
(2013) 01 BOM CK 0051

In the Bombay High Court

Case No : Criminal Appeal No. 275 of 1996

Shantappa Parisa Manare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 323

Citation : (2013) ALLMR(Cri) 1429

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : S.A. Ingawale, for the Appellant; R.M. Gadhvi, APP, for the Respondent

Judgement

R.C. Chavan, J.—This appeal is directed against the appellant's conviction by the learned Additional Sessions Judge, Sangli, of offence punishable u/s 304 part II of the Indian Penal Code and sentence of rigorous imprisonment for 5 years with fine of Rs. 10,000/- or in default rigorous imprisonment for one year, imposed upon the appellant, on conclusion of trial of Sessions Case No. 120 of 1995, before him. The facts which are material for deciding this appeal are as under:-

The appellant is younger brother of the victim. The families of both were residing in the same residential block i.e. a common wada. There was dispute about use of common access in the wada. There had been altercations on that count about 3 days prior to the incident dated 24th March, 1995 and even on the morning of 24th March, 1995 a quarrel had taken place amongst the ladies. Both the appellant as well as victim were in fact not at home at that time. Both were called by their respective children. The appellant allegedly picked up wooden log and gave blow on the head of the victim, even after victim fell down, the appellant is alleged to have beaten the victim. The other members of their family are also stated to have participated in the assault resulting in injuries to the members of victim's family. The victim was taken to hospital where he was pronounced dead. On the report by victim's son Rajendra PW 1, an offence was

registered. In the course of investigation police caused the inquest to be performed on the body of the victim and sent it for the postmortem examination. They seized the blood stained clothes of the victim. They performed panchnama of spot and seized the articles lying at the spot. The appellant and his family members were arrested. Their clothes were also seized. Police recorded statements of witnesses and on completion of investigation sent the chargesheet to the Court of learned Judicial Magistrate First class, Miraj, who committed the case to the Court of Sessions at Sangli.

2. The learned Additional Sessions Judge to whom the case was made over charged the appellant, his two sons and his wife of offences under Sections 302 and 323 of the Indian Penal Code. The charge initially framed on 23rd January, 1996 was modified on 19th February, 1996. Since the accused persons pleaded not guilty, they were put on trial at which the prosecution examined in all 7 witnesses in its attempt to bring home the guilt of the appellant and other accused persons. After considering the prosecution evidence in the light of defence of being falsely implicated and as the victim had suffered fatal injury, the learned trial Judge convicted and sentenced the appellant accused No. 1 as aforementioned while acquitting the other accused persons of all the offences for which they were charged. Aggrieved thereby the appellant is before this Court.

3. I have heard learned counsel for the appellant and the learned Additional Public Prosecutor for the State. With the help of both, I have gone through the evidence on record. As rightly pointed out by the learned Additional Public Prosecutor, the cross-examinations of eye witnesses i.e. victim's son PW 1, wife PW 2, and daughter-in-law PW 3, would clearly show that there was scuffle between the appellant's family and the family of victim. The defence was that the victim suffered injury by fall. P.W. 4 Dr. Supriya Waydande, had conducted postmortem on the victim's body. She proved the notes of postmortem at Exh. 23. These notes show that the victim had as many as 11 surface wounds. The doctor had also drawn sketches to show the places where the injuries had been suffered by the victim. The injuries are described as under:-

1. Contusion with depression at right frontal area size 7 x 4 cms x 2 cm depression. Depressed area is irregular and palpable fracture of skull bone present.
2. Contused lacerated wound 5 x 2 cms bone deep vertical at left parietal frontal anterior end of CLW is sutured by thread two stitches present clotted blood present.
3. Contused lacerated wound 3 x ? cm bone deep clotted blood and oozing present. Palpable fracture of right parietal frontal area is noted.
4. Contused lacerated wound 1 x 1 cms bone deep right frontal parietal area clotted blood present.
5. Contused lacerated wound 1 x 1 cms bone deep right parietal area near right

external ear. Clotted blood present.

6. Contusion of right eye with swelling of both eyelids.

7. Sub conjunctival hemorrhage present surrounding area of right eye reddish black in colour.

8. Contused lacerated wound right leg medial aspect near knee joint. 3 x 1 x ? cms bleeding clot present.

9. Contusion right medial aspect of knee joint 4 x 5 cms colour, reddish black.

10. Contused lacerated wound anterior aspect middle 1/3rd of right leg 2 x 2 cms and 1 x ? cm clotted blood present oozing present.

11. Abrasion left lateral malleable 3 x 2 cm clotted blood present oozing present.

4. Dr. Waydande denied suggestion that the injury Nos. 2 to 5 would be caused by dash or fall. The locations of the injury would clearly rule out such injuries being caused by fall. As rightly submitted by the learned Additional Public Prosecutor the defence had suggested participation of the appellant in the scuffle, therefore, the possibility of injuries by being caused fall or dash has been ruled out. The learned Judge, therefore, rightly came to the conclusion that the injury which led to the death of victim was caused by blow given by the appellant since the appellant's participation in the scuffle has been specifically suggested to the prosecution witnesses in the course of their cross examination. The learned Judge also rightly held that the offence would not be one punishable u/s 302 of the Indian penal Code, but would be punishable u/s 304 part II since victim's wife P.W. Huausabai had specifically stated in the cross examination that the accused No. 1 i.e. present appellant did not rush at the victim. In view of this the conclusion drawn by the learned Judge cannot be faulted. The conviction of the appellant for the offence punishable u/s 304 part II of the Indian Penal Code, has therefore, to be upheld.

5. The learned counsel for the appellant submits that the learned trial Judge had noted that the appellant was of 70 years old and therefore, inflicted sentence of rigorous imprisonment of five years with fine of Rs. 10,000/-. He submits that this was about 17 years ago and therefore, now the appellant is 87 years old. The appellant was behind the bar from the date of incident i.e. 24th March, 1995 till he was bailed out by the orders of this Court, in June, 1996 i.e. for about 15 months. He submits that at this point of time, no useful purpose would be served by sending the appellant to serve the remaining sentence of 3? years and therefore, submits that the substantive sentence may be reduced to that already undergone by increasing fine.

6. The learned APP submits that the delay in the Court should not lead to the offenders getting released on a small punishment, even when there is loss of life. Though there is some substance in the submission of learned APP. Yet the appellant need not be blamed for the delay in hearing such type of matters in

this Court for 17 years now. In any case the appellant is now 87 years old. Except for satisfaction to the victim's if though the appellant is sent to jail even at this stage, no useful purpose would be served, in the context in which offence was committed and the age of appellant at this point of time. I would, therefore, reduce the substantive sentence to that already undergone by increasing fine substantially. The appeal is, therefore, partly allowed. The conviction of the appellant for the offence punishable u/s 304 part II of the Indian penal Code is maintained. Sentence is, however, reduced to rigorous imprisonment for 14 months i.e. the period already undergone, increasing fine from Rs. 10,000/- to Rs. 1,00,000/- or in default rigorous imprisonment for a period of three years. If the fine amount is paid or deposited the entire amount shall be paid to the victim's family members. If the fine amount is not paid or deposited within a period of eight weeks, the learned Judge may have the appellant arrested and committed to prison to serve the sentence awarded in default of payment of fine.