

(2016) 03 BOM CK 0059
In the Bombay High Court
Case No : Criminal Appeal No. 523 of 2014

Dhaku Sonu Jadhav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-03-2016

Acts Referred:

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

Citation : (2016) 2 AIRBomRCri 229 : (2016) ALLMRCri 1757 : (2016) 3 BomCR(Cri) 810

Hon'ble Judges : Smt. V.K. Tahilramani; Smt. Anuja Prabhudessai, JJ.

Bench : Division Bench

Advocate : Abhaykumar Apte, Advocate, for the Appellant; A.S. Shitole, A.P.P, for the Respondent

Final Decision : Partly Allowed

Judgement

Smt. V.K. Tahilramani, J. (Oral) - This appeal is preferred by the appellant-original accused no. 1 against the judgment and order dated 1.11.2011 passed by the learned Additional Sessions Judge, Raigad in Sessions Case No. 148 of 2009. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to imprisonment for life.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Chandrakant was the husband of PW 1 Tulsabai. Gangubai was the sister of Tulsabai. The appellant is the husband of Gangubai. Tulsabai along with her husband Chandrakant and Gangubai along with her husband Dhaku were working on the brick-kiln of PW 4 Ganesh Shelke. There were about 12 to 13 couples working on brick-kiln of Ganesh Shelke. PW 2 Ram and PW 3 Krishna alias Kisan were also working on the brick-kiln of Ganesh Shelke. For residential purposes, all the workers were allotted one hut each in the premises of the brick-kiln. Gangubai along with appellant Dhaku and Tulsabai along with her husband Chandrakant, were residing in one hut, however, there was a partition in the hut

and Gangubai and Dhaku and Tulsabai and Chandrakant were residing on either side of the partition. One Devji was the father of Gangubai and Tulsabai. He expired about four years back. Devji had one hut and some land. Devji gave half acre land to Jankibai who was the sister of Gangubai and Tulsabai. He gave half acre of land to Gangubai and half acre to Tulsabai. As at the time of death, Tulsabai was residing with her father Devji, therefore Devji had given the hut to Gangubai. There was dispute between Tulsabai and Gangubai on account of property.

(ii) The incident occurred on 27.3.2009 at about 9.10 p.m. The appellant came to the house of Tulsabai. The appellant gave abuses and called out to Chandrakant who was the husband of Tulsabai. Chandrakant then went outside the house. Then the appellant gave blow with sickle on the neck of Chandrakant. Due to the blow, Chandrakant fell down. PW 2 Ram who had witnessed the incident, went and informed Ganesh Shelke who was the owner of the brick-kiln. Ganesh Shelke came to the spot and he took Chandrakant to the hospital. There Chandrakant was declared dead. PW 1 Tulsabai then lodged F.I.R. (Exh. 15) in the hospital. Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed against the appellant. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant and co-accused Gangubai under Section 302 read with Section 34 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4. We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant assaulted Chandrakant with the sickle which led to the death of Chandrakant.

5. There are three eye witnesses in the present case i.e. PW 1 Tulsabai, PW 2 Ram and PW 3 Krishna. Tulsabai has stated that she was working on the brick-kiln of PW 4 Ganesh Shelke. The brick-kiln was situated at village Kharghar near Panvel. Her sister Gangubai and Gangubai's husband Dhaku were also working on the same brick-kiln. Tulsabai along with her husband Chandrakant and daughter were residing in a hut on the premises of the brick-kiln. Gangubai and Dhaku were residing in a separate hut on the brick-kiln. Tulsabai has stated that Devji was her father. Her father expired about three years prior to the incident. She had no brother, however, she had two sisters i.e. Gangubai and Janki. Her father Devji had one hut and some land. Her father had given half acre land each to Janki, Tulsabai and Gangubai. As at that time Tulsabai was residing with her father in his hut, her father had given the hut to her. There was dispute between

Tulsabai and Gangubai on account of property. Tulsabai has further stated that the incident occurred on 27.3.2009. The appellant came to the house of Tulsabai. The appellant gave abuses and called out to Chandrakant who was the husband of Tulsabai. Chandrakant then went outside the house. Then the appellant gave blow with sickle on the neck of Chandrakant. Due to the blow, Chandrakant fell down. PW 2 Ram who had witnessed the incident, went and informed Ganesh Shelke who was the owner of the brick-kiln. Ganesh Shelke came to the spot and he took Chandrakant to the hospital. There Chandrakant was declared dead. PW 1 Tulsabai then lodged F.I.R. (Exh. 15).

6. The second eye witness is PW 2 Ram. Ram has stated that he was working on the brick-kiln of Ganesh Shelke since last about five years. He knew deceased Chandrakant and his wife PW 1 Tulsabai since about five years. They were also working on the same brick-kiln and they were residing in the premises of the brick-kiln in a hut. Ram was also residing in a hut on the premises of brick-kiln. Ram knew Dhaku and his wife Gangubai. They were also working on the same brickkiln and residing in the premises of the brick-kiln. According to Ram, he returned home at about 7.30 p.m. There he came to know that quarrel was going on between both sisters Gangubai and Tulsabai. He went to the spot where the quarrel was taking place. He saw the appellant giving blow to Chandrakant with sickle. Chandrakant fell down. Then Ram went and informed PW 4 Ganesh Shelke i.e. the owner of the brick-kiln. Ganesh Shelke came to the spot. Ganesh Shelke took Chandrakant to the hospital. Chandrakant died in the hospital.

7. The last witness is PW 3 Krishna. Krishna has stated that at the relevant time, he was working on the brick-kiln of Ganesh Shelke. He was staying in the premises of brick-kiln in a hut. Chandrakant was the husband of his cousin sister. The hut of Chandrakant was situated adjacent to his hut. Krishna has further stated that Gangubai is his sister and the appellant is the husband of Gangubai. Chandrakant and Dhaku were living in one hut but there was partition made by grass in the hut. Krishna has further stated that at about 8 to 9 p.m. he was taking dinner. At that time, quarrel took place between Chandrakant and Dhaku. Dhaku gave blow with sickle on Chandrakant. Chandrakant fell down and became unconscious. Somebody informed Ganesh Shelke i.e. the owner of the brick factory. Ganesh Shelke came to the spot and took Chandrakant to hospital. Nothing has been elicited in the cross-examination of PW 1 Tulsabai, PW 2 Ram and PW 3 Krishna to cause us to disbelieve their evidence. We find that the evidence of these three eye witnesses inspires implicit confidence, hence, we have no hesitation in relying on the same.

8. The evidence of three eye witnesses is further corroborated by the medical evidence. PW 5 Dr. Naik conducted the post-mortem on the dead body of Chandrakant. On external examination, Dr. Naik noticed incised wound on the right shoulder, size 5 cm. x 3 cm. x 2.5 cm. deep. The injury had penetrated to the right subclavari vessel, pleura and lung. In addition, there was incised wound on the right arm. On internal examination, Dr. Naik noticed that pleura was torn

on right side upper lobe of the lung. Right side lung was torn on upper side lobe with bleeding in the right plural cavity and lung was collapsed underneath. Blood had collected there. On examination of large vessel on the left side, it was found normal while on right side subclavian vessel was injured and bleeding was present. According to Dr. Naik, the cause of death was hemorrhagic shock. Dr. Naik has further stated that injury sustained by Chandrakant was possible by blow of sickle. Thus, the medical evidence also corroborates the prosecution case.

9. Mr. Apte, the learned counsel for the appellant submitted that even if it is accepted that the act of the appellant of assaulting Chandrakant with sickle resulted in his death, the case would not fall under Section 302 of IPC, but it would fall under Section 304 Part-I of IPC. Mr. Apte pointed out that the evidence on record shows that when the incident occurred, a quarrel was going on between the appellant and deceased Chandrakant which has been deposed about by PW 3 Krishna. Mr. Apte pointed out that Krishna has stated that at 8 to 9 p.m. he was taking dinner, at that time, quarrel took place between Chandrakant and the appellant. The appellant then gave a blow with sickle to Chandrakant. Mr. Apte pointed out that the evidence of the three eye witnesses shows that just one blow was given by the appellant to Chandrakant. Mr. Apte further submitted that the assault was not premeditated or preplanned but it happened on the spur of moment in a fit of anger. Mr. Apte stated that all these facts, especially the fact that the appellant assaulted Chandrakant during the course of sudden quarrel, would bring the case under Exception 4 to Section 300 of IPC and would thus, be covered by Section 304 Part-I of IPC.

10. To bring a case within Exception 4 to Section 300 of IPC, all the ingredients mentioned in it must be found. It is to be noted that the word "fight" occurring in Exception 4 to Section 300 of 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 passion to cool down. In this case, the evidence especially that of PW 3 Krishna shows that a quarrel was going on between the appellant and the deceased. The evidence of three eye witnesses shows that the appellant gave only one blow with sickle which shows that the appellant did not take any undue advantage or act in a cruel or unusual manner. In this view of the matter, in our opinion, the case would fall as rightly submitted by Mr. Apte, under Section 304 Part-I of IPC.

11. Considering the evidence on record, we are of the opinion that Exception 4 to Section 300 applies to the facts of the case and appropriate conviction would be under Section 304 Part-I of IPC. Hence, the following order is passed:

ORDER

(1) The conviction and sentence under Section 302 of IPC imposed on the appellant by judgment and order dated 1.11.2011 passed by the learned Additional Sessions Judge, Raigad in Sessions Case No. 148 of 2009 is set aside. Instead, the appellant is convicted under Section 304 Part-I of IPC and sentenced to suffer R.I. for seven years and fine of Rs. 2000/- (Rs. two thousand only) in

default to suffer R.I. for one month.

(2) Appeal is partly allowed to the aforesaid extent.

(3) Office to communicate this order to the appellant through the concerned Jail Superintendent.

(4) Legal fees to be paid to appointed advocate Mr. Abhaykumar Apte is quantified at Rs. 5000/-