

(2015) 12 BOM CK 0088
In the Bombay High Court
Case No : Criminal Appeal No. 1165 of 2009

Mohammed Karim Badruduja Shaikh	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 23-12-2015

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2016) 1 BomCR(Cri) 589

Hon'ble Judges : V.K. Tahilramani, Actg. C.J. and Dr. Shalini Phansalkar Joshi, J.

Bench : Division Bench

Advocate : Yug Mohit Chaudhary, Naima Shaikh, Khan Abdul Wahab and Parijata Bharadwaj, for the Appellant; H.J. Dedia, A.P.P., for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Shalini Phansalkar Joshi, J.—The Appellant, who stands convicted by the Judgment and Order dated 11th December 2009 of 4th Ad-Hoc Additional Sessions Judge, Dindoshi, Borivali Division, Mumbai, in Sessions Case No. 116 of 2008 for the offence punishable under Section 302 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs. 10,000/-, in default to suffer R.I. for six months, by this Appeal challenges his conviction and sentence.

2. Brief facts of the Appeal can be stated as follows:--

"PW-1 Rita is the wife of deceased Samindar Vishwakarma. PW-2 Saraswati is their daughter. The Appellant, with his wife and son Romin, aged 4 years, was residing opposite to their house. On 29th April 2008, at about 11:15 am, some quarrel took place between Saraswati, aged 11 years, and Romin, while they were playing together. In the said quarrel, Romin assaulted Saraswati with foot-wear and hence Saraswati took Romin to the house of the Appellant and told him about it. Appellant, however, threatened her with knife. Hence, she returned to her house. Her father, deceased Samindar, then went to the house of the Appellant to confront him as to why he gave threatening to his daughter.

Thereupon Appellant stabbed the Deceased with knife on his chest. Due to the assault, Deceased fell down in injured condition. He was taken in rickshaw to the hospital at Pathanwadi, where PW-4 Dr. Khan Rizwan Abdul Wahab Khan declared him to be dead. Antul Vishwakarma, the nephew of the Deceased, then went to Dindoshi Police Station at about 11:50 am and informed that his uncle was assaulted. PW-8 PSI Sadaram Bomble immediately rushed to the spot and came to know that Deceased was already taken to the hospital and declared dead. Then he came to the Police Station and recorded the complaint of PW-1 Rita, wife of the Deceased."

3. On her complaint (Exhibit-13), C.R. No. 155 of 2008 was registered against the Appellant. During the course of investigation, the Inquest Panchanama (Exhibit-20) and the Spot Panchanama (Exhibit-21) was made. The dead body was referred for postmortem examination. The Appellant himself came to the Police Station and he was arrested under Panchanama (Exhibit-22). His clothes came to be seized under Panchanama (Exhibit-24). The statements of PW-2 Saraswati and other witnesses came to be recorded.

4. Further investigation of the case was taken over by PW-9 API Dilip Palande. In custodial interrogation of the Appellant, Appellant produced the blood stained knife, which came to be seized under Panchanama (Exhibit-37). The said knife was identified by the witnesses and the Panchanama to that effect was made vide Exhibit-26. The seized muddemal was sent to Chemical Analyzer. The C.A. Reports are produced at Exhibits 33 to 35. Further to completion of investigation, Charge-Sheet came to be filed in the Court against the Appellant.

5. On committal of the case to the Sessions Court, the Trial Court framed charge against the Appellant vide Exhibit-7. The Appellant pleaded not guilty and claimed trial. In support of its case, prosecution examined in all 9 witnesses and on appreciation of their evidence, the Trial Court was pleased to convict and sentence the Appellant, as aforesaid.

6. In this Appeal, we have heard learned counsel for the Appellant Dr. Yug Mohit Chaudhary. The only submission advanced by him is that the case against the Appellant falls under Exception 4 to Section 300 of IPC and, therefore, at the most, he can be convicted for the offence under Section 304 Part II of IPC. According to him, though there are several discrepancies in the evidence of the eye-witnesses, he is not going to challenge the conviction of the Appellant on merits, but considering the fact that the incident has happened without any premeditation and in a sudden quarrel, without Appellant taking any undue advantage, it being a single blow injury, the Appellant deserves to be released on the punishment which he has already undergone in Jail.

7. Per contra, learned A.P.P. has submitted that though it was a single blow injury, as it was caused with a dangerous weapon like knife and on the vital part of the body like chest, the benefit of Exception 4 of Section 300 of IPC cannot be extended to the Appellant. In the opinion of learned A.P.P., the conviction, as

recorded by the Trial Court, for the offence under Section 302 of IPC is just, legal and correct. Hence, no interference is warranted either in the conviction or in the sentence.

8. In our considered opinion, before adverting to these rival submissions advanced by learned counsel for the Appellant and learned A.P.P., it would be useful to refer to the evidence on record.

9. The prosecution case against the Appellant stands on the evidence of three eye-witnesses, namely, PW-1 Rita, the wife, PW-2 Saraswati, the daughter, and PW-3 Raju Sharma, the friend of the Deceased. Their evidence is, more or less, of an identical nature. It is clearly emerging from their evidence that on the date of incident, while PW-2 Saraswati, aged 11 years, and Appellant's son Romin, aged 4 years, were playing together, Romin assaulted Saraswati with foot-wear. Hence, Saraswati took Romin to his father and told him about it. Appellant, however, threatened Saraswati. Hence, Saraswati returned to her house and informed to her father about it. Her father, i.e. the Deceased, then went to the house of the Appellant and confronted him as to why Appellant has threatened his daughter. Thereupon, as per the evidence of all these three eye-witnesses, Appellant immediately stabbed the Deceased with knife on his chest. Due to the assault, Deceased fell down and succumbed to the injury, before he was taken to the hospital.

10. Though the Defence Counsel has succeeded in eliciting some omissions through cross-examination of these witnesses, those omissions are in respect of peripheral details. Their evidence as to the actual incident of assault is thoroughly consistent, reliable and cogent.

11. Moreover, their evidence is also supported with the medical evidence. PW-4 Dr. Khan Rizwan has examined the Deceased, when he was brought there immediately after the incident, and he has declared him to be dead. The Postmortem Report (Exhibit-32) is admitted in evidence by the Defence Counsel and Para No. 17 of the same goes to prove the following external injuries:--

"(1) Stab Injury:--

Mammary Region 1 1/2 cm x 1/2 cm x thorax deep (16 cm) (4th rib cut); gaping present; 15 cm below clavicle left side; 04 cm lateral to sternum; fresh blood oozing out.

(2) Contused Abrasion:--

Back of right elbow 4 cm x 3 1/2 cm, supf. no e/o. # dislocating.

(3) Incised Injury:--

Left hypothenar aspect; 1 cm x 1/2 cm x 1/2 cm sharp.

(4) Incised Injury:--

Lateral aspect of left eye angle, upto left eyebrow, oblique, 1 cm x 1/2 cm x 1/2

cm

(5) Contused Abrasion:--

Below lower left eyelid 2 1/2 cm x 1/2 cm."

12. There were corresponding internal injuries and the cause of death, as noted in the Postmortem Report, was "hemorrhage and shock due to stab injuries with polytrauma" As the Postmortem Report is admitted in evidence, there is no reason to disbelieve the cause of death as homicidal one.

13. The prosecution has also led the evidence of the Investigating Officer PW-9 API Dilip Palande to prove that the blood stained knife was recovered at the instance of the Appellant, under Section 27 of Evidence Act. The C.A. Report proves the presence of the human blood stains on the said knife and on the clothes of the Appellant.

14. In the light of this conclusive and clinching evidence on record about the occurrence of the incident and involvement of the Appellant in the said incident, it has to be held as proved by the prosecution beyond reasonable doubt.

15. Now coming to the submissions advanced by the learned counsel for the Appellant that the case against the Appellant falls within Exception 4 to Section 300 of IPC, we find much substance therein. The facts of this case are self-eloquent to prove that the incident has occurred without any premeditation, in a sudden quarrel. The cause of the quarrel was also very trifling and it was a single blow injury, with Appellant himself going to the Police Station after the incident. Exception 4 to Section 300 of IPC clearly provides that, culpable homicide is not murder, if it is committed without premeditation in a sudden fight, in the heat of passion, upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

16. In the instant case, the Appellant is not having any criminal antecedents at all. The relations between the parties were also not strained or of animosity. Hence, there was no motive for any deliberate act of assaulting the Deceased. Thus, there was no premeditation. It was a sudden quarrel between the Appellant and the Deceased. In the said quarrel, as can be seen from the cross-examination of the Investigating Officer PW-9 API Palande, the Appellant and his wife Tabassum were also injured. Their medical certificates are produced on record at Exhibits "40" and "41", which prove that Appellant has sustained the injury on his forearm, left wrist, right foot and left elbow, whereas, his wife Tabassum has also got one minor scratch abrasion on her right wrist. The Postmortem Report of the Deceased (Exhibit-32), as stated above, discloses only one stab injury on the chest. The other injuries are quite of a minor nature and must have resulted into the quarrel between the Appellant and his wife on the one part and the Deceased on other part. The fatal injury is only the stab injury on the chest caused by the knife. Therefore, there is nothing on record to show that the Appellant has taken undue advantage or has acted in a cruel or unusual

manner. The very fact that he has himself reported to the Police Station and surrendered to the custody, goes to prove that there was no intention on his part to commit murder of the Deceased, though the knowledge on his part can be inferred that his act of assaulting the Deceased with knife on the vital part of the body like chest was likely to result into the death in the ordinary course of nature. Hence, in our considered opinion, the present case against the Appellant squarely falls within the four corners of Section 304 Part II of IPC.

17. The punishment provided for the offence under Section 304 Part II of IPC is imprisonment of either description for a term which may extend to 10 years or with fine or with both. In the instant case, the Appellant is arrested on the same day, i.e. 29th April 2008, and since then he is in Jail for a period of more than 7 years of actual imprisonment and 9 years of imprisonment with remission. Therefore, the punishment already undergone by him being sufficient, the Appeal deserves to be allowed. Hence, the order.

"ORDER"

"? The Appeal is allowed partly.

? The conviction and sentence of the Appellant for the offence under Section 302 of IPC is set aside and, instead, he is convicted for the offence punishable under Section 304 Part II of IPC.

? He is sentenced to suffer imprisonment for the period which he has already undergone, i.e. imprisonment of seven years, and fine of Rs. 10,000/-, in default to suffer R.I. for six months.

? The entire fine amount, if recovered, be paid to PW-1 Rita, the wife of deceased Samidar Vishwakarma.

? As the Appellant has already undergone the punishment of imprisonment of seven years, he may be released forthwith, if not required in any other offence."

18. The Appeal is disposed of in above terms.