

(2017) 02 BOM CK 0030
In the Bombay High Court
Case No : Criminal Appeal No. 366 of 2015

Pramod @ Bhurya s/o. Gangaramji

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, Section 324

Citation : (2017) ALLMRCri 2104 : (2017) CriLJ 2472

Hon'ble Judges : Mr. B.R. Gavai and Indira Kanahaiyalal Jain, JJ.

Bench : Division Bench

Advocate : Mr. R.M. Daga, Advocate, for the Appellant; Mr. T.A. Mirza, A.P.P, for the Respondent/State

Final Decision : Partly Allowed

Judgement

B.R. Gavai, J.(Oral) - Being aggrieved by the Judgment and Order passed by the learned Sessions Judge, Nagpur in Sessions Trial No.453 of 2013 thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.5,000/, in default to suffer rigorous imprisonment for one year and also convicting him for the offence punishable under Section 324 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for two years and to pay a fine of Rs.5000/, in default to suffer rigorous imprisonment for six months, the appellant has approached this Court.

2. The appellant and deceased Chhaya were related to each other. Deceased Chhaya was wife of Ramrao Narayan Patil (PW1). The appellant/accused is the son of sister of Ramrao namely Rekha. It is the prosecution case that, prior to eight days of the incident, the sister of first informant Ramrao namely Rekha and her another son Navin had come to his house at Nagpur for attending a marriage ceremony. There was a quarrel between accused Pramod and another son of Rekha namely Navin. The first informant and Chhaya intervened in the quarrel. He scolded accused Pramod for picking up quarrel.

3. It is further the prosecution case that, on 20.6.2013, when the first informant Ramrao returned in the evening at around 6.30 p.m., he saw that the accused was hurling abuses to his wife Chhaya. Thereafter, wife of the accused came and intervened in the quarrel. She persuaded her husband and took him back to his house. Thereafter, at around 7.00 p.m., Ramrao and Chhaya were chitchatting in front of their house. The accused came there and started abusing both of them. Thereafter, the accused took out a knife from his waist and dealt a blow with the same on the first informant. However, he succeeded to dodge the blow. Deceased Chhaya then intervened. However, the accused assaulted her by means of knife. The deceased was taken to hospital. The Medical Officer declared her dead. The first informant lodged oral report below Exh.23. On the basis of same, the First Information Report came to be registered below Exh.50 for the offences punishable under Section 302 r/w. Section 307 of the Indian Penal Code. On the basis of the F.I.R., investigation was set into motion. At the conclusion of investigation, the charge sheet came to be filed in the Court of learned Magistrate. However, since the case was exclusively triable by the Court of Sessions, it was committed to the Sessions Court. The learned trial Judge framed the charges for the offences punishable under Sections 302 and 324 of the Indian Penal Code. At the conclusion of the trial, the learned trial Judge passed the order of conviction and sentence, as aforesaid. Hence, the present appeal.

4. Mr. R.M. Daga, learned Counsel for the appellant submits that the witnesses in the present case are interested witnesses and as such, the order of conviction solely based upon their testimonies cannot be sustained in law. The learned Counsel, in the alternative, submits that the prosecution has utterly failed to bring the case within the ambit of Section 302 of the Indian Penal Code and the case would at the most come under Part I or II of Section 304 of the Indian Penal Code.

5. Mr. T.A. Mirza, learned A.P.P. for the respondent/State, on the contrary, submits that the learned trial Judge, upon consideration of the entire material on record, has rightly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and no interference is warranted in the appeal.

6. With the assistance of the learned A.P.P. and the learned Counsel for the appellant, we have scrutinized the entire evidence on record.

7. Ramrao Narayan Patil (PW1) is an injured witness and the first informant. Perusal of his evidence would reveal that he has narrated the incident which occurred prior to eight days of the date of incident. He narrates about the quarrel between two sons of his sister i.e. present appellant Pramod and another son Navin. He states that, on account of this witness, the accused had a grudge against him. He further states that, on the day of incident, when he returned home, he saw that the accused was hurling abuses to his wife Chhaya. Thereafter, the wife of accused came and intervened in the quarrel. She

persuaded the accused and took him back to their house. He states that, thereafter, the accused came out of house and again started abusing Ramrao (PW1) and his wife. On being asked the reason of abusing, the accused took out a knife from his waist and dealt a blow with the same on the first informant. However, in an attempt to save himself, the blow of knife struck on the arm of his left hand. Ramrao (PW1) further states that thereafter his wife saw that the accused was assaulting him and therefore, she rushed towards him and intervened in the fight. But the accused assaulted his wife/deceased Chhaya by means of knife on her chest and abdomen. In spite of thorough cross-examination, the evidence of this witness has remained unshattered. It is further to be noted that the evidence of this witness is corroborated by the First Information Report which is immediate in point of time.

8. Sunita Raju Maske (PW3) is neighbour of the first informant. Though this witness has been declared hostile, she states about the scuffle between the deceased and the first informant Ramrao one hand and the appellant on the other hand.

9. Sau. Sonu w/o. Bandu Maske (PW4) has turned hostile. However, she also states about the scuffle between the first informant and the deceased on one hand and the appellant on the other hand.

10. Rameshwari w/o. Ashwin Golait (PW7) is daughter of the deceased and the first informant. She also states about the quarrel between her parents on one hand and the appellant on the other hand and also states about the accused assaulting the deceased with knife in the said quarrel.

11. Nodoubt that Ramrao (PW1) and Rameshwari (PW7) are husband and daughter respectively of the deceased and as such, they are interested witnesses. However, merely because the witnesses are interested, cannot be a ground for discarding their testimonies. If the evidence of such witnesses is found to be trustworthy, reliable and cogent, conviction could be based on the testimonies of such witnesses. Ramrao (PW1) is an injured witness. As such, his presence at the spot cannot be disputed. It is further to be noted that the other witnesses i.e. Sunita Maske (PW3), Sau. Sonu Maske (PW4) and Rajkumar Ramprakash Sahdeo (PW8), who are neighbours, have also, though turned hostile, stated regarding the quarrel taking place between the deceased and the first informant on one hand and the appellant on the other hand. We, therefore, find that, on the basis of ocular testimonies of these witnesses, it can safely be said that the prosecution has proved beyond reasonable doubt that it is the present appellant who is an author of the crime.

12. That leaves us with the next question as to whether the conviction under Section 302 of the Indian Penal Code needs to be maintained or as to whether the crime would come under the ambit of the lesser offence.

13. From the tenor of cross-examination, it would reveal that defence of the present appellant is that the incident has taken place in a heat of passion in the

quarrel. It further appears to be the defence of the appellant that it is the deceased who had initially given a blow of wooden log to the appellant and thereafter, he has assaulted the deceased. Both Ramrao (PW1) as well as Rameshwari Golait (PW7) have admitted that there was a quarrel and a scuffle between the deceased and the first informant on one hand and the appellant on the other hand. Sunita Maske (PW3) and Sau. Sonu Maske (PW4), who are independent witnesses and who have been declared hostile, also state about the quarrel. Sunita Maske (PW3) states in her evidence that, in the quarrel, deceased Chhaya had dealt a blow with wooden stick to the accused. The appellant has also examined two witnesses as defence witnesses. Both these witnesses have deposed that there was a quarrel between the appellant on one hand and the first informant and the deceased on the other hand. They have deposed that Ramrao (PW1) had brought a wooden log and dealt a blow with the wooden log on the head of accused Pramod. The accused had also received injuries on his head. It could thus be seen that the incident is the outcome of the quarrel. From the evidence of witnesses, it cannot be said with the degree of certainty that the present appellant has pre-mediated the crime. The possibility of the appellant assaulting the deceased in a heat of passion in the quarrel which had suddenly taken place cannot be ruled out. The possibility of the first informant and the deceased beginning the quarrel cannot be ruled out. In the light of this, it will be appropriate to refer to the cross-examination of Dr. Mulchand Sheshrao Gedam (PW5) who has conducted the post mortem. It is thus :

" It is true that the injuries no.4 to 6 are not serious in nature. It is true that in the instant case, the victim died due to shock following excessive loss of blood. I am concur with the view that the external injuries no.1 to 3 mentioned in the postmortem report are not so serious being muscle deep injuries. It is true that the injury of contusion over the frontal region of the skull mentioned in the P.M. could be possible due to fall on the rough surface."

14. The Apex Court in the case of Ravindra Shalik Naik and Others v. State of Maharashtra reported in 2009 ALL MR (Cri)1798 (S.C.) has, in the similar facts, held that the accused was entitled to benefit of 4th Exception of Section 300 of the Indian Penal Code. In the light of the ocular testimonies as well as the evidence of Dr. Mulchand Gedam (PW5) who has conducted post mortem, we find that the accused would be entitled to benefit of Exception 4 of Section 300 of the Indian Penal Code and the case would not come under Section 300 of the Indian Penal Code, but would come under Part I of Section 304 of the Indian Penal Code. Hence, the following order.

ORDER

1. The Appeal is partly allowed.
2. The conviction and sentence under Section 302 of the Indian Penal Code is altered to one under Part-I of Section 304 of the Indian Penal Code.
3. The appellant/accused is sentenced to suffer rigorous imprisonment for seven

years for the said offence.

4. Rest of the order including conviction and sentence for the offence punishable under Section 324 of the Indian Penal Code is maintained.