
(1982) 02 BOM CK 0018
In the Bombay High Court
Case No : Criminal Appeal No. 449 of 1979

Dnyaneshwar Dagdoba Hivrekar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-02-1982

Acts Referred:

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

Citation : (1982) CriLJ 1870

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. This is an appeal preferred by the accused to challenge the legality of the judgment dated March 27, 1979, recorded by the Additional Sessions Judge, Pune, convicting the appellant for an offence u/s 304 Part II of the Penal Code, and imposing a sentence of rigorous imprisonment for three years.

2. The incident which gave rise to the prosecution occurred at about 5 p.m. on November 10, 1979, in a Wada situated at Kasba Peth, Pune. The deceased was residing in the Wada along with his parents and two sisters Tai (P.W. 3) and Anju (P.W. 4). The deceased was a young man of about 23 years old, while the accused was equally a young man and was a friend of the deceased and was residing in the adjoining block in the same Wada. On the date of the occurrence, the deceased left his house and was going along with the accused towards the gymnasium for their regular exercise. Within a short distance from the house where both the accused and the deceased were residing, some dispute took place between them and they started abusing each other and there was a scuffle between them. A young boy Rajendra came and told Tai the sister of the deceased that the accused and the deceased were quarrelling. Thereupon, Tai proceeded to the place where they were quarrelling and on the way came across her sister Anju (P.W. 4). Both the sisters separated the deceased and the accused and the sisters carried their brother back to the house. The deceased was very reluctant to return to the house and both the deceased and the accused

continued shouting and abusing each other. Tai and Anju persuaded the deceased to return back and they were followed by the accused. After the deceased entered the Wada and Tai and Anju were forcing him to enter the room, the accused, who was following, pulled stick from the hand of a child who was playing in the Wada and gave a blow on the head of the deceased from the rear. Unfortunately, the deceased collapsed and became unconscious. He was carried inside the house and after sometime removed to the hospital. In spite of the medical aid in the Jahangir Nursing Home, which is a reputed hospital in Pune city, the deceased breathed his last, early on the next day morning. It is required to be stated that it was the brother of the accused who carried him to the hospital as the parents of the deceased were not in the house at the relevant time. The investigation followed and the accused was arrested and charge-sheeted for having committed the offence of murder punishable u/s 302 of the Penal Code.

3. The defence of the accused was one of total denial and it was suggested that while the deceased was returning back to his house he was struck against the electric poll, fell down and received an injury which ultimately led to his death. The prosecution in support of its case examined several witnesses including the eye-witnesses Tai (P.W. 3) and Anju (P.W. 4). The medical evidence is of Dr. Shinde (P.W. 7) who examined the deceased on his admission to the hospital and Dr. Kundalkar (P.W. 11) who gave treatment and carried out post mortem. The post mortem notes are produced on record at Exh. 35 and the cause of death is internal hemorrhage. The trial Judge came to the conclusion that the accused gave blow with a stick on the head of the deceased but the stick which weighed only 210 grams could be called an apology for stick. The trial Judge held that the accused never intended to cause death of the deceased but he had a knowledge that the blow given by him would result into death and thereupon recorded a conviction u/s 304 Part II of the Penal Code. Taking into consideration the fact that the accused is a young man of hardly 23 years old and the blow given by him was not violent and has merely caused a slight bruises on the vertex, felt that the sentence of three years rigorous imprisonment would meet the ends of justice. The order of conviction is under challenge in this appeal.

4. Shri Paranjpe, the learned counsel appearing in support of the appeal submitted that the evidence led by the prosecution is not sufficient to warrant a conclusion that the accused gave a blow on the head of the deceased and that resulted into his death. I do not find any merit in the submission of the learned counsel. The evidence of Tai (P.W. 3) is very clear as to how the incident occurred and in the cross-examination, which is lengthy, nothing was elicited to discard her testimony. Tai deposed that her brother left the house to go to the gymnasium and she learnt about the dispute going on the street between the accused and the deceased and thereupon ran to that place. Tai further deposed that along with her sister Anju, whom she met on the road, they were bringing back the deceased and at that time the accused, who was following, was calling the deceased a coward. Tai stated that the accused took a stick from the hand of

one of the children playing in the compound of the Wada and gave a blow on the head of the deceased. Tai stated that her brother fell down and the stick broke into two pieces. There is hardly any reason to discard the testimony of Tai. The witness was cross-examined with reference to sundry and irrelevant matters, but as regards the cracks of her evidence about assault by the accused, there is hardly any cross-examination. The witness was very frank in admitting that the deceased and the accused were abusing each other before the stick blow was given. The evidence of Anju (P.W. 4) also clearly indicates that the evidence given by Tai is very accurate. I do not find any infirmity in the testimony of Tai and Anju and in my judgment the trial Judge was person that the accused did inflict a blow with a stick on the head of the deceased. The submission of Shri Paranjpe that the deceased dashed against an electric poll and fell down and received the injury is not borne out by the evidence and save and except making a suggestion to the witnesses in cross-examination there is nothing to sustain that submission.

5. The prosecution examined Dr. Shinde who examined the deceased in the hospital at about 7 p.m. on his admission. Dr. Shinde deposed that there was no external injury but the pupils were dilated and were not reacting to light. The prosecution also examined Dr. Kundalkar (P.W. 11) and the witness stated that he attended to the deceased and removed the hair on the head and noticed a bruise over the vertex slightly on the left side of a measurement of 2 1/2" x 3/4" transverse. Dr. Kundalkar further deposed that the X-rays did not reveal any skull fracture. After the exploratory operation was performed by Dr. Variava, it was noticed that large quantity of blood had evacuated from sub-dural space and the fresh bleeding was present. Gross laceration of brain was visible on both sides and according to Dr. Kundalkar the bleeding could be due to the injuries to the brain and blood vessels. The post-mortem notices (Exh. 35) indicated that the caused of death was the internal hemorrhage in the head. There is no reason to discard the medical evidence and Shri paranjpe did not challenge this part of the evidence.

6. In my judgment, the prosecution has clearly established that the accused gave blow with a stick on the head of the deceased and that blow has resulted in his death. Shri Paranjpe then submits that accepting the entire prosecution case, it would not be possible to record a finding that the accused had committed an offence u/s 304 Part II of the Penal Code. It was urged by the learned counsel that the accused had neither the intention nor the knowledge that his act would cause the death of his friend. Shri Paranjpe points out that the stick with which the blow was given can hardly be described as a stick as it weighs only 210 grams and with the blow given by the accused it broke into two pieces. It is not in dispute that the stick was grabbed by the accused from the hand of a child who was playing in the compound of the Wada and it would not be improper if it is assumed that the stick must be a very small stick. The prosecution led the evidence of Tai and the witness produced on record Article 4 which is claimed to be a broken portion of the stick. From the evidence on record, it is impossible to

hold that the stick used by the accused was a weapon from which a knowledge can be attributed to the accused that the blow by such stick would cause death. The fact that the accused and the deceased were friends and were neighbours also cannot be overlooked and taking all these facts into consideration, in my judgment, the offence committed by the accused could not be one under S. 304 Part II of the Penal Code. The offence is clearly one u/s 323 of the Penal Code. Looking to the stick used by the accused and looking to the fact that some quarrel was going on between the two friends, it could be safely held that the accused intended to cause a simple hurt to the deceased. Unfortunately the blow landed on the head and resulted into the death. The trial Judge has recorded a finding that the blow given by the accused was not at all violent and the witnesses nowhere stated that the blow was given with any force. Shri Chopda relied upon the statement of Dr. Kundalkar to the effect that the injury could have been caused by a forcible blow with the stick Art. 4 Firm this statement it is impossible to conclude that the accused had given a forcible blow. In my judgment the accused had committed an offence of causing simple hurt to the deceased and is liable for conviction under S. 323 of the Penal Code.

7. Turning to the question of sentence, Shri Paranjpe submits that the accused had remained in jail for a period of 53 days and taking into consideration the fact that the accused is a young man and was a student at the time of the occurrence, it would not be appropriate to send him back to the jail. Shri Paranjpe submits that the incident occurred on an auspicious day in Diwali of 1977 and the evidence establishes that the two families had very cordial relations and it was the brother of the accused who attended to the deceased after the blow was suffered. Taking all these factors into consideration, in my judgment, the ends of justice would meet if the sentence is limited to the period already undergone by the accused.

8. Accordingly, the appeal is allowed and the conviction recorded by the trial Judge is modified and the accused is convicted under S. 323 of the Penal Code and sentenced to suffer rigorous imprisonment for a period of 53 days. As the accused has already undergone the said period in jail, it is not necessary to give any further directions for detention of the accused. The bail bond of the accused stands cancelled.

9. Order accordingly.