

(2012) 02 BOM CK 0186

In the Bombay High Court

Case No : Criminal Appeal No. 705 of 2006 With Criminal Application No. 1543 of 2011

Lal Saheb Mahanand Pal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 300, 302, 304(I), 34

Citation : (2012) 02 BOM CK 0186

Hon'ble Judges : V.M. Kanade, J;P.D. Kode, J

Bench : Division Bench

Advocate : Yug Mohit Chaudhry, for the Appellant; J.P. Yagnik -APP, for the Respondent

Judgement

V.M. Kanade, J.—Heard the learned counsel appearing on behalf of the Appellant and the learned APP for the State. The Appellant takes exception to the judgment and order passed by the III Ad-hoc Additional Sessions Judge, Thane dated 30.11.2005 whereby the Appellant was convicted for the offence punishable u/s 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/-and, in default, to undergo simple imprisonment for three months.

2. Shri Chaudhry, the learned counsel appearing on behalf of the Appellant, at the outset, submitted that the Appellant did not wish to challenge the finding of the Trial Court, so far as the incident in question is concerned. He submitted that even if the prosecution case is accepted, even then an offence u/s 302 of the Indian Penal Code is not made out and at the most, the said offence would amount to an offence punishable u/s 304-Part II of the India Penal Code.

3. The prosecution case in brief is that the Appellant was the uncle of the deceased and the incident in question took place on 26.3.2005 which was the day after "Holi Festival" which is called "Dhoolivandan Festival". According to the

prosecution, deceased Dilip informed the Appellant /Accused that he was going to sprinkle colour on the Appellant. However, the Appellant warned him not to do so. In spite of that, according to the prosecution, Dilip sprinkled colour on the Appellant and as a result of which, there was an altercation between the Appellant and deceased Dilip and, thereafter, the Appellant went inside the house, brought a knife and inflicted two injuries on the person of deceased, as result of which the deceased collapsed and died. It is not in dispute that his death was homicidal. The doctor, who performed the post-mortem, has stated in his evidence that the deceased received three external injuries viz.; (i) Incise wound over, neck, anterior, 6 inches X 3 inches, cavity deep, carotid artery and jugular vein cut through and through, trachea cut through and through; (ii) Incise wound left anterior chest, 4 inches below left sterno-clavicular joint, size 1 inch X 0.5 inch muscle deep; (iii) Incise wound left ear over pinna 0.5 inch X 1/4th inch, skin deep. PW-2-Dr. Kantilal Sontakke who performed the postmortem has stated that the cause of death was due to cardio respiratory failure due to hemorrhagic shock due to injury to major vessel i.e. carotid and jugular veins and trachea on account of wound being caused by sharp object. He has further stated that these injuries were sufficient to cause death.

4. The learned counsel appearing on behalf of the Appellant submits that even if the prosecution case is accepted as it is, even then, according to him, the Trial Court ought to have held that the offence would fall u/s 304-Part II of IPC and not u/s 302 of IPC. He submitted that there was sudden fight and there was altercation between the Appellant and the deceased and thereafter, the Appellant brought a knife and stabbed the deceased. He submitted that therefore, the case of the Appellant would squarely fall under the 4th Exception to section 300 of the Indian Penal Code. In support of the said submissions, he has relied on the following judgments of the Apex Court

- (1) Satish Narayan Sawant Vs. State of Goa, ;
- (2) Sukhbir Singh Vs. State of Haryana, ;
- (3) Jagpati Vs. State of Madhya Pradesh, .

5. On the other hand, the learned APP appearing on behalf of the State submits that the Trial Court had taken into consideration the entire evidence on record and had rightly come to the conclusion that the Appellant had committed offence u/s 302 and not u/s 304 - Part II of the Indian Penal Code. He submitted that the eye witnesses had clearly stated that after the deceased had sprinkled colour on the deceased, which is customary during the Holi Festival, the Appellant went inside the house, brought a knife and thereafter, inflicted three injuries on his person which were sufficient in the ordinary course of nature to cause death. He submitted that apart from that, it had come on record that there was prior enmity between the Appellant and the deceased and, therefore, it could not be said that the said incident had taken place on the spur of the moment. He submitted that the injury, which was caused by the Appellant, was on the main

parts of the body i.e. neck, chest, left ear over pinna, thorax and, apart from that, there was a deep cut to the trachea which is a vital organ and as a result of the said stab wound, the deceased fell down and died on the spot. He, therefore, submitted that this is not a fit case for interfering with the impugned judgment and order passed by the Trial Court.

6. We have, with the assistance of the learned counsel for the Appellant and the learned APP for the State, gone through the impugned judgment and order passed by the Trial Court and also notes of evidence and other material evidence on record. In the present case, the learned counsel for the Appellant has mainly submitted that the offence u/s 302 of the IPC was not attracted even if the prosecution case is accepted as it is. In view of this submission, in our view, it is not necessary to go through the evidence for the purpose of finding out whether the prosecution has proved its case regarding the incident of assault by the Appellant herein.

7. The only question, therefore, which now falls for our consideration is: whether there was sufficient material on record whereby the Court could have come to the conclusion that the Appellant had committed premeditated murder of deceased Dilip. We have given our anxious consideration to the material on record, and, in our view, the evidence clearly suggests that the case of the Appellant would fall within Exception 4 to section 300 of the Indian Penal Code. It is a common ground that the deceased came to the house of the Appellant and told him that he was going to sprinkle colour on him. For some reason, the Appellant did not wish to get sprinkled with the colour though it was a Holi Festival and he warned the deceased that he should not sprinkle the colour on him. In spite of warning being given by the Appellant, the deceased Dilip, who was the Appellant's nephew, proceeded to sprinkle colour on him and thereafter, there was an altercation and both the Appellant and the deceased abused each other and soon thereafter, the Appellant went inside, brought a knife and stabbed the deceased thrice on the upper chest. From the evidence on record, it is established that there was a sudden quarrel and there was no premeditation on the part of the Appellant. The evidence clearly discloses that the deceased came near the house of the Appellant and thereafter the incident in question took place. Though it is true that the Appellant went inside, brought a knife and then inflicted injuries, the said incident happened in fraction of a minute. If the injuries, which are caused to the deceased, are taken into consideration, it cannot be said that the Appellant has acted in a cruel or unusual manner.

8. In this context, it would be relevant to take into consideration the judgment of the Apex Court in the case of Satish Narayan Sawant vs. State of Goa (supra). The Apex Court in paragraph 28 of the said judgment has observed that if the provocation and the incident happened at the spur of the moment, then the case would not fall u/s 302 of the Indian Penal Code, but it would fall u/s 304-Part II of the Indian Penal Code. In the said case, the Apex Court observed that the other injuries were superficial and only one injury was fatal in nature. In the said

case also, there was heated exchange of words and scuffle between the parties before the actual incident of stabbing took place. In the second case of Sukhbir Singh vs. State of Haryana (supra) also, there was a quarrel and the deceased gave slap to the Appellant and thereafter, the accused went home and came armed with the company of others and the time gap between the quarrel and the fight was of a few minutes only. The Apex Court held that there was no sufficient lapse of time between the quarrel and the fight and, therefore, the occurrence was "sudden" within the meaning of Exception 4 to section 300 of the Indian Penal Code.

9. Similarly in the case of Jagpati Vs. State of Madhya Pradesh (supra), the Apex Court has observed in paragraph 2 as under:

2. Before the Courts below it was also submitted that even if the prosecution case is to be accepted, even then an offence under S.302, IPC read with S.34, IPC is not made out. Coming to the nature of the offence, we find it difficult to hold that an offence under S. 302, IPC read with S.34 is made out. There was no previous enmity. There was a scuffle and a sudden quarrel that preceded the occurrence. No doubt the witnesses say that 15-20 minutes later the accused Jagpati accompanied by his brother, Ram Krishna came to the scene of occurrence. It can be seen that because of the trivial incident the subsequent occurrence appears to have taken place.

10. In our view, the ratio of these judgments would squarely apply to the facts of the present case. In the present case also, there was a sudden quarrel. The deceased came to the house of the Appellant and tried to sprinkle the colour on the Appellant, though he was warned not to do so. An altercation ensued, followed by a scuffle and then the Appellant went inside the house and brought a knife. In the present case also there was no sufficient lapse of time between the incident and the assault and, therefore, the fight was "sudden" within the meaning of Exception 4 to section 300 of the Indian Penal Code. The submission made by the learned APP for the State that since the Appellant had gone inside and brought the knife and caused a fatal injury with the knife shows that there was an intention to commit the murder, cannot be accepted. It is also urged that it had come on record that there was previous enmity between the two, whereas in the judgment on which the reliance is placed, the Apex Court had noted that there was no previous enmity. It is true that one of the witnesses had stated that there was previous enmity between the Appellant and the deceased. However, apart from the mere statement, there was no material on record to suggest that there was prior enmity between the two. The Appellant was the uncle of the deceased and had there been a previous enmity, the deceased would not have come to the house of the Appellant on a Holi Festival to sprinkle the colour on him. The submissions of the learned APP appearing on behalf of the State that there was a prior enmity and, therefore, the ratio of the judgments are not applicable, cannot be accepted. In our view, therefore, the prosecution has not established that the Appellant had committed murder which is an offence

punishable u/s 302 of the Indian Penal Code. In our view, the case would fall u/s 304-Part I of the Indian Penal Code and not 304-Part II of the Indian Penal Code. Since the Appellant clearly had an intention to inflict the injury on the deceased as he had gone in the house and had brought the knife and had inflicted 2/3 incised injuries on the person of the deceased. However, since his case fell within Exception 4 to section 300 of the Indian Penal Code, in our view, he will have to be convicted for the offence punishable u/s 304-Part I of the Indian Penal Code. Taking into consideration the facts and circumstances of the case, the Appellant is sentenced to suffer rigorous imprisonment for 10 years. In the result, following order is passed.

1. The Criminal Appeal is partly allowed.
2. The conviction u/s 302 of the Indian Penal Code and sentence is quashed and set aside. The Appellant, however, is convicted for the offence punishable u/s 304-Part I of IPC and is sentenced to suffer R.I. for 10 years and to pay fine of Rs.1,000/-and, in default, to suffer further R.I. for two months. The Appellant is entitled to get benefit of set-off u/s 428 of the Criminal Procedure Code.
3. Criminal Application No. 1543 of 2011 for bail therein does not survive and is, accordingly, disposed of.