

(2017) 02 BOM CK 0090
In the Bombay High Court
Case No : Criminal Appeal No. 128 of 2011

Rajendra @ Anant Sainath Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 300

Citation : (2017) 1 AIRBomRCri 974

Hon'ble Judges : Smt. V.K. Tahilramani and Revati Mohite Dere, JJ.

Bench : Division Bench

Advocate : Dr. Yug Mohit Chaudhry Advocate, for the Appellant; Mr. H.J. Dedia A.P.P, for the State

Final Decision : Partly Allowed

Judgement

Smt. V.K. Tahilramani, J. (Oral) - This appeal is preferred by the appellant-original accused against the judgment and order dated 20.12.2010 passed by the learned Adhoc Additional Sessions Judge, Islampur in Sessions Case No. 39 of 2009. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to R.I. for life and fine of Rs.5000/- in default R.I. for six months.

2. The prosecution case, briefly stated, is as under:

The appellant was a wrestler. Deceased Ramchandra alias "Kondya" was also a wrestler. The incident took place on 31.5.2009 in front of Government godown at Islampur, Dist. Sangli. At about 7.15 p.m. a quarrel took place between the appellant and the deceased on account of loan given by the appellant to the deceased. During the course of quarrel, the appellant picked up a "Rapi" from the shop of Cobbler which was at the spot. Thereafter, the appellant assaulted Ramchandra with the "Rapi" on the neck and other parts of the body. Ramchandra died due to the said assault. F.I.R. was lodged by PW 9 Manik Bhauso Patil who is the brother of the deceased Ramchandra. Thereafter

investigation commenced. The dead body of Ramchandra was sent for post-mortem. Though a number of injuries were found on the body of Ramchandra, in the opinion of Dr. Madane who conducted the post-mortem, the cause of death was "due to hemorrhagic shock due to incised wound on neck cutting carotid trunk on left side". After completion of investigation, the charge sheet came to be filed.

3. Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4. We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant assaulted Ramchandra with "Rapi" which led to the death of Ramchandra.

5. In order to support the conviction, the prosecution has relied on the evidence of PW 8 Shrirang Patil who is an eye witness to the incident. Though three other eye witnesses have been examined by the prosecution, their evidence is of no use to the prosecution as they have not supported the case of prosecution. Thus, as far as the actual assault is concerned, we have to rely only on the evidence of PW 8 Shrirang. Shrirang has stated that the appellant and the deceased were both wrestlers. On 31.5.2009, he purchased vegetables from the Bazar. When he came in front of Govt. godown, he saw that exchange of words was going on between the appellant and the deceased. He went to the spot to see. He saw that a quarrel was going on between the appellant and the deceased. He asked the appellant what has happened, but the appellant did not answer. Thereafter, the appellant picked up "Rapi" from the stall of a Cobbler. Then the appellant gave blow with the "Rapi" on the neck of Ramchandra. Blood started oozing from the neck. PW 8 Shrirang got frightened and left the spot. Nothing has been elicited in the cross-examination of PW 8 Shrirang to cause us to disbelieve his evidence. We are of the opinion that his evidence is trustworthy, hence, we have no hesitation in relying on the same.

6. That the appellant assaulted deceased Ramchandra with "Rapi" and caused his death, is further corroborated by the evidence of PW 11 Dr. Madane who performed postmortem on the dead body of Ramchandra. The main three injuries noted by Dr. Madane, are as under:

"(1) Incised wound left side of the neck, in the middle part lateral to trachea, 3 x 3 cm., depth cutting muscle of neck, carotid trunk on left side verticle, depth 3 cms. active bleeding present;

(2) Incised wound on chest left side, lower third part, anterior axillary line,

transverse in direction in the 9th space, 3 x 1.5 cm., depth cutting 9th rib;

(3) Incised wound on left flank, above left anterior superior iliac spine oblique in direction 3 x 1.5 cm. entering in abdominal cavity, exploration shows cutting descending colon on left side."

Remaining injuries were not on vital parts of the body.

7. Dr. Chaudhry submitted that even if it is accepted that the act of the appellant of assaulting Ramchandra with a "Rapi" resulted in his death, the case would not fall under Section 302 of IPC but it would fall under Section 304 Part-II of IPC. He pointed out that the evidence on record shows that when the incident occurred, a quarrel was going on between the appellant and the deceased. He pointed out that the evidence of PW 8 Shrirang who is an eye witness, clearly shows that exchange of words was going on between the appellant and the deceased and that a quarrel was going on between the appellant and the deceased. Learned counsel for the appellant further submitted that the assault was not premeditated or preplanned but it happened at the spur of moment in a fit of anger. Mr. Chaudhry reiterated that the fact that the incident occurred during the course of a sudden quarrel and the fact that it was not premeditated or preplanned would bring the case under Exception 4 to Section 300 of IPC and would thus, be covered by Section 304 Part-II of IPC.

8. To bring a case within Exception 4 to Section 300 of IPC, all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 of IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for passion to cool down. In this case, the evidence shows that both the parties had worked themselves into a fury on account of verbal altercation going on between them. The appellant did not come to the spot armed with a weapon but he assaulted Ramchandra with a "Rapi" which he picked up from the stall of a cobbler which was nearby. Thus, we find much merit in the submission that the act of the appellant would not fall under Section 302 of IPC. However, we are not inclined to accede to the submission of Mr. Chaudhry that the case would fall under Section 304 Part-II of IPC. In our view, the case would fall under Section 304 Part-I of IPC, because, we are of the opinion that the appellant did not just have the knowledge that his act is likely to cause death but in fact, the appellant intended to cause the death of Ramchandra. We say so on the basis of the weapon used, the part of body where the injury was inflicted and the number and nature of injuries. The injuries as can be seen from the evidence of PW 11 Dr. Madane, are extensive in nature. Looking to all these facts, we are of the considered opinion that the case cannot fall under Section 304 Part-II of IPC.

9. Considering the evidence on record, we are of the opinion that Exception 4 to Section 300 of IPC applies to the facts of this case and appropriate conviction would be under Section 304 Part-I of IPC. Hence, the conviction under Section 302 of IPC is set aside. Instead, the appellant is convicted under Section 304

Part-I of IPC. In our view, custodial sentence of 10 years R.I. and fine of Rs.5000/- in default R.I. for 6 months would meet the ends of justice. Order accordingly.

10. The seized cash amount of Rs.360/- be returned to the heir of deceased Ramchandra (Kondya) Bhauso Patil after the appeal period is over.

11. Appeal is partly allowed to the aforesaid extent.