
(2015) 09 BOM CK 0291
In the Bombay High Court
Case No : Criminal Appeal No. 282 of 2015

Tukaram	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 307

Citation : (2015) 09 BOM CK 0291

Hon'ble Judges : B.R. Gavai and P.B. Varale, JJ.

Bench : Division Bench

Advocate : Nisha Gajbhiye, Advocate, for the Appellant; T.A. Mirza, A.P.P., for the Respondent

Final Decision : Partly Allowed

Judgement

B.R. Gavai, J.—The appeal challenges the Judgment and order dated 15th November, 2005, passed by the learned 4th Ad hoc Additional Sessions Judge, Washim, in Sessions Trial No. 42 of 2005, thereby convicting the appellant/accused for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life.

2. The prosecution case, in brief, as could be gathered from the material placed on record, is thus:--

"That the appellant/accused and the deceased are related to each other. The appellant is the husband of the sister of the deceased Haribhau Ghode. Despite of the marriage between the appellant and the sister of the deceased, wife of the appellant was residing with the deceased and on that count the appellant was annoyed with the deceased. On 13th February, 2005 there was a marriage of grand- daughter of Haribhau in Gajanan Temple of village Umbarda Bazar. The accused had also attended the said marriage. At that time, the accused had altercation with the deceased and then all of a sudden the accused stabbed him in his abdomen with a knife. The grand-son of the deceased viz. Subhash Ghode

and others put him in a van and took him to the Government Hospital at Karanja. The First Information Report came to be lodged at the instance of Subhash Ghode (P.W.1). Initially, the offence was registered under section 307 of the Indian Penal Code. However, when the deceased had been taken to Akola for further treatment, he died on the way. When he was brought to the hospital at Akola, he was declared as dead. As such the information was given to the City Kotwali Police Station, Akola. In the mean time, Karanja Police had conducted preliminary investigation. The City Kotwali Police Station, Akola undertook the inquest of the dead body in the hospital. Thereafter, the postmortem was conducted in the hospital. The accused came to be arrested on the same day. On the death of the deceased, crime came to be altered for the offence punishable under section 302 of the Indian Penal Code."

3. After completion of the investigation, charge sheet came to be filed in the Court of the Judicial Magistrate, First Class, Karanja for the offence punishable under Section 302 of the Indian Penal Code. However, since the case was exclusively triable by the Court of Sessions, the same came to be committed to the Court of Additional Sessions Judge, Washim. Charge was framed against the accused for the offence punishable under section 302 of the Indian Penal Code, to which, the accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned trial Judge passed the order of conviction and sentence as aforesaid. Being aggrieved thereby, this appeal.

4. Mrs. Nisha Gajbhiye, learned counsel appearing for the appellant submits that the prosecution has failed to prove the case beyond reasonable doubt. She submits that all the witnesses are the interested witnesses and as such conviction on the basis of the testimonies of such witnesses, would not be sustainable. She, therefore, submits that the appeal deserves to be allowed and the order of conviction needs to be set aside.

5. Mr. T.A. Mirza, learned A.P.P., on the contrary, submits that in view of the testimonies of the eye witnesses and in view of the corroboration of the scientific evidence, no interference is warranted with the finding of conviction. He, therefore, submits that the appeal deserves to be dismissed and the order of conviction is to be maintained.

6. In view of the evidence of P.W.6 Dr. Wrushali and the postmortem report, we find that no interference is warranted with the finding that the death of the deceased is homicidal. We are, therefore, called upon to answer as to whether the appellant can be said to be an author of the death of the deceased.

7. P.W.1 Subhash Ghode is the grand son of the deceased and he has lodged the first information report. He clearly said in the evidence that on the day of the incident, there was a marriage in the family. He states that the accused had also come for the said marriage. He states that there was an altercation between the deceased and the accused as the wife of the accused was not being sent to the house of the appellant. He states that in this quarrel, accused took knife and

dealt a blow on the chest of his grand father. Similar is the testimony of P.W.7 Awadhut. The testimony of these two witnesses is corroborated by P.W.4 Raju.

8. By now, it is settled law that merely because the witnesses are the interested witnesses, cannot be a ground for discarding their testimony. The only requirement is that the evidence of such witnesses must be found to be trustworthy, cogent and reliable. The perusal of the evidence of these witnesses would reveal that their testimony cannot be said to be unreliable. Apart from the fact that in the First Information Report lodged by P.W. 1 Subhash, the appellant is implicated immediately. As such the evidence of P.W.1 Subhash is corroborated by the First Information Report.

9. In view of the testimony of the eye witnesses, which is found to be trustworthy, cogent and reliable, we do not find it necessary to discuss the other corroborative evidence. We, therefore, find that the prosecution has proved beyond reasonable doubt that it is the accused who is the author of the crime.

10. That lead us to the question as to whether the conviction under section 302 of the Indian Penal Code would be tenable or needs to be altered to some lesser offence.

11. From the testimonies of the eye witnesses itself it would reveal that there was enmity between the appellant and the deceased since the deceased was not permitting the wife of the appellant to come to his house. It is further to be noted that the appellant and the deceased both were present in the marriage. It has further come on record that there was an altercation between the accused and the deceased. It has further come on record that after the altercation, the incident took place and the appellant assaulted the deceased with knife. However, it is to be noted that only one assault is made by the deceased, no doubt on the vital part. No doubt, merely because case is of single blow, it would not be come out of the ambit of Section 302 of the Indian Penal Code. However, all other ingredients also required to be taken into consideration. In the present case, nothing has come on record that the deceased with premeditation committed the death of the deceased. On the contrary, the evidence placed on record would reveal that there was a sudden fight and the possibility of in such a fight in the hit of passion upon sudden quarrel, the appellant assaulted the deceased, cannot be ruled out. The evidence on record would reveal that the appellant had not taken undue advantage or acted in a cruel or unusual manner. We, therefore, find that the case would fall under exception 4 of the Section 300. In the result, we find that the conviction under section 302 of the Indian Penal Code would not be sustainable and will have to be converted into Section 304 (part I) of the Indian Penal Code. Hence, the following order.

In the result, the appeal is partly allowed.

The conviction under Section 302 of the Indian Penal Code is altered to one under Section Part-I of 304 of the Indian Penal Code and the sentence of life imprisonment is reduced to 10 (ten) years rigorous imprisonment.

Rest of the order is maintained.

The fees payable to the learned counsel appointed for the appellant are quantified at Rs. 5,000/-.