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In the Bombay High Court

Case No : Criminal Appeal No. 444 of 2009

Lahu Chandar Hilam APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3488

Hon'ble Judges : V.K. Tahilramani, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : Arfan Sait, for the Appellant; V.R. Bhonsale, APP, for the Respondent

Judgement

V.K. Tahilramani, J.—The appellant - original accused had preferred this appeal against the judgment and order dated 13.2.2009 passed by the learned Additional Sessions Judge, Mangaon, District Raigad in Sessions Case No. 83 of 2008. By the said judgment and order, the learned Additional Sessions Judge convicted the appellant u/s 302 of the Indian Penal Code and sentenced him to imprisonment for life and to pay fine of Rs. 500/- and in default, R.I. for 30 days. The prosecution case briefly stated is as under:

The first informant PW 1 Bapu was the paternal uncle of the deceased Chandar. Chandar was the son of the elder brother of PW 1 Bapu. Deceased Chandar had two sons, namely, Chiman and Lahu, i.e., the appellant. Deceased Chandar was residing with his family consisting of his sons and grandchildren at village Nadsur (adivasiwadi), Taluka Sudhagad, District Raigad. The incident took place on 1.4.2008 at about 8 p.m., at that time a quarrel took place between the appellant and his father Chandar. Deceased Chandar was telling the appellant i.e., his son that he was acting as a vagabond and doing nothing and how he can provide food to him. Lahu told the deceased "I will see you". This quarrel was witnessed by PW 1 Bapu and PW 2 Raman. Immediately thereafter, the appellant assaulted Chandar with an axe on the neck. PW 1 Bapu lodged FIR. Thereafter, investigation commenced. The appellant was arrested on 9.4.2008 from the house of his relation in village Sangde, Taluka Khalapur, District Raigad. The

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clothes, which were on his person at that time, came to be seized as they were found blood stained. After completion of investigation, the charge-sheet came to be filed.

2. Charge came to be framed against the appellant u/s 302 of the Indian Penal Code. 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. His further defence is that deceased Chandar was a Police Patil and he had many enemies as whenever the police used to come to the Adivasiwadi in relation to illicit liquor business, Chandar used to help the police. After going through the evidence adduced in this case and the defence raised by the appellant, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this Appeal.

3. We have heard the learned Advocate for the appellant and learned A.P.P. for the State. We have carefully considered their arguments, the judgment and order passed by the learned Sessions Judge and the evidence on record. After minutely considering the same, we are of the opinion that the appellant assaulted his father Chandar with an axe and caused his death.

4. The prosecution has examined PW 5 Dr. Naravate. He is the medical officer, who had carried out autopsy on the dead body of Chandar. Dr. Naravate found following external injuries on the person of the dead body:

1. Clean out incised wound over Rt. side of the neck about 7 c.m. x 3 c.m. x 5 c.m. transverse place. Rt. Carotid Artery cut with profused bleeded, Tracheal ring cut, there was fracture of hyoid bone and there was fracture of thyroid cartilage.

2. Clean cut incised wound placed over Rt. Side of neck placed 2 c.m. Below injury No. 1, 4 c.m. x 2 c.m. x 2 c.m. with carotid artery cut bleeded. Transversely placed.

Dr. Naravate also found following internal injury on the dead body.

1. Tracheal ring cut T1 -- T2.

Dr. Naravate accordingly prepared the Post Mortem notes (Ex. 16). According to him, above injuries were sufficient in the ordinary course of nature to cause death. The Investigating Officer, PW 8 P.I. Shinde, has shown an axe seized in this case to Dr. Naravate and he has opined that above injuries are possible by means of an axe (Article No. 1). Dr. Naravate accordingly gave his opinion in writing (Ex. 17), that the cause of death was haemorrhagic shock due to grievous injury over right side of neck with profuse-bleeding. The advance cause of death (Ex. 14) was also issued by this medical officer. The above evidence clearly indicates that death of Chandar was nothing but homicidal death. It may be noted that seized article including axe was sent for chemical analysis (ex. 27). The C.A. Report (Ex. 29) clearly indicates that the axe was stained with blood, on the blade and handle. It was human blood of "B" group. Under these circumstances, it can be said that death of deceased Chandar was neither

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suicidal nor accidental and it is a homicidal death.

5. There is no direct eye witness to the incident and the conviction is mainly dependent on the evidence of PW 1 Bapu and PW 2 Raman. Both these witnesses have stated that immediately prior to the incident, a quarrel took place between the appellant and his father Chandar. Immediately, thereafter, Chandar was found dead. It is pertinent to note that in this quarrel the appellant threatened the deceased that he would "see him". The other evidence which the prosecution is relying on in this case is the evidence of PW 4 Raghunath, who is a relation of the appellant. The evidence of this witness is relied on to show that the appellant was absconding and he was arrested on 9.4.2008 from village Sangde, Taluka Khalapur, District Raigad. The appellant was residing at village Nadsur Taluka Sudhagad with his father that is deceased Chandar, but immediately after the incident he disappeared from the house and was found 8 days later in District Khalapur. This shows mens rea on his part. Especially as he did not even turn up for his father''s funeral. The time gap between the quarrel and finding the dead body of Chandar and the other facts and circumstances are such that it excludes the possibility of any third person committing the murder of Chandar. Nothing has been elicited in the cross-examination of all these three witnesses so as to disbelieve their testimony.

6. Another incriminating circumstance against the appellant is that at the time of his arrest, the clothes on his person were bloodstained. These clothes were sent to the C.A. As per the CA report Exhibit 29C, the shirt and pant of the appellant were found stained with blood of ''B'' group. The clothes of the deceased were also stained with blood of ''B'' group. This shows that blood of the group of the deceased was found on the clothes of the appellant. This is a highly incriminating circumstance. It is pertinent to note that the appellant has not furnished any explanation for the blood stains on his clothes.

7. Mr. Sait submitted that even if it is to be accepted that the act of the appellant of assaulting his father Chandar with an axe resulted in his death, the case would not fall u/s 302 of the Indian Penal Code but it would fall u/s 304 part II or at the most section 304 part I of the Indian Penal Code. He pointed out that the evidence on record shows that a quarrel was going on between the appellant and the deceased which has been deposed to by PW 1 Bapu and PW 2 Raman. He submitted that the incident occurred on the spur of the moment in a fit of anger. Mr. Sait submitted that as the incident had occurred during the course of a sudden quarrel, this would bring the case under Exception 4 to section 300 of the Indian Penal Code.

8. To bring a case under 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 shows that both the parties had worked themselves into a fury on account of verbal altercation going on between them.

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The appellant did not come to the spot armed with a weapon but he assaulted Chandar with an axe taken from the house. The evidence of PW 1 Bapu shows that the axe used in the incident was found in the house of every adivasi person. Thus, it is seen that the appellant did not come to the spot armed with the axe with premeditation but he assaulted Chandar with the axe which was in the house. However, for the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation, it must be further shown that the offender has not taken any undue advantage or acted in cruet or unusual manner. The facts of this case show that the appellant did not take any undue advantage or acted in a cruel or unusual manner. However, we are not prepared to accede to the submission of Mr. Sait that the case would fall u/s 304 part II of the Indian Penal Code. In our view, the case would fall u/s 304 part I of the Indian Penal Code because we are of the opinion that the appellant did not just have the knowledge that his act is likely to cause death, as contended by Mr. Sait but in fact, the appellant intended to cause death of Chandar. We say so, on the basis of the weapon used, the part of the body where the injury was inflicted, the force used while assaulting and the nature of the injury. The injury as seen from the evidence of PW 5 Dr. Naravate are serious in nature. Looking to all these facts, we are of the considered opinion that the case cannot fall u/s 304 part II of the Indian Penal Code.

9. Considering the evidence on record, we are of the view that Exception 4 to Section 300 of the Indian Penal Code applies to the facts of the case and the proper conviction would be u/s 304 part I of the Indian Penal Code. Hence, the conviction u/s 302 of the Indian Penal Code is set aside. Instead, the appellant is convicted u/s 304 part I of the Indian Penal Code. In our view, custodial sentence of seven years R.I. and a fine of Rs. 1000/- in default, S.I. for two months would meet the ends of justice.

10. Appeal is allowed to the aforesaid extent.

11. Office to communicate this order to the Appellant and the Superintendent of jail where the appellant is lodged i.e., Nashik Road Central Prison.

12. Writ expedited. At this stage, we must record our appreciation for the able assistance rendered by the learned advocate Mr. Arfan Sait who even at a very short notice, was thoroughly prepared and very ably conducted the matter. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee at Rs. 2,500/-.

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