

(1996) 10 BOM CK 0092
In the Bombay High Court
Case No : Criminal Appeal No. 322 of 1994

Pandurang Limbaji Lande	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Evidence Act, 1872 — Section 3, 32, 59, 8, 9
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (1997) BomCR(Cri) 762

Hon'ble Judges : T.K. Chandrashekhara Das, J; A.C. Agarwal, J

Bench : Division Bench

Advocate : T.E. Mane, for the Appellant; J.S. Pawar, Assistant Public Prosecutor, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The judgment and order dated 31st March 1994 passed by the learned Sessions Judge, Solapur, in Sessions Case No. 283 of 1993 is challenged in this appeal by the appellant (original accused). By the aforesaid judgment, accused/appellant was convicted for the offence u/s 302 of the Indian Penal Code (I.P.C.) and sentenced to undergo rigorous imprisonment for life.

2. According to the prosecution, deceased Sukhdeo Lande and accused Pandurang Lande are cousins. There was a dispute with regard to the fields which they occupied. According to the prosecution, the said dispute was settled, but after that again dispute arose on the allegation that the accused had changed boundary of their fields and then deceased restored the boundary. On this issue, a quarrel ensued between them. On 24th August 1993 at about 9.00 a.m. the deceased, after giving water to his crops from the well in the field of Ganpati Patkar, put off the electric motor there and he was standing there. The accused went there and asked deceased Sukhdeo why he ploughed his boundary and abused him. Deceased Sukhdeo told the accused that four persons should be called and according to their opinion the place of boundary should be fixed. The accused did not pay any heed to it. He threatened Sukhdeo that he would kill

him. He then pulled him down. He gave 10 blows with a knife on his chest and abdomen. Sukhdeo was shouting, hearing which P.W. No. 12 Pramod went there and requested the accused to stop. P.W. 12 went to call somebody to rescue Sukhdeo. P.W. 5 Krishnadeo went there. When he went there, the accused was holding the collar of Sukhdeo by his left hand, giving knife blows on the chest and abdomen of Sukhdeo sitting on his chest. P.W. 5 caught hold of the accused's banian and pulled him back from the chest of Sukhdeo. P.W. 13 then brought a Dhoti and wrapped the injuries of Sukhdeo with it. The deceased was taken to General Hospital, Solapur. There, at about 12.30 p.m., P.W. 14 Dr. Borde examined him. P.W. 6 Head Constable Shaikh, who was on duty at the General Hospital, Solapur, informed the matter to the Police Station, Sadar Bazar. On that day at about 1.15 p.m. P.W. 11 Head Constable Gumasthe was directed from the Police Station, Mohol, to go to General Hospital, Solapur. He gave requisition (copy Exhibit 15) to P.W. No. 2 Tarapure, Special Executive Magistrate. P.W. 6 Head Constable Shaikh, P.W. 2 Tarapure and P.W. 11 Head Constable Gumasthe recorded the dying declaration of Sukhdeo at Exhibits 37, 24 and 45-A respectively. On the basis of the dying declaration (Exhibit 45-A) offence was registered as Crime No. 117/1993 on 24th August 1993 at 6.30 p.m. At about 7.15 p.m. on that day, P.W. No. 15, A.P.I. Sinnarkar, seized shirt (Article No. 1) and blood-stained Pyjama (Article No. 2) of the accused. On 25th August 1993, P.W. 15 inspected the spot of the incident and prepared panchanama (Exhibit 6). On 26th August 1993 the accused made disclosure statement about the knife. It was recorded at Exhibit 42. He took A.P.I. Sinnarkar and the panchas to the hut near the well where the incident took place and took out the knife (Article No. 6) which was seized, vide panchanama (Exhibit 43). On 27th August 1993 Sukhdeo died in the General Hospital, Solapur. The post-mortem examination report (Exhibit 10) prepared by Dr. Kanki shows that Sukhdeo died due to shock and haemorrhage due to stab injuries on the chest and injuries to both the lungs. The articles were sent to Chemical Analyser, Pune. Report of the Chemical Analyser is at Exhibit 61. At the trial, the accused denied the charge. P.W. 15 A.P.I. Sinnarkar investigated the offence.

3. Out of the witnesses examined by the prosecution in this case, we have P.W. 5, P.W. 12 and P.W. 13 who were present at the time of incident. According to P.W. 12 Pramod Lane, he knew the deceased. He was having his field 500 and 600 feet away from the spot of the incident. The spot is near the well in the field of one Patkar. He says that at about 5 to 6 months ago one day at about 9.00 a.m. he was present in his field. While he was harrowing the field, he heard noise of shouts from the side of the well in the field of Patkar. So he went running there. The accused was found sitting on the chest of Sukhdeo. He was holding collar of shirt of Sukhdeo with one hand moving it and giving fist blows with his other hand. He asked the accused not to beat. The accused said that he should not interfere and it would not be good for him. He also said that he saw accused giving knife blow on chest of Sukhdeo. Sukhdeo shouted "Melo-re". He started running to contact someone to rescue Sukhdeo with his help. Krishnadeo Patil

(P.W. 5) was found running towards that well. P.W. 5 Krishnadeo came to the spot of the incident and caught hold of the banian of the accused and separated him from the person of Sukhdeo. The accused went away. There were 10 to 11 bleeding injuries on the chest and abdomen of Sukhdeo.

4. Krishnadeo (P.W. 5) then asked P.W. 12 to give a call to Rajendra Lande (P.W. 13) and ask him to bring Dhoti for bandaging the wounds of Sukhdeo. However, he says that P.W. 12 shouted aloud addressing Rajendra saying that Panduranga inflicted injuries to Sukhdeo by means of knife and he should bring a Dhoti. Rajendra Lande (P.W. 13) came there with a Dhoti. Dhoti was wrapped over the injuries of Sukhdeo. Then P.W. 12 brought bullock cart there. Rajendra and Krishnadeo put Sukhdeo in the bullock cart. Krishnadeo told him that he was going to inform the matter to Bhamabai, wife of Sukhdeo, and he should take Sukhdeo to bus stop. He and Rajendra (P.W. 13) were taking Sukhdeo in the bullock cart. On the way Sukhdeo told them that he was severely injured by the accused; that he would not survive and that he should be quickly taken to the hospital. They came to the bus stop at Kurul. Bhamabai came there. Rajendra made a jeep to stop and accordingly Bhamabai and Rajendra took Sukhdeo in that jeep towards Solapur. Then P.W. 12 took back his bullock cart. He also identified the knife which was used by the accused for inflicting injuries on the deceased. In the cross-examination of this witness, his testimony could not be shaken. But P.W. 12 says in the cross-examination as follows :-

"Sukhdeo was my cousin, in relation and of my brotherhood. This shouting continued for about 15 to 20 minutes before I went there. Sukhdeo and the accused were felling each other. It is not true that in my presence Sukhdeo gave a blow with knife on the left thigh of the accused. (The witness volunteers that when he went there was bleeding injury on the thigh of the accused). It is not true that knife was in the hand of Sukhdeo, that on 3-4 occasions Sukhdeo tried to give knife blows to the accused."

5. P.W. 5 Krishnadeo Patil corroborated the evidence of P.W. 12. He says that he was knowing deceased Sukhdeo; that the field of the accused and deceased Sukhdeo are adjoining to each other. His field was about 300 to 400 feet away from their fields. He says that there was dispute between the accused and Sukhdeo on common boundary of the fields. About 5 to 6 months ago one Tuesday at about 9 a.m. he was present in his field. He heard shouts "Melo Melo". So he went running to the spot of incident. It was near the well in the field of Ganpat Patkar. Panduranga, the accused, was sitting over the chest of Sukhdeo. Accused was holding shirt of Sukhdeo with his left hand and giving blows with the knife in his right hand to Sukhdeo. At that time accused was wearing banian. He caught hold of his banian and pulled him and accused was then separated from the person of Sukhdeo. Pramod Lande was at that time at a distance of 200 feet from Sukhdeo. Immediately accused ran away. Pramod (P.W. 12) brought Dhoti from Rajendra Lande. Rajendra came there along with Pramod. There were about 10 to 11 injuries on the chest and abdomen of

Sukhdeo. They tied the Dhoti over the injuries on Sukhdeo. He says that then Pramod brought bullock cart there. Rajendra took Sukhdeo in that bullock cart. Rajendra came in the bullock cart to the bus stop. He was also subjected to severe cross-examination on behalf of the accused, but his testimony could not be challenged. The statements of P.W. Nos. 5 and 12 more or less corroborate the statement contained in three dying declarations.

6. There are three dying declarations, as we have pointed out earlier. They were marked as Exhibits 37, 24 and 45-A respectively in point of time. The learned Counsel for the appellant accused tried to attack these dying declarations as aforesaid. He submits that going by the timings entered in the dying declarations, serious doubt could be cast on the genuineness of the said dying declarations. Exhibit 24 is the dying declaration recorded by P.W. 2 Special Executive Magistrate, Shri S.G. Tarapore. It shows that he started at 2.30 p.m. and ended at 3.30 p.m. Exhibit 45-A is the dying declaration, the recording of which started at 3.45 p.m. It shows that the doctor has made endorsement that at the time of taking of his statement the deceased was in a conscious condition and this endorsement was made at 3.45 p.m. The learned Counsel in order to challenge the dying declaration relied upon the timings spoken of by some witnesses of recording the statement. For example, he pointed out that P.W. 2 in his cross-examination had stated that the doctor put endorsement in the margin of Exhibit 24 at 2.30 p.m. as the starting of the recording of dying declaration and ended it at 3.30 p.m. At the same time, P.W. 9 Dr. Subhangi Sharad Kalekar said she first time gave consent to record the statement of the deceased for Exhibit 37 at 2.30 p.m. and at that time the statements at Exhibit 24 and Exhibit 37 were already taken. It is true that some mistakes have been committed by the witnesses in stating the exact time at which the dying declarations were recorded. However, according to us, these mistakes will not affect the evidentiary value of the dying declarations. Mere slip of tongue committed by some of the witnesses in stating the exact timings could not be made use of for challenging the validity of the entire dying declarations. It may be pointed out that the Court below did not solely depend upon these dying declarations to sustain the prosecution. The Court below was relying upon these dying declarations only for corroborating the account given by the eye-witnesses (P.W. Nos. 5 and 12) as aforesaid. Therefore, the submission of the learned Counsel for the appellant based upon the timings of the dying declarations is not sustainable. We have pointed out, the evidence of P.W. Nos. 5 and 12 could not be challenged and the entire prosecution was based upon their evidence. Their presence in the locality could not be questioned, impartiality in their testimony also could not be questioned. They have spoken truly what they have seen at the spot. The aforesaid statement quoted from the deposition of P.W. 12 itself will go to show that all the witnesses are impartial and trustworthy. Therefore, even if the dying declarations are discarded, the prosecution can sustain.

7. Then the learned Counsel for the appellant submits that the Court below has not considered the plea of private defence. The learned Counsel for the appellant

submits that in the facts and circumstances of the case and also taking into account the injury that has been inflicted on the person of the accused it can be seen that there was tussle between the deceased and the accused. The medical evidence shows that the injuries on the back of the accused can be possible by fall on two or three occasions. By the time P.W. Nos. 5 and 12 came to the scene, the tussle between the accused and the deceased had already started. Therefore, the learned Counsel for the appellant submits that as the injuries must have been on account of the tussle between the deceased and the accused, the accused can be held guilty only under Part I of section 304 of I.P.C and resultantly a lesser sentence may be awarded. Evidence of P.W. 10 Dr. Ainapure shows that accused had sustained four injuries. One of them was an incised injury. Prosecution has failed to satisfactorily explain the injuries sustained by the accused. It is possible that the deceased had initiated the assault and the accused had retaliated in self-defence. In our view, evidence on record does not disclose how the incident of assault had commenced. Witnesses appeared on the scene when accused had already mounted an attack on the deceased. Hence prosecution has failed to explain the injuries sustained by the accused. Prosecution has thus failed to elucidate the genesis of the crime. In the circumstances, we are inclined to hold that the accused had a right of private defence. The same, however, has been exceeded by the accused. We have seen that the injuries inflicted on the deceased are self-explanatory. As per the medical evidence, it has been noticed that there were 10 incised wounds on the vital parts of the body of the deceased. P.W. Nos. 5 and 12 in clear tone have spoken that they have seen the accused sitting on the body of the deceased and inflicting blows on the person of the deceased and what the deceased inflicted on the body of the accused is only a wound on his thigh. Therefore, it is clear that the attack is in a spot which does not belong to the accused and the accused has applied force on the deceased exceeding what is required in the circumstances of the case. From the evidence we have seen that there was no circumstances in which the accused can apprehend grievous hurt or danger to his life. In that circumstances, the 10 incised wounds appearing on the person of the deceased will clearly spell out that the accused had exceeded his right of private defence. Accused in the circumstances is liable to be convicted u/s 304 Part I of the I.P.C.

8. We have noticed already the circumstances in which the accused was injured and P.W. No. 12 has spoken about that. The medical evidence would go to show that injuries found on the back of the accused may be due to fall on the ground. Both P.W. Nos. 5 and 12 reached the spot of incident after the fight between the deceased and the accused had started. Therefore, we do not know who initiated the quarrel. However, we have no hesitation to hold that fierce fighting was going on between deceased and accused. In view of the above conclusions, we find that the order of conviction passed u/s 302 I.P.C. is liable to be quashed and the accused is liable to be convicted u/s 304 Part I of I.P.C. and hence the quantum of sentence awarded by the trial Court against the accused requires some reduction. We think, in the circumstances of the case, rigorous imprisonment for

seven years will be appropriate and sufficient sentence to the accused. Therefore the sentence awarded by the trial Court is reduced to seven years" rigorous imprisonment.

9. In the result, the appeal is partly allowed. The order of conviction u/s 302 I.P.C entered by the IV Additional Sessions Judge, Solapur, vide his judgment and order dated 31st March 1994 against the accused is set aside and accused is convicted u/s 304 Part I of I.P.C . The sentence imposed upon the appellant-accused is reduced to seven years" rigorous imprisonment, with right to set-off his imprisonment from 24th August 1993. The trial Court's judgment and order is modified only to the extent indicated above.