
(2015) 09 BOM CK 0109
In the Bombay High Court
Case No : Criminal Appeal No. 836 of 2007

Santosh Balappa Alkunte	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 304-I, 304-II

Citation : (2015) 09 BOM CK 0109

Hon'ble Judges : V.K. Tahilramani, A.C.J;A.S. Gadkari, J

Bench : Division Bench

Advocate : D.G. Khamkar, for the Appellant; S.D. Shinde, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

V.K. Tahilramani, Acting C.J—This appeal is preferred by the appellant -original accused against the judgment and order dated 3.8.2007 passed by the learned Additional Sessions Judge, Pune in Sessions Case Nos. 104 of 2006. By the said judgment and order, the learned Session Judge convicted the appellant for the offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and fine of Rs. 10000/-, in default R.I. for 6 months.

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

(a) Deceased Raju was the brother of the appellant. The parents of the appellant and the deceased had constructed three rooms. Deceased Raju along with his wife PW 1 Bharati and their two sons were residing in the middle room. The appellant along with other brother Prakash and their parents were residing in one room and the third room was given on rent for commercial purpose.

(b) Dispute took place between Bharati and her husband Raju, hence, Bharati went to her maternal house at Village Jat. After settlement of the dispute, she came back to reside with her husband Raju. While Bharati was residing in the house of her parents, the appellant had given the room in which Bharati and Raju

were residing, on rent. When Bharati came back, she started residing in the room with her husband and children. The appellant was insisting that they should vacate the room as he wanted to sell the same. Bharati and Raju declined to vacate the room and on that count, there was dispute between Bharati and Raju on one side and the appellant on the other.

(c) The incident took place on 12.12.2005 at about 1.00 p.m. On the day of the incident at about 9.00 a.m., the appellant beat the son of deceased Raju and PW 1 Bharati, hence, Bharati asked the appellant the reason for assaulting her son. At about 1.00 p.m, PW 1 Bharati was inside the house. At that time, she heard noise of quarrel, hence, she came out of the room. She saw the appellant assaulting her husband with fist blows. She tried to separate them but at that time, the appellant took out razor from his pocket and gave blow with it on the back of her husband Raju. The appellant also took out iron spoke and gave blow with it on the ribs and back of Raju. Raju fell down. Raju was taken to the hospital where he was declared dead. PW 1 Bharati then lodged F.I.R. Thereafter, investigation commenced. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

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

4. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant assaulted Raju with razor and iron spoke and caused his death.

5. The conviction of the appellant is mainly based on the evidence of PW 1 Bharati who is an eye witness to the incident. Bharati was the wife of deceased Raju. Bharati has stated that she was residing at Wadarwadi with her husband Raju and two sons since 8-9 months prior to the incident. Raju was the brother of the appellant. The parents of the appellant and the deceased Raju had constructed three rooms. PW 1 Bharati, her husband Raju and their two sons were residing in the middle room. The appellant along with other brother Prakash and their parents were residing in one room and the third room was given on rent for commercial purpose.

Bharati has further stated that dispute took place between her and her husband Raju, hence, she went to her maternal house at Village Jat. After settlement of the dispute, she came back to reside with her husband Raju. While Bharati was residing in the house of her parents, the appellant had given the room in which Bharati and Raju were residing, on rent. When Bharati came back, she started

residing in the room with her husband and children. The appellant was insisting that they should vacate the room as he wanted to sell the same. Bharati and Raju declined to vacate the room and on that count, there was dispute between the appellant and Raju.

Bharati has further stated that the incident took place on 12.12.2005 at about 1.00 p.m. On the day of the incident at about 9.00 a.m., the appellant beat the son of deceased Raju and PW 1 Bharati, hence, Bharati asked the appellant the reason for assaulting her son. At about 1.00 p.m, PW 1 Bharati was inside the house. At that time, she heard noise of quarrel, hence, she came out of the room. She saw the appellant assaulting her husband with fist blows. She tried to separate them but at that time, the appellant took out razor from his pocket and gave blow on the back of her husband Raju. The appellant also took out iron spoke and gave blow with it on the ribs and back of Raju. Raju fell down. Raju was taken to the hospital where he was declared dead. PW 1 Bharati then lodged F.I.R.

6. It is the prosecution case that the appellant assaulted Raju with razor as well as iron spoke. This is supported by the medical evidence. PW 10 Dr. Vabale conducted the postmortem on the dead body of Raju. On external examination, Dr. Vabale found the following injuries:-

1. Puncture mark on left side of chest in 5th inter costal space adm 4.5 c.m. away from nipple measuring 3 mm in diameter medial aspect abraded bone deep;
2. Puncture mark 4 c.m. below and 1 c.m. medial to external injury No. 1. 03 m.m. in diameter entering thoracic cavity i.e stab wound;
3. Incised wound over right scapula measuring 9 x 1.5 c.m. muscle deep margins clean cut;
4. Abrasion on left shoulder up 2 x 1 c.m.

Dr. Vable has stated that external injury No. 2 with corresponding internal injuries were sufficient to cause the death in ordinary course of nature and the death was a result of trauma and haemorrhage as a result of stab injury. Dr. Vabale has stated that external injury Nos. 1 and 2 are possible by iron spoke and external injury No. 3 is possible by razor.

7. Mr. Khamkar, the learned Advocate for the appellant submitted that even if it is accepted that the act of the appellant of assaulting Raju resulted in his death, the case would not fall under Section 302 of IPC but it would fall under Section 304-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 which has been deposed about by PW 1 Bharati, the wife of deceased Raju. Mr. Khamkar drew our attention to the evidence of PW 1 Bharati who has stated that at about 1.00 p.m, she was inside the house. At that time, she heard noise of quarrel, hence, she came out of the room. She saw the appellant assaulting her husband with fist blows. She tried to separate them but at that

time, the appellant took out razor from his pocket and gave blow on the back of her husband Raju. The appellant also took out iron spoke and gave blow with it on the ribs and back of Raju. Raju fell down. Mr. Khamkar further submitted that the assault was not premeditated or preplanned but it happened on the spur of the moment in a fit of anger. He pointed out that during the course of the quarrel, the appellant assaulted Raju. Moreover, out of the four injuries, the fourth injury was an abrasion and hence inconsequential. Mr. Khamkar further pointed out that injury No. 1 and 3 did not cause any fracture or any damage or injury to any internal organ. Mr. Khamkar reiterated that the fact that the appellant assaulted the deceased during a sudden quarrel would bring the case under Exception 4 to Section 300 of IPC and would thus, be covered by Section 304-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 word "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 on record shows that both the parties had worked themselves into a fury on account of verbal altercation going on between them. The evidence on record shows that during the course of the quarrel, the appellant assaulted the deceased with razor and iron spoke. Looking to the evidence on record, we are of the considered opinion that the incident occurred during a sudden quarrel, hence, Exception 4 to Section 300 of IPC would apply. However, we are not prepared to accede to the submission of Mr. Khamkar 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 the death of Raju but in fact the appellant intended to cause the death of Raju. We say so on the basis of the weapon used, the part of the body where the injury was inflicted, the force used while assaulting and the nature of the injuries. Injury No. 2 as seen from the evidence of PW 10 Dr. Vabale has caused extensive internal damage.

9. Considering the evidence on record, we are of the view that Exception 4 to Section 300 of IPC applies to the facts of the present case and the appropriate conviction would be under Section 304 Part I of IPC. Hence, the conviction of the appellant under Section 302 of IPC is set aside, instead, the appellant is convicted under Section 304-I of IPC. In our view, custodial sentence of ten years rigorous imprisonment and fine amount of Rs. 1000/- in default simple imprisonment for fifteen days would meet the ends of justice.

10. The appeal is allowed to the aforesaid extent.