

(2002) 06 BOM CK 0103
In the Bombay High Court
Case No : Criminal Appeal No. 272 of 1997

Shalik Maroti Kowe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 300, 302, 304, 307, 324

Citation : (2003) BomCR(Cri) 763 : (2002) 104 BOMLR 129

Hon'ble Judges : V.M. Kanade, J; R.K. Batta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Batta, J.—The appellant was tried for murder of Deorao Bawane, attempt to murder Nagorao Bawane and for voluntarily causing hurt to Soma Bawane, under Sections 302, 307 and 324 of the Indian Penal Code respectively. The learned Additional Sessions Judge, Yavatmal vide judgment dt. 23.6.1997, found the appellant guilty of murder of Deorao Bawane u/s 302 of the Indian Penal Code and sentenced the appellant to undergo rigorous imprisonment for life and to pay fine of Rs. 1000/- in default R. I. for 6 months. He also found the appellant guilty for voluntarily causing hurt to Nagorao Bawane and Soma Bawane u/s 324 of the Indian Penal Code and sentenced the appellant to undergo R. I, for one year. The substantive sentences have been ordered to run concurrently. The benefit of set off u/s 428 of the Cr. P.C. has been given to the appellant. The appellant challenges his conviction and sentence in this appeal.

2. The prosecution case, in brief, is that on 24.8.1,996 at about 8.00 p.m. there was a quarrel between the appellant and Soma Bawane since the appellant is said to have committed theft of illicit liquor prepared by Soma Bawane and in the said quarrel the appellant had assaulted Soma Bawane. Soma Bawane along with his brothers Deorao and Nagorao as also one Vitthal, went to the Sarpanch

Ramesh Puppalwar and informed him of the incident, who had advised them to lodge a report with the Police. All of them came out of the house of the Sarpanch Ramesh Puppalwar and the Sarpanch also came after them. The appellant assaulted Deorao with a knife on his chest, as a result of which, he died. Thereafter, the appellant, at the same time, is said to have assaulted Nagorao and Soma by knife causing injuries to them. The appellant had assaulted Nagorao in his abdomen region as a result his intestines came out. While the appellant was trying to inflict knife blow to Soma, he warded the same as a result he received injuries on the hand. Accused was seen running away with the knife in his hand towards the river. Besides, P.W. 2 Ramlu, the prosecution had examined Sarpanch Ramesh Puppalwar as P.W. 1, Nagorao (P.W. 3), Soma (P.W. 5) besides other witnesses. The knife was attached at the instance of the appellant u/s 27 of the Evidence Act upon which human blood was found as per the report of Chemical Analyser. The Trial Court accepted the evidence of the said witnesses and discarded the defence theory of self defence. The Trial Court also rejected the submissions made on behalf of the appellant that the offence fell u/s 304-II of the Indian Penal Code.

3. The learned Advocate Mr. M. R. Daga, argued on behalf of the appellant and Shri Loney, learned A.P.P. on behalf of the State.

4. Learned Advocate Shri M. R. Daga, urged before us that Nagorao (P.W. 3) has admitted in the cross-examination that there was maramari between the accused one on one side and Deorao and Soma on the other side near the house of the Sarpanch. He, therefore, submits that in these circumstances and keeping in view that only a single blow was given by the appellant, who had acted in the right of his private defence, the offence, at the most, would fall u/s 304-II of the Indian Penal Code. On the other hand, the learned A.P.P. urged that there is ample evidence on record to show that the appellant intended to kill Deorao and had assaulted him with knife in the heart region on account of which deceased Deorao instantly died. He also pointed out that the appellant also assaulted his brothers Nagorao and Soma and fortunately Nagorao survived even though injury was inflicted on his abdomen and intestine had come out. The learned A.P.P. urged that there is ample evidence on record to show that offence committed is u/s 302 of the Indian Penal Code. The learned A.P.P. also stated that the case of the appellant does not fall within the scope and ambit of Exception 4 of Section 300 of the Indian Penal Code since not only the assault was premeditated but there was no fight or even sudden quarrel so as to attract the said provisions. The learned A.P.P. has placed reliance on the case of Mahesh Balmiki @ Manna Vs. State of Madhya Pradesh, .

5. The prosecution case is that initially there was a quarrel between the appellant and Soma on account of theft of illicit liquor belonging to Soma. This incident took place on the same day at about 8.00 p.m. P.W. 5 Soma has stated that the appellant had taken away the container containing illicit liquor belonging to him and there was a quarrel between him and the appellant near the river at 8.00

p.m. in which the appellant had beaten him. The appellant/accused in his statement u/s 313 of the Cr. P. C. not only admits the theft but also the quarrel between him and Soma. The prosecution case further is that after this quarrel. Soma, Deorao, deceased and Nagorao who are brothers alongwith Vitthal went to Sarpanch Ramesh (P.W. 1) and complained to him about the said quarrel between Soma and the appellant. The Sarpanch advised them to report the matter to the Police and when they came out of the house of Sarpanch, the appellant first assaulted deceased Deorao with a knife on his chest in the heart region. Then he assaulted Nagorao by Inflicting blow in his abdomen and later he tried to assault Soma but he warded off the blow with his hand resulting injury to his right hand. The appellant is said to have run away from the spot. These facts are deposed not only by Soma (P.W. 5) but also by Nagorao (P.W., 3) as also Sarpanch Ramesh (P.W. 1). The defence put forth by the appellant is that Soma (P.W. 5) was trying to assault him with a knife but he warded off the blow and it fell on the chest of Deorao who died on account of the said blow. Further defence of the appellant is that he had assaulted Nagorao (P.W. 3) and Soma (P.W. 5) in his self defence. The learned Advocate for the appellant made strenuous efforts to convince us that not only the appellant had acted in the right of his self defence but that he is entitled to the benefit of Exception 4 of Section 300 of the Indian Penal Code since there was a maramari, the appellant was alone and there were many other persons who were assaulting him, he had acted in his self defence and at any rate as the single blow had been given in a sudden fight, Exception 4 of the Section 300 of the Indian Penal Code is attracted as a result of which the offence would fall u/s 304-II of the Indian Penal Code. We do not find, in fact, any merit whatsoever in the submission made by the learned Advocate for the appellant. From the evidence on record, we find that the assault was premeditated. The appellant had earlier fight with Soma (P.W. 5) and he assaulted him. The appellant thereafter had knife with him and he assaulted Deorao (deceased), Nagorao and Soma with knife. The self defence theory has been rightly discarded by the Trial Court since there is no material on record to suggest that the appellant had acted in the right of his self defence. P.W. 1 Ramesh has stated that there was oral exchange between the accused and Deorao, Nagorao, Soma and thereafter the appellant made assault on them. Mere oral exchange would not entitle the appellant to assault them with knife nor on account of oral exchange the appellant could be said to have acted in the right of his private defence. There is no material on record to accept the private defence theory put up by the appellant. It is no doubt true that Nagorao (P.W. 3) states that there was a maramari between the accused on one side and Deorao and Soma on the other side near the house of Sarpanch and hearing the hue and cry of the quarrel he came outside and when quarrel was going on, the Sarpanch advised Deorao and Soma to report the matter to the Police. It appears that P.W. 3 has not seen maramari since according to him, he was inside the house of Sarpanch and came out hearing hue and cry. This quarrel cannot be equated to a sudden fight which is one of the pre-condition for the applicability of Exception 4 of Section 300 of the Indian Penal Code. Besides this, as we have already

pointed out, the appellant had assaulted Deorao and others with premeditation which also rules out the possibility of the applicability of Exception 4 of Section 300 of the Indian Penal Code which provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

6. So far as the question of a single blow is concerned, the Apex Court in a case of Mahesh Balmiki alias Munna v. State of Madhya Pradesh," has laid down as under :

There is no principle that in all cases of single blow Section 302 of the I.P.C. is not attracted. Single blow may, in some cases, entail conviction u/s 302 of the I.P.C., in some cases u/s 304 of the I.P.C. and in some other cases u/s 326 of the I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him.

The same principle was reiterated in the case of Mahesh Balmiki @ Manna Vs. State of Madhya Pradesh, . In this case, it was found that even though a single blow was given with knife, the said blow was given on the chest on the left side of the sternum between the costal joint of the 6th and 7th ribs, fracturing both the ribs and the said injury had gone through the sternum, pericardium, anterior and posterior after passing the ribs and thereafter entering the liver and perforating a portion of stomach. The total depth of the wound was 19 cm. It was held that Exception 4 would not be applied to the facts of the case.

7. In the case before us, the weapon used is knife. The depth of the injury is 4". There was a fracture to 7th rib, pleura was torn at the site of injury, pericardium was torn and the right ventricle of the heart was ruptured. The weapon used, part of the body on which the injury was inflicted as also the force of the injury clearly establishes that the appellant had intention to kill the deceased. At any rate, the act of the appellant was so imminently dangerous that it must in all probability cause death or said bodily injury as is likely to cause death as a result of which knowledge can be attributed to the appellant so that his case would be fully covered under Clause 4 of Section 300 of the Indian Penal Code. The recovery of blood stained knife has been duly established through evidence of P.W. 4 Subhan Suleman. P.W. 2 Ramlu also supports the prosecution case as he saw the appellant running away with knife. In the light of the aforesaid evidence on record, we do not consider that any case has been made out for interfering with the conviction and sentence passed by the Trial Court. We, therefore, do not find any merit in the appeal. The appeal is rejected.