
(2000) 03 BOM CK 0089
In the Bombay High Court
Case No : Criminal Appeal No. 69 of 1994

Ravindra Lallusingh Chavan	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 301, 302, 304, 34

Citation : (2000) 03 BOM CK 0089

Hon'ble Judges : P.S. Brahme, J;J.N. Patel, J

Bench : Division Bench

Advocate : M.R. Daga, for the Appellant; D.B. Yengal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, J.—The appellant Ravindra s/o Lallusingh Chavan came to be charged, along with one Lacchu s/o Gulab Deshmukh, for having committed murder by intentionally and knowingly causing the death of Manoj s/o Dhanrajmal Mirani, in furtherance of their common intention and thereby having committed an offence punishable u/s 302 read with section 34 of the Indian Penal Code. The learned Third Additional Sessions Judge, Amravati, by his judgment and order dated 8-12-1993 in Sessions Trial No. 185 of 1992, convicted the appellant/accused for having committed the offence punishment u/s 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 500/- or in default of payment of fine, to suffer rigorous imprisonment for three months. As regards the co-accused Lacchu s/o Gulab Deshmukh, the learned Additional Sessions Judge held that the prosecution has failed to prove its case against him and, therefore, recorded his acquittal for the said offence. The appellant/accused has challenged his conviction and sentence before this Court.

2. The facts quite briefly stated were as follows :-

On 17-6-1992 at about 22.30 to 2300 hrs., Naresh Newaldas Walecha (P.W.I),

along with Manoj Dhanrajmal Mirani (the deceased), were sitting in the Municipal Corporation Garden, Krushna Nagar, Amravati. At that very time, the appellant/accused accompanied with one Lacchu Pardhi came there. The appellant/accused Ravindra Lallusingh Chavan took out a Gupti (swordstick) and pounced upon them to assault, due to which Naresh Walecha moved aside and the blade of the Gupti struck on the left side chest of Manoj Mirani who sustained bleeding injuries and collapsed on the ground. On this, the appellant/accused Ravindra Lallusingh Chavan and his associate Lacchu Pardhi fled away from the place. While fleeing away, the appellant/accused Ravinda Chavan has also taken away the Gupti with him. Naresh Walecha (P.W.I) raised shouts because of which, younger brother of Manoj Mirani and persons nearby rushed to the place. They saw the appellant/accused and his associate running away from the scene of offence. The victim Manoj Mirani, with the help of Naresh Walecha and the persons who had gathered there, was taken to his house and a doctor was called to attend him. From the house, the victim was shifted in an auto-rickshaw to Irwin Hospital, Amravati, and after admission, the victim succumbed to his injuries. It is the prosecution case that the appellant, Ravindra Chavan has killed Manoj Mirani by stabbing him with a Gupti with an intention of snatching money.

3. After the incident of assault, Naresh Walecha (P.W.I) went to Gadgenagar Police Station and lodged a report there. On the report of Naresh, PSI Shankarrao Aadge, registered Crime No. 228/92 of Gadgenagar Police Station against the appellant/accused and his associate, for the offence punishable u/s 302 read with section 34 of the Indian Penal Code. After registering the offence, he arrested the appellant/accused at about 2.00 a.m., on 18-6-1992. He seized the Gupti from the appellant/accused in the Police Station and also his blood stained clothes. The Police Officer also seized the clothes of Naresh Walecha (P.W.I) on 18-6-1992. PSI Aagde conducted the inquest of the dead body of the victim in presence of panchas and drew Inquest Panchanama (Exhibit 12). He had also gone to the spot and prepared the panchanama of the scene of offence which is at Exhibit 11. The dead body of Manoj Mirani was sent for autopsy.

4. During the course of investigation, statements of Anandrao, Kisanchand and Manohar came to be recorded on 18-6-1992 and those of Dhanrajmal, Harishkumar, Narayandas, Ashokkumar, Kausallyabai, Sarojbai, Chandrabhan, Kanhayalal and Shrichand came to be recorded on 19-6-1992. The articles seized from the spot as well as the clothes of the accused and the deceased so also the Gupti were sent to the Chemical Analyser. On completion of the investigation, a charge-sheet came to be filed in the Court of the Judicial Magistrate First Class, Court No. 2, Amravati, against the accused persons. As it was a case triable by the Court of Sessions, the learned Judicial Magistrate committed it to the Court of Sessions by his order dated 7-11-1992.

5. On 31-7-1993, the learned Additional Sessions Judge framed a charge (Exhibit 2) against the two accused persons. The appellant/accused, as well as the co-accused, pleaded not guilty and claimed to be tried. It is their case that they

have been falsely implicated.

6. The prosecution in all examined seven witnesses and relied upon various documents, like Spot Panchanama, Inquest Panchanama, Arrest Panchanama of the accused persons, Seizure Panchanama of various articles and clothes, including the Gupti; the Chemical Analyser's Report and so on.

7. The learned Additional Sessions Judge found that the prosecution has proved that on 17-6-1992 in between 22.30 to 23.00 hrs. at Krushna Nagar, Amravati, deceased Manoj Mirani died a homicidal death. The learned trial Court also found that the prosecution has proved that it is the appellant/accused who has committed the murder of deceased Manoj Mirani and thereby committed an offence punishable u/s 302 of the Indian Penal Code and, therefore, he proceeded to convict the appellant/accused for the said offence and sentenced him accordingly. The original accused No. 2, Lacchu Gulab Deshmukh (Pardhi) was acquitted.

8. It is submitted by Mr. M. R. Daga, learned Counsel for the appellant/accused, that the prosecution's case rests on the sole testimony of Naresh Newaldas Walecha (P.W.I). Mr. Daga submitted that the evidence of Naresh Walecha is not reliable and cannot be the basis of conviction, for the reason that in his evidence before the Court, not only he has made material improvement in his case, but his evidence is full of contradictions and omissions and, therefore, it would be most unsafe to rely on his evidence.

9. Mr. Daga submitted that if at all the prosecution's case is accepted, then the facts brought on record would show that the appellant/accused had no intention to kill Manoj Mirani, the deceased. On the other hand, the appellant/accused is alleged to have made an attempt to assault Naresh Walecha (P.W.I) and in the course of that transaction, Naresh Walecha could escape the assault which landed on the chest of victim Manoj Mirani and, therefore, it cannot be said that the appellant/accused had an intention to commit murder of Manoj Mirani. It is, therefore, submitted that in absence of any intention, the appellant/accused cannot be held guilty for having committed an offence u/s 302 of the Indian Penal Code. Mr. Daga submitted that this can be gathered from the fact that the First Information Report lodged by Naresh Walecha (P.W.I), wherein the incident has been described in detail, the witness has specifically stated : "Ravindra Lallusingh Chavan took out his gupti (swordstick) and rushed upon to assault us. Suddenly, I moved myself aside. As a result of that, the blow on the gupti hit to the left side chest aspect of Manoj Mirani and thereby he sustained an injury, the bleeding started and he collapsed on the ground. " It is, therefore, submitted that the case of the appellant/accused would not fall within the definition of the offence of Murder, and at the most it may be a case of culpable homicide not amounting to murder.

10. Another contention raised by Mr. Daga is that this is a case of single blow and in absence of the prosecution bringing on record any motive on the part of the

appellant/accused, coupled with the fact that the appellant/accused had no intention to kill Manoj Mirani, the case of the appellant/accused will fall u/s 304, Part II, of the Code of Civil Procedure. It is submitted that at the most knowledge could have been attributed to the appellant/accused as to his act of stabbing the victim, particularly when there was no intention on his part to kill him and, in the circumstances, this Court should modify the conviction of the appellant/accused from one u/s 302 of the Indian Penal Code to that u/s 304, Part II of the Indian Penal Code.

11. Mr. D. B. Yengal, learned APP, on the other hand submitted that the prosecution has established its case beyond a shadow of doubt, against the appellant/accused. It is submitted that the prosecution's witness Naresh Walecha (P.W.I), whose presence at the scene of offence is not disputed and whose evidence is amply corroborated by the First Information Report and the medical evidence on record, cannot be said to be an untruthful witness on facts as narrated by him before the Court. Mr. Yengal submitted that the omission attributed to this witness, as regards the manner in which the incident occurred, is not material as the fact remains that Manoj Mirani was stabbed by the appellant/accused with the Gupti. It is further submitted that all those contradictions and omissions as claimed by the learned Counsel for the appellant/accused, do not, in any manner, make the evidence of this witness unreliable.

12. Mr. Yengal further submitted that the appellant/accused cannot take any advantage of the fact that he intended to kill Naresh Walecha (P.W.I) but, in the transaction, killed Manoj Mirani. Mr. Yengal has submitted that this is a case which is well covered by the doctrine of "transfer of malice" and the same finds place in section 301 of the Indian Penal Code. It is submitted that the prosecution, having clearly established that the appellant/accused had all the intention to commit murder, it will not be of much assistance to him if he takes a plea that he never intended to kill the victim Manoj Mirani and, therefore, on this count, the appellant/accused has no case.

13. In respect of the contention of Mr. Daga, that the case of the appellant/accused would fall u/s 304, Part II, of the Indian Penal Code, as it is a case of single blow, Mr. Yengal submitted that this also does not help the appellant/accused, for the simple reason that the appellant/accused had come armed with a Gupti and had all the necessary intention to commit murder. It is submitted by Mr. Yengal that the appellant/accused has taken undue advantage of the situation and he, along with his associate, actually wanted to rob the victim and as they could not get anything out of them, the appellant/accused assaulted the victim on his vital part of the body and punctured his heart which resulted in his death. Mr. Yengal has cited the case of Katta Ramudu Vs. State of Andhra Pradesh, , to show that in case the accused inflicts an injury by piercing a sharp edged weapon, into the heart, of deceased, resulting into his death, there can be no hesitation to draw an inference that he had an intention to kill the deceased and the offence of murder is made out. Under the circumstances, it is submitted that

the appeal deserves to be dismissed.

14. It is not much disputed before us that Manoj Dhanrajmal Mirani died a homicidal death. Dr. Anil Uttamrao Patil (P.W.5), who was at the relevant time working as the Medical Officer at the General Hospital, Amravati, had conducted autopsy on the dead body of Manoj Mirani, on 18-6-1992. On external examination, he noticed the following injuries :

(1) Incised wound 0.7 inches x 0.3 inches cavity deep, upper margin of the wound is contused, both angles are blunt it is placed horizontally and directed laterally in the 6th left intercostal space 3" lateral to mid line and 2" below the left nipple. It is caused by sharp and cutting object. Wound was fresh. Blood clot was present.

(2) Contusion 1" x 1" on upper surface of right shoulder, 1" lateral to stomach sterno clavicular caused by hard and blunt object.

(3) Abrasion 1/2" x 1/2" on left palm on the Thenar Enunnce caused by hard and blunt object.

On internal examination, he noticed that the thorax walls, ribs, cartilages are intact; pleura showed incised wound 0.6" long on the left anterior; mucous of the larynx and trachea was pale. On examination of the left lung, the doctor found that dotted blood was present in the pleural cavity and the whole of the cavity was filled with the blood and it (the left lung) was congested. As regards right lung, he found that it was congested.

On examination of pericardium, the doctor found incised wound 0.7" long on anterior pericardium and the blood was present in the pericardial cavity.

On examination of the heart, the doctor found incised wound 0.6" on anterior wall of the left ventricle, which was entering into the left ventricle cavity: right chamber was empty and the weight of the heart was 300 grams. The doctor also found that the great vessels were empty.

According to the doctor, all the injuries were ante-mortem injuries. In his opinion, the cause of death was due to injury to heart. He has placed before the Court the Post-mortem Notes which are at Exhibit 34. The doctor gave a clear opinion that the injury mentioned at serial No. 1 in Col. 17 of the Postmortem Notes (Ex.34) is sufficient to cause death in the ordinary course of nature and this injury corresponds to the internal injury to the heart. The doctor, while in the witness-box, was shown the Gupti (Art No. 5) before the Court and he gave an opinion that the injury No. 1 could be caused by the Gupti (Art. No. 5). The doctor's evidence has almost gone unchallenged.

15. The only witness to the actual assault is Naresh Nowaldas Walecha (P.W.I). He has narrated the incident in a proper sequence. According to him, on the date of the incident, he left his house at about 9.30 p.m. and to the Tea Stall where he met his friend Manoj, i.e., the deceased. Then the both went to the liquor

shop of Amrutlal where they consumed 100 ml. of liquor. As the shopkeeper informed them that the shop was going to be closed, they both went to the Government Garden which was near the liquor-shop in Rampuri Camp area. They sat in the garden and asked the watchman to bring cigarette and Chiwda. It is at this time that the appellant/accused, along with his associate, came over that place. The appellant/Accused Ravindra tried to remove money from his (witness's) person and Manoj (the deceased) was caught hold of by the original accused No. 2. In the transaction, the appellant/accused Ravindra took out Gupti and then abused him and thereafter he (appellant/accused) went to his friend Manoj and gave a Gupti blow in the chest of Manoj. Before that, appellant-accused Ravindra had also given him fist blows. According to this witness, when the appellant/accused Ravindra gave Gupti blow to Manoj, original accused No. 2 Lacchu caught hold of the hands of Manoj.

16. Naresh Walecha (P.W.I) has identified the Gupti (Art. No. 5) before the Court as the weapon which was used by the appellant/accused in assaulting Manoj on his chest. Naresh stated that after Manoj received the blow on his chest, he cried and fell down on the ground and thereafter the accused persons ran away and the appellant accused took away the Gupti with him. When this witness shouted, the brother of the deceased Manoj, namely, Harish came there and also some other persons, and Harish then shifted Manoj to his house which was at a distance of 50 feet from the spot. A doctor was called and as per advice of the doctor, Manoj was admitted in the Irwin Hospital. After sometime, he died at the hospital. On this, this witness Naresh went to Gadgenagar Police Station and lodged an oral report which is at Exhibit 24.

17. The improvements, which have been brought on record in the cross-examination of this witness Naresh (P.W.I), relate, firstly, to a contradiction that watchman Thakre got annoyed and he asked Manoj why he abused Thakre and thereafter Thakre picked up a brick and assaulted them. The next is the omission of the fact that Ravindra tried to grab money from his pocket and the third is also the omission with respect to the fact that Ravindra abused him and gave kick and fist blows and that then Ravindra left him and went towards Manoj and assaulted him with Gupti. Mr. Daga, learned Counsel for the appellant/accused has tried to make a capital of this, in reference to the First Information Report. Even if we accept that the incident occurred as narrated in the First Information Report of Naresh Walecha (P.W.I), still, in our view, it will not make any difference to the case of the appellant/accused, which we propose to discuss in detail in the later part of our judgment. First we would like to ascertain as to whether the evidence of Naresh Walecha (P.W.I) inspires confidence and can be held to be sufficiently reliable to arrive at a conclusion that the appellant/accused is guilty of having committed murder.

18. The evidence of Naresh Walecha (P.W.I) is corroborated by the First Information Report (Exhibit 37) in all respects. Except for the small deviation in respect of narrating the incident of actual assault, we do not find any other

shortcomings in his evidence so as to create suspicion in our mind. Even the medical evidence placed on record by the prosecution by examining Dr. Patil (P.W.5), clearly shows that the victim was assaulted by a sharp edged weapon on his chest which injured his heart, and this is how the assault has been described by the witness. As regards the presence of the accused person, in addition to Naresh Walecha (P.W.I), there were two other witnesses who had seen them running away from the spot, and they were (1) Harish Mirani (P.W.2), the brother of deceased Manoj Mirani; and (2) Shrichand Nihalchand Nagdeo (P.W.6). The evidence of these two witnesses on the point has gone unchallenged. They were knowing the accused persons and have sufficiently identified them. Not only this, these witnesses have also clearly stated that they saw a Gupti in the hand of the appellant/accused Ravindra. When these witnesses arrived at the scene of offence, they saw that Naresh (P. W. 1) was sitting under the light in the garden and Manoj was in his laps. The scene of offence panchanama also corroborates this fact. In addition to this evidence, what we find is that the Chemical Analyser's report (Exhibit 21) also reinforces the prosecution's case as regards the presence of Naresh (P.W.I) along with the victim at the time of incident and also the participation of the appellant/accused in the assault, as his clothes have been found to be stained with blood of "O" Group, which was the blood group of the deceased. No doubt, Mr. Daga has again pounced on the opportunity that the weapon of assault, i.e., Gupti (Art.No. 11 in C.A's report), does not have blood stains and the Chemical Analyser's report is negative on the point. But, this by itself does not mean that the deceased was not assaulted by a weapon like Gupti. If one views the injury as found by Dr. Patil (P.W.5) and his expert opinion that the injury could be caused by Gupti (Art.No. 5 before the Court), it cannot be ruled out that the weapon like Gupti was used by the appellant/accused. The witnesses have also identified the weapon in the Court. Therefore, this contention of Mr. Daga, that as no blood stain was found on the weapon of assault (i.e., the Gupti), the victim was not assaulted-by it, will not be sufficient to discard the prosecution's case.

19. Now, let us take up the contention of Mr. Daga that the case against the appellant/accused would not fall in the category of culpable homicide amounting to murder, for two reasons; firstly, that the appellant/accused had no intention to kill Manoj Mirani as the attack by him with a Gupti was on Naresh Walecha (P.W.I) who was his target and as he (the appellant/accused) was not successful in stabbing him, but out of accident, stabbed the victim, malice or intention cannot be attributed to him. We are afraid that this contention does not find favour with the Court. As rightly submitted by the learned APP, the case of the appellant/accused even if accepted as true, would be covered by section 301 of the Indian Penal Code, which reads as under:-

"301. If a person, by doing anything which he intends or known to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it

would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause."

It will be worthwhile to mention a passage as observed by Lord Coleridge, C.J. in *Latimer*, (1986) 17 QDB 359,361, which is as follows :

It is common knowledge that a man who has an unlawful and malicious intent against another, and, in attempting to carry it out, injures a third person, is guilty of what the law deems malice against the person injured, because the offender is doing an unlawful act, and has that which the Judges call general malice, and that is enough.

Therefore, in our considered opinion, the appellant/accused cannot claim that his culpable act would fall outside the purview of the definition of "murder" and he cannot be held guilty of the said charge.

20. The next question is, whether in the facts and circumstances, the case of the appellant/accused would fall u/s 304, Part II, of the Indian Penal Code, considering that the appellant/accused has given a single blow. We have examined the case before us, in order to ascertain as to whether the case of the appellant/accused would travel beyond the purview of section 302 of the Indian Penal Code and we have no hesitation to record that his case does not fall within the purview of section 304 of the Indian Penal Code. What we find is that the case of the appellant/accused is squarely covered under clause Thirdly of section 300 of the Indian Penal Code.

21. Explaining clause 3 of section 300 of the Indian Penal Code, Vivian Bose, J., in the leading case of *Virsa Singh Vs. The State of Punjab*, , observed as under:-

To put it shortly, the prosecution must prove the following facts before it can bring a case u/s 300 "thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Once these four elements are established by the prosecution, the offence is murder u/s 300 "thirdly". It does not matter that there was no intention to cause

death. It does not matter that there was no intention even to cause any injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

22. In the facts and circumstances of the case, what we find is that the appellant/accused had gone to the scene of offence armed with a deadly weapon like Gupti (Art.No. 5 before the Court), along with his associate. His victims were Naresh Walecha (P.W.I) and Manoj Mirani, the deceased. They were unarmed. The appellant/accused and his associate tried to snatch money from them. The victim having resisted, the appellant/accused took out Gupti (swordstick) and stabbed his victim with it on his chest, i.e., the vital part of the body, with a force that it not only pierced through the chest and lungs, but also punctured the heart. Therefore, we have no hesitation to hold that though the appellant/accused caused a single blow on his victim, the very fact that the blow was given on the vital part of the body and with such a force that it resulted into a fatal injury which, in the opinion of the doctor, was sufficient in the ordinary course of nature to cause his death.

23. For these reasons, without any hesitation, we have reached the conclusion that the trial Court was justified in convicting the appellant/accused of having committed murder of deceased Manoj Dhanramji Mirani and rightly sentenced him to imprisonment for life and fine as imposed. The appeal has no merits. The same is dismissed.