
(1988) 02 BOM CK 0017

In the Bombay High Court

Case No : Criminal Appeal No. 533 of 1985

Laxman Kisan Nagare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-02-1988

Acts Referred:

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

Citation : (1988) 02 BOM CK 0017

Hon'ble Judges : V.S. Kotwal, J;V.P. Tipnis, J

Bench : Division Bench

Judgement

Tipnis, J.—Estrangement between the wife and the husband has unfortunately resulted into the death of the father of the wife at the hands of the accused husband.

2. Accused Laxman Nagare, a young man of about 22 years, was married to Shantabai (P.W. No. 4), daughter of deceased Chandrakant, 4 to 4 1/2 years prior to the date of the incident. After the marriage, Shantabai stayed with the accused for about 1 1/2 years. Deceased Chandrakant appears to be a well-to-do man owning a house and agricultural lands at village Nali. It appears that due to ill-treatment and beating Shantabai left the house of the accused and for about 2 years prior to the date of the incident she had come to her parents' place at Nali along with her minor son Yedu, aged about 2 years. It is alleged that 6 months prior to the incident the accused had come to Nali to take back Shantabai, but deceased Chandrakant, father of Shantabai, was not willing to send Shantabai with the accused. On 10th of November, 1984 at about 12 O'clock accused came to village Nali and met his mother-in-law Krishnabai along with his son Yedu. He asked Krishnabai to hand over Yedu, upon which Krishnabai told the accused that they should first go to their house and meet her husband. Accordingly, Krishnabai, Yedu and the accused came back to the residence, i.e. the house of deceased Chandrakant. There was some talk between Chandrakant and the accused and thereafter, it is the case of the

prosecution, the accused during the talk or quarrel whipped out a knife and gave three blows. Thereafter, Chandrakant and the accused grappled with each other and in a staggering condition went ahead and ultimately deceased Chandrakant fell on the ground in the lane at a spot which is about 30 to 35 feet away from the house of Chandrakant. Immediately thereafter Balu Kalasgonde (P.W. No. 8) and one Arun Koli came there. Krishnabai, who was supposed to be following Chandrakant and accused, snatched away the knife from the hands of the accused which hands were securedly held by Balu (P.W. No. 8). Balu and Arun Koli detained the accused in the nearby temple and accused was handed over to the police at about 12 O'clock in the night by this witness. It appears that thereafter one Narayan went to the Police Patil (P.W. No. 6). Police Patil came to the spot and thereafter one Namdeo and Police Patil first went to Mangalwedha and from there by S.T. bus went to Pandharpur Police Station at about 8.00 p.m. The first information report of Namdeo was recorded at about 9.00 p.m. and thereafter P.S.I. came to the scene of offence at about mid-night. Inquest panchanama was completed. Statements were recorded and after completing the investigation the accused was charged and tried for an offence under S. 302 of the Indian Penal Code in Sessions Case No. 54 of 1985 before IV Additional Sessions Judge, Solapur.

3. The learned Additional Sessions Judge by his judgment and order dt. 10th of June, 1985 was pleased to convict the accused for an offence under S. 302 of the Indian Penal Code and was pleased to sentence the accused for imprisonment for life.

4. The accused has appealed from the said order of conviction and sentence. Shri Naik, the learned Advocate appointed for the accused, contended that evidence of Krishnabai (P.W. No. 7) ought to be discarded completely as her version as an eye-witness is absolutely false and unreliable. Shri Naik further contended that the circumstances brought on record clearly show that accused has exercised the right of private defence of his own person and not exceeded the same. He, therefore, contends that the accused is guilty of no offence and ought to be acquitted. Shri Phanse, the learned Public Prosecutor for the State, on the other hand supported the judgment and order of the trial Court and urged that no interference is called for and the appeal ought to be dismissed.

5. Now, before we go to the evidence of the witnesses to the incident, in the peculiar facts and circumstances of this case, it is more convenient to see the evidence of Dr. Arvind Khiste (P.W. No. 9). This witness has performed the autopsy upon the dead body of deceased Chandrakant. He found the following injuries on the person :-

(1) Punctured wound on precordial region of chest 4 cms. away and lateral to left nipple 1 x 0.5 cm. peritoneum deep in 5th, 6th intercostal space on left side of chest.

(2) Incised wound 1 x 1 x .5 cm. on left gluteal region, muscle deep.

(3) Incised wound 1 x 1 x 0.5 cm. on left superior iliac crest. Edges are clean cut everted and angular.

All injuries were covered with reddish clotted blood. The doctor further opined that all the injuries might have been caused by some sharp cutting object like the knife before the Court. On internal investigation the doctor found punctured wound on left ventricle below external injury No. 1. Both chambers were empty 12 X 8 cms. Heart was pale. The doctor has opined that the punctured wound on the heart was sufficient in the ordinary course of nature to cause death of the person. In the cross-examination, the doctor has stated as under :-

"..... It is correct after inflicting injury like injury No. 1 there will be profuse bleeding, immediately. If person walks for about 35 feet who is having injury like injury No. 1 then there will be continuous flow of blood falling on the ground. It is improbable that person having such injuries can walk for about 35 feet. In all natural probabilities the injured person having such injury will collapse on the very place.

xx xx xx

Even though the person wearing the cloths who has such injuries in that case also there will be continuous flow of fall of blood on the ground

xx xx xx

There was no storage of the blood inside chest cavity."

6. The aforesaid evidence very clearly shows that deceased Chandrakant must have collapsed immediately upon the receipt of the first injury on the chest. Secondly, there must have been profuse bleeding and the blood must have fallen on the ground at the spot where he received that injury. Thirdly, in the remote possibility of such person walking away for a few feet, he would leave the trail of blood on the path.

7. Krishnabai (P.W. No. 7), the mother-in-law of the accused, has stated that her husband came to the house on the date of the incident and went for afternoon nap. She took Yedu to Shantabai for breast-feeding. She met the accused on the way. Accused wanted to take Yedu to his house. This witness requested the accused to come to the house to meet her husband. Accused and the witness came to the house. She woke up her husband. Her husband came outside and her husband and accused started talking. Accused told her husband that he would like to take his son Yedu. The deceased told that the accused should also take Shantabai. Accused is alleged to have stated that he would take Shantabai only if he was given cash of Rs. 1,000/-, a radio and a wrist watch. The deceased entreated that all the things would be given in future, but accused said that he would take only Yedu. Accused Laxman thereafter got up from his seat and gave knife blows to deceased Chandrakant. Krishnabai is specific that accused gave first knife blow on the left side of the chest, second on the left thigh and when deceased Chandrakant tried to catch up the accused by embracing him, the

accused gave the third blow on the buttock of her husband. Her evidence shows that thereafter her husband and the accused went ahead in a staggering condition in the lane together. Thereafter, the witness started crying and shouting and went behind them. At that time the accused also attempted to give knife blow to her, but she caught hold of his hand to save herself. Balu Kalasgonde (P.W. No. 8) and Arun Koli came there and caught hold of the accused. She snatched away the knife from the hands of the accused with the help of Balu and Arun. Her husband sat on the ground and thereafter fell on the ground. In the cross-examination, she has stated that her husband, deceased Chandrakant, and accused were talking for about half an hour, that there was no hot exchange of words between them, that her husband was sitting prior to receiving the blows. She has further reiterated that accused gave first blow of knife on the left side of the chest. She has admitted that her husband, deceased Chandrakant, was a strong and stout person. She has denied the suggestion that her husband insulted the accused and took him pushing and dragging up to the lane. She blurted out in the cross-examination that her husband sat on the chest of the accused and she again corrected herself by saying that the accused sat on the chest of her husband in the lane. She has denied the suggestion that her husband insulted the accused, beat him and sat on the chest of the accused and, therefore, the accused took out the knife to protect himself from the attack of her husband. She has also denied the suggestion that Balu caught hold of the hands of the accused while accused was lying on the ground and she snatched the knife from the hands of the accused at that time. She has admitted that there was no continuous flow of fallen blood from the courtyard up to the spot where her husband had fallen in the spot where her husband had fallen in the lane. Her statement was recorded on Sunday at about 8.00 a.m.

8. Now, apart from the evidence of Balu (P.W. No. 8) to which we will refer immediately, the evidence of the doctor clearly shows that if deceased Chandrakant received the injury on the chest at the house of Chandrakant as stated by Krishnabai, firstly, he would have fallen there; secondly, there would have been a pool of blood at that spot : and thirdly, even imagining the remote possibility of deceased Chandrakant walking up to the distance of about 35 feet, there ought to have been a trail of blood. Admittedly no blood is found at the house of deceased Chandrakant. Between the house and the spot where his body was lying a distance of about 35 to 40 feet, no blood at all was detected. These factors leave no manner of doubt in our minds that Krishnabai's evidence cannot be accepted at all. Her evidence to the effect that she, in fact, saw the accused inflicting the blows is, therefore, totally unreliable and we discard that evidence in its entirety.

9. However, evidence of Balu (P.W. No. 8) is extremely important in this case. Balu has stated that on the date of the incident at about 1.00 p.m. himself and one Arun Koli were working in the field. They heard some shouts and cries and ran in that direction. They went in the lane near the house of Namdeo Patil and they saw that Chandrakant, the deceased, was sitting on the chest of accused

Laxman. Chandrakant when sitting on the chest of the accused had injuries on the chest, thigh and buttock, and his clothes were stained with blood. The accused was holding knife in his right hand. This witness caught the right of the accused and Arun Koli caught hold of the left hand of the accused and Krishnabai snatched the knife away from the right hand of the accused. Thereafter Arun Koli and this witness caught the accused and kept him in their custody near the Mahadeo Temple. Many people gathered there. Chandrakant died almost immediately. Thereafter, Police Patil Bajirao came to the spot at about 5.00 p.m. Namdeo and Police Patil went to Pandharpur. Police came to the village at about mid-night and accused was handed over to the Police Patil by this witness and Arun Koli. This witness has candidly admitted in the cross-examination that he did not see the actual incident of giving knife blows. This witness has also stated that Chandrakant, the deceased, was a strong and stout person. The evidence of this witness appears to us to be extremely reliable. Nothing is brought on record, not even a single contradiction or any other circumstance, that should discredit his evidence. On the contrary, after going through the evidence carefully we find that the evidence appears to be absolutely truthful and reliable. Evidence of this witness as also of Krishnabai, wife of deceased Chandrakant, shows that Chandrakant was a strong and stout person. Evidence also indicates that Chandrakant was opposed to his daughter being taken by accused Laxman and on the date of the incident as well accused had come with the avowed purpose of taking back his minor son. It further shows that there was some talk between Chandrakant, the father-in-law, and the accused, the son-in-law. Balu's evidence clearly shows that when he went to the spot he found deceased Chandrakant sitting on the chest of the accused. There blows were received by the deceased, one on the thigh, the other on the buttock and the third on the chest. The medical evidence to which we have referred in detail clearly shows that deceased Chandrakant must have collapsed on the spot after the receipt of the injury on the chest. If that be so, it is clear that the injury on the chest must be the last injury. Now, all these facts and circumstances clearly make out a situation wherein accused was lying on the ground and deceased Chandrakant was sitting on his chest and in that condition accused had inflicted three blows, one on the thigh, the other on the buttock, both not vital parts of the body, and the third on the chest. The situation makes it absolutely clear that deceased Chandrakant, who was strong and stout, had overpowered the accused who had fallen on the ground and was sitting on the chest of the accused and in the process of getting himself released the accused gave two blows, one on the thigh and one on the buttock, and failing in that endeavour appears to have inflicted the third blow on the chest. Though the accused has not at all taken the plea of right of private defence in his statement, the circumstances on record, especially the very clear evidence of Balu (P.W. No. 8), leave no manner of doubt that accused inflicted the deadly blow in the exercise of right of private defence of his person.

10. That being the case, the accused cannot be convicted under S. 302 of the Indian Penal Code for an offence of murder. However, taking into consideration,

the situation and the nature of the injury resulting from the blow on the chest, we feel that the accused has exceeded in the exercise of that right. Admittedly, deceased Chandrakant was an old person of about 55 years of age. He was unarmed. In such circumstances, it is clear that the accused inflicted the injury on the chest of the deceased exercising his right of private defence. The facts and circumstances also clearly point out that the death is not caused with the intention of causing death or causing such bodily injury as is likely to cause death, but the accused has inflicted the injury with the knowledge that it is likely to cause death but without any intention to cause death. That being the case, the offence would fall under Part II of S. 304 of the Indian Penal Code.

11. Therefore, the conviction of the accused for an offence under S. 302 of the Indian Penal Code has to be set aside, instead the accused is convicted for an offence under S. 304 Part II of the Indian Penal Code. Taking into consideration all the facts and circumstances of the case, we feel that rigorous imprisonment for a period of 5 years would meet the ends of justice.

12. Accordingly, the appeal is partly allowed. The order of conviction and sentence passed against the accused for an offence under S. 302 of the Indian Penal Code is quashed and set aside and instead the accused is convicted for an offence under S. 304 Part II of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for a period of 5 years.

13. Order accordingly.