
(1997) 04 BOM CK 0050
In the Bombay High Court
Case No : Criminal Appeal No. 376 of 1993

Laxman Mhaske

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-04-1997

Acts Referred:

Evidence Act, 1872 — Section 3, 45, 59, 61, 8
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (1998) BomCR(Cri) 372

Hon'ble Judges : S.G. Mutalik, J; N.P. Chapalgaonker, J

Bench : Division Bench

Advocate : Mrs. A.N. Ansari, for the Appellant; Mrs. A.S. Rasai, Assistant Public Prosecutor, for the Respondent

Judgement

N.P. Chapalgaonker, J.—The appellant was charged with murder of Hiranman Apparao Sarvade, by stabbing him on 5th October 1992. He was found guilty in sessions Case No. 4/93 by the Additional Sessions Judge, Ambajogai, and was sentenced to undergo imprisonment for life and to pay fine of Rs. 1,000/- in default was directed to undergo further R.I. for six months. This order dated 20-8-1993 is challenged in this appeal. Deceased Hiranman and present appellant Laxman are distant relatives. Daughter of Hiranman and sister of the accused Laxman are married to two real brothers Shivaji and Mariba. 5th October was a Dasera day. Hiranman had gone to weekly Bazar in Kaij. It appears that some quarrel broke out between Parimala and her mother Phulabai with deceased Hiranman and there was some exchange of blows. In the evening accused-appellant came to the residence of Hiranman and asked as to why he had assaulted Parimala and her mother Phulabai. Hiranman replied that he had not even touched them. On hearing the denial accused caught hold of Hiranman by his neck, took out a knife from his pocket and stabbed him near 6th rib fracturing it and piercing through left lobe of the lung. Dr. Dnyanoba Tandale, who conducted the post-mortem examination, opined that the deceased died due to shock caused by opening haemothorax. It was the only injury detected on the person of

the deceased Hiranman.

2. Smt. A.N. Ansari, learned Counsel for the appellant contended that three eye witnesses namely Kasturbai (P.W. 1), Laxmibai (P.W. 2) and Shobha (P.W. 3) are interested witnesses. The first one is the wife and other two are daughters of deceased Hiranman. 4th witness Dattu claims to have come at the scene of offence immediately after stabbing and claims to have seen Laxman moving away and Hiranman lying with an injury. He also related to the family. According to Smt. Ansari, the neighbours and other persons who had assembled have not been examined and this fact raises a serious doubt about the truthfulness about the story of prosecution.

3. We have carefully examined the testimonies of Kasturbai, Laxmibai and Shobha (P.W. 1, 2 and 3) and found them most natural witnesses. They are not exaggerated and added something which they might not have seen. Accused-appellant had come to the house of Hiranman and there was some exchange of words had not been denied by the defence. It is suggested by the defence that Hiranman tried to throttle Laxman, Laxman pushed him aside, who fell against a nail lying there. In view of the defence the prosecution story is not really in dispute. Panchanama of the scene of offence which is at Exh. 18 does not speak about any nail or any other sharp object which could have pierced into the body of Hiranman. If anybody falls on a nail which is lying on the ground, the injury like the one Hiranman had is not possible. It has not been suggested even to the witnesses that such an object either affixed to the floor or to the wall or to any other permanent fixture which could have caused injury in question. Therefore, we do not find any reason to discard the testimony of the eye witnesses when they deposed that appellant Laxman took out the knife and stabbed Hiranman. The learned trial Judge has discussed the evidence and arrived at proper conclusion.

4. The next submission made by Smt. Ansari, that the offence proved is not u/s 302 but a lesser one i.e. u/s 304 Part I or II or u/s 326 of the Indian Penal Code.

5. The intention underlying the act of the accused is seldom a matter which can be conclusively established. It is indeed only known to the person in whose mind the intention is conceived. But when the question arises before the Court whether the accused had a necessary intention, an inference will have to be drawn from the circumstances---surrounding the act of the accused. As was observed by the Division Bench of the Calcutta High Court in *Khetramani Dasi v. Emperor*, AIR 1922 Calc 539 , proving of intention or knowledge must be almost, entirely, a matter of inference from circumstances. Smt. A.S. Rasal, Additional Public Prosecutor submitted that looking to the purpose for which Laxman had come there, it is evident that he wanted to punish Hiranman for having assaulted women members of his family and by this very fact we infer that the accused had an intention to inflict injury which would be sufficient in the ordinary course to cause death. She also submitted that there was some previous quarrel is not disputed by the defence. Though, it is true that accused-appellant Laxman had

come to the house of Hiranman to punish him, we do not find anything on record that the appellant wanted to murder or had an intention to inflict injury which would be sufficient to cause death. By the nature of the injury it can be inferred that the accused knew that he had the knowledge that he is inflicting an injury which is likely to cause death. Smt. Ansari, relied on the judgment of the Supreme Court in Kulwant Rai Vs. State of Punjab, , wherein Supreme Court noted that the offence was committed without any premeditation and there was no prior enmity. A short quarrel preceded the assault and only one blow was given with a dagger and blow landed in the epigastrium area. Looking to all these circumstances, the Court was pleased to alter the conviction 302 to that u/s 304 Part II of the Indian Penal Code.

6. If it is found that the act of accused is culpable homicidal not amounting to murder then to bring it within the first part of section 304, the prosecution will have to prove that the accused had an intention to inflict the injury which is sufficient to cause death in the ordinary course. No dispute is raised before us by either of the parties which has resulted into death instantaneously. When a man pierces a knife in the lower portion of the chest, he can be posted with the necessary knowledge that this injury is likely to cause death. However, the question about the intention cannot be assumed in the absence of specific surrounding circumstance justifying it. A petty quarrel preceded the incident in question and the fact that there was only one blow that too on the lower lateral side is suggestive that accused had no intention to cause an injury--which would result into death, however, he knew that such an injury may result in death. The circumstances are not sufficient to infer the necessary intention. Therefore, we hold that the accused-appellant is guilty of an offence u/s 304 Part II of the Indian Penal Code.

7. On the quantum of sentence Smt. Ansari, invited our attention to another circumstance. After the conviction of the accused, he was sent to the Jail, his wife lost mental balance and in that condition has murdered her own child. On this ground bail application was moved to this Court which bears Criminal Application No. 442/96 and as per directions of this Court, the State was directed to hold an enquiry about the contentions raised in the bail application. On this ground, the Court was released accused-appellant on temporary bail for two months by order dated 11-4-96. Since the accused could not furnish the security his release was delayed and we extended time to furnish the security and the accused was later released. No doubt that irresponsible act of Hiranman lost his life, as a luck would have it, the wife of the accused has gone insane and also murdered her own child. This circumstance which we take into consideration while deciding the quantum of sentence to be imposed on the appellant. 8. The Criminal Appeal is partly allowed. The conviction and sentence passed by the learned trial Judge holding him guilty for an offence u/s 302 of the Indian Penal Code is set aside. The accused-appellant is held guilty of an offence punishable u/s 304 Part II of the Indian Penal Code. We direct him to undergo imprisonment for 5 years and to pay fine of Rs. 1,000/-. At the request of the learned Counsel

of the accused we grant accused appellant time of three months from the date of his release from the prison for undergoing substantive sentence for the deposit of the amount. He should furnish a personal bond of Rs. 5,000/- at the time of his release ensuring the payment of fine. If the fine amount is deposited, the same amount may be paid to Kasturbai wife of Hiranman as a token compensation. The appellant shall furnish undertaking in the form of affidavit to this Court within two weeks from the date of his release that he will deposit the necessary fine amount. If he fails to deposit fine amount within time allowed, he will undergo the sentence of one year in default.

8. Appeal partly allowed.