused did hit the victim. The accused has told his 2/3 friends that he hurt his wife. It is proved on record that he accompanied her to Doctor Madan P.W. 3 and then to a Neuro Surgeon. Dr. Madan heard the victim saying that she was beaten by the accused, son of the accused and the deceased, when he was coming home saw them at the dispensary of Doctor Madan and he was also told by the accused that he has hit the wife. Similar disclosure is also made to P.W. 5 who was co-worker of the accused over the telephone. The deposition of these persons therefore clearly prove that the accused did hit the victim. There can be no doubt that the accused hit the victim. The fact that he is guilty of assault cannot therefore be disputed. The only question substantially raised by the learned counsel appearing on behalf of the accused which needs our attention is that do these facts as proved make out the conviction u/s 302 ? In our opinion, conclusion is well founded. There is no evidence whatsoever to show that the accused intended to kill his wife. There is ample evidence to show that the husband and wife used to quarrel frequently in which husband beat the wife. Deposition of the son also is very clear when he states that he saw father personally sitting at the door of the doctor telling him that he has injured his wife. From all this evidence it is apparent that the accused did intend to hurt the victim. It cannot however be said, even if entire evidence is accepted that he hit her with the intention to kill her. He used wooden plank and hit on the head of the victim. It cannot be said that he had therefore the knowledge that in all probability death would ensue. It is therefore a case where he had the knowledge that the death is likely to be caused by blow he hit on the head of the victim. In our opinion, therefore, interest of justice would be met if the order of conviction and sentence u/s 302 of I.P.C. is set aside and the accused-appellant is acquitted of the same and instead he is convicted u/s 304(II) of IPC to suffer imprisonment for seven years. Appeal is thus partly allowed.