

(2007) 09 BOM CK 0087
In the Bombay High Court
Case No : Criminal Appeal No. 41 of 2005

Nitin Mopkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

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

Citation : (2007) 09 BOM CK 0087

Hon'ble Judges : D.D. Sinha, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : R.M. Daga, for the Appellant; T.A. Mirza, Additional Public Prosecutor, for the Respondent

Judgement

D.D. Sinha, J.—Heard Shri Daga, learned Counsel for the appellant, and Shri Mirza, learned Additional Public Prosecutor for the respondent.

2. The criminal appeal is directed against the judgment and order dated 29.11.2004 passed by the Sessions Judge, Wardha in Sessions Trial No. 114/2003 whereby appellant is convicted for the offence punishable u/s 304 Part I of Indian Penal Code and sentenced to suffer imprisonment for life and pay fine of rupees one thousand, in default to suffer rigorous imprisonment for one year.

3. Shri Daga, learned Counsel for the appellant, contended that prosecution has examined PW 1 Poornima, PW 2 Rajendra, PW 3 Chhaya, PW 4 Dhananjay and PW 5 Pankaj as eye witnesses to the incident. It was submitted that evidence of PW 8 Dr. Moon corroborates the evidence of eye witnesses and, therefore, even if it is presumed that the trial Court was justified in holding that prosecution has succeeded in bringing home the guilt of the appellant for the offence punishable u/s 304 Part I of Indian Penal Code, however, erred in imposing sentence of imprisonment for life. It was further submitted by the learned Counsel that the appellant is limiting his argument only in respect of awarding of excusing sentence by the trial Court.

4. Learned Counsel Shri Daga argued that as per evidence of PW 8 Dr. Moon, deceased Mukesh suffered seven external injuries, which consisted of some stab and some incised wounds and on internal examination, Dr. Moon noticed nine wounds. Though charge framed against the appellant was for the offence punishable u/s 302 of Indian Penal Code, the trial Court convicted the appellant for the offence punishable u/s 304 Part I of Indian Penal Code, which is a lesser offence. It was contended that the maximum punishment, i.e. imprisonment for life can only be awarded in an exceptional situation where the evidence warrants such punishment. It was submitted that evidence of eye witnesses shows that on 26.5.2003 there was a house warming ceremony at the house of PW 1 Poornima (younger sister of deceased Mukesh). Deceased Mukesh had come for the said function at about 4 p.m. The arrangement for dinner was made on the terrace of the house and the programme commenced at 7 p.m. and went upto 10.45 p.m. It is the version of the eye witnesses that at about 11.30 p.m., they heard shouts coming from the direction of the terrace "Wachwa Wachwa". The eye witnesses went to the terrace and saw that the appellant was assaulting Mukesh by means of gupti. It was contended that it has come in the cross-examination of PW 1 Poornima (complainant) that appellant had not come for dinner on the day of incident and after the function was over, she came down from the terrace and personally did not see appellant going on the terrace. She has also admitted that she had no personal knowledge about what happened on the terrace before she heard shouts. Similarly, PW 2 Rajendra in the cross-examination has admitted that though he had seen the appellant while entering the house, however, he was not aware what happened on the terrace between appellant and deceased Mukesh till he heard the shouts.

5. Learned Counsel Shri Daga further argued that PW 3 Chhaya, PW 4 Dhananjay and PW 5 Pankaj also gave similar version that they were not aware what happened between appellant and deceased Mukesh before they heard shouts "Wachwa Wachwa" came from the direction of the terrace. It was submitted that prosecution has failed to prove genesis of the quarrel and it is not known how quarrel had started and who was the aggressor. It was contended that prosecution has failed to prove genesis of the crime and motive behind the crime and, therefore, trial Court has held that culpable homicide committed by the appellant was not amounting to murder, but erred in giving the maximum punishment of imprisonment for life to the appellant. It was submitted that on the basis of evidence on record, the appellant at the most should have been sentenced to suffer imprisonment for ten years. In order to substantiate his contentions, reliance was placed on the judgment of this Court in Bhanudas Narayan Shirke v. State of Maharashtra 2007 ALL MR (Cri) 422 and judgment of the Apex Court in Naveen Chandra v. State of Uttaranchal 2007 ALL MR (Cri) 513.

6. Shri Mirza, learned Additional Public Prosecutor for the respondent, supported the impugned judgment and submitted that in the instant case, the prosecution has succeeded in bringing home the guilt of the appellant beyond all reasonable doubts and proved that death of Mukesh was caused by the appellant with the

intention of causing such bodily injuries as were likely to cause death. Similarly, considering the injuries sustained by deceased Mukesh, the sentence awarded by the trial Court is just and proper.

7. We have considered the rival contentions of the learned Counsel for the parties. In the instant case, since finding of conviction recorded by the trial Court is not challenged by the appellant, it is not necessary for us to consider the appeal on merits except as to whether the sentence of life imprisonment awarded by the trial Court to the appellant for the offence punishable u/s 304 Part I of Indian Penal Code is sustainable in law.

8. The appellant though was charged for the offence punishable u/s 302 of Indian Penal Code, however, trial Court held that the prosecution succeeded in bringing home the guilt of the appellant for the offence punishable u/s 304 Part I of the Indian Penal Code and State has not preferred appeal against the impugned judgment and in absence thereof, we are only required to consider whether sentence awarded by the trial Court to the appellant for the offence punishable u/s 304 Part I of Indian Penal Code is just and proper.

9. Culpable homicide is murder, if the act by which death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of a person to whom the harm is caused. However, in the instant case, on the basis of evidence adduced by the prosecution, the trial Court has held that culpable homicide committed by the appellant does not amount to murder, though deceased Mukesh sustained multiple external and internal injuries. While considering purport of Section 304 Part I of Indian Penal Code, it is necessary to keep in mind that if the act by which death is caused is done with the intention of causing death or such bodily injury as is likely to cause death, punishment is imprisonment for life or imprisonment of either description for a term, which may extend to ten years and fine. In the instant case, prosecution has failed to establish the genesis of the crime. There is no evidence to show as to how the quarrel started, who was the aggressor and what was the motive. All the eye witnesses reached the scene of occurrence only after quarrel started between appellant and deceased Mukesh. In the absence of evidence of genesis of the crime, it is difficult to conclude whether the injuries inflicted by the appellant were in a sudden fight or in a heat of passion or it was a pre-meditated assault. Number of injuries sustained by the victim is not always a safe criterion for determining who was the aggressor, though in a given case, this can help in ascertaining the possible intention of the assailant as well as culpability of crime. We concur with the view expressed by the Division Bench of this Court in the case of Bhanudas Narayan Shirke (cited supra) and there is no quarrel with the proposition laid down by the Apex Court in the case of Naveen Chandra (cited supra). In the instant case, for the reasons stated hereinabove, ends of justice would be met if the sentence of life imprisonment awarded by the trial Court to the appellant is reduced to rigorous imprisonment for ten years.

10. In the result, the criminal appeal is partly allowed. The conviction awarded

by the trial Court to the appellant for the offence punishable u/s 304 Part I of Indian Penal Code is confirmed. However, sentence of life imprisonment awarded by the trial Court is reduced to rigorous imprisonment for ten years. The sentence of fine awarded by the trial Court to the appellant is confirmed.