

(2015) 03 SC CK 0042

In the Supreme Court Of India

Case No : Criminal Appeal No. 442 of 2015 (Arising out of SLP (Crl.) No. 1506 of 2012) and Criminal Appeal No. 443 of 2015 (Arising out of SLP (Crl.) No. 1505 of 2012)

Tukaram Dnyaneshwar Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 324, 326, 34

Citation : (2015) 2 ACR 1607 : (2015) 2 AJR 852 : (2015) 89 ALLCC 719 : (2016) 1 ALT(Cri) 97 : (2015) 2 BomCR(Cri) 348 : (2015) 2 CCR 182 : (2015) CriLJ 2313 : (2015) 2 Crimes 152 : (2015) 2 JLJR 447 : (2015) 2 MLJ(Cri) 89 : (2015) 3 PLJR 29 : (2015) 2 RCR(Crimina

Hon'ble Judges : C. Nagappan, J.;V. Gopala Gowda, J.

Bench : Division Bench

Advocate : Shankar Chillarge, A.G.A., Satyajit A. Desai, Anagha S. Desai, Aniruddha P. Mayee, Kishor Lambat and Rabin Majumder, for the Appellant

Final Decision : Allowed

Judgement

C. Nagappan, J.—Leave granted in both the appeals.

2. Both the appeals are preferred against the judgment dated 14.7.2011 passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Appeal No. 284 of 1998, whereby the High Court partly allowed the said Criminal Appeal filed by Respondents 2 to 4 herein/accused 1 to 3 and thereby set aside their conviction and sentence Under Section 302 read with Section 34 Indian Penal Code and instead convicted them for offence Under Section 304 Part-II read with Section 34 Indian Penal Code and sentenced them to imprisonment for period already undergone and directed them to pay jointly and severally a sum of Rs. 1,05,000/- to PW1 Narayan Patil and family members of the deceased as compensation in default to undergo rigorous imprisonment for two years and the High Court maintained the conviction of the accused persons Under Section 324 read with Section 34 Indian Penal Code but reduced the sentence to the period

already undergone. Aggrieved by the same the State has preferred Criminal Appeal No. _____ of 2015 (@ SLP(Crl.) No. 1505 of 2012. The complainant Tukaram Dnyaneshwar Patil also preferred appeal in Criminal Appeal No. of 2015 (@ SLP (Crl.) No. 1506 of 2012. Since both the appeals have been preferred against the same judgment, they are heard together and a common judgment is rendered.

3. Briefly the facts are stated as follows: The accused and the deceased belonged to village Tuljapur Tah. Wardha. PW1 Narayan Patil is the brother of deceased Dnyaneshwar Patil and he was also residing in the same village. Tukaram is the son of the deceased. There was a dispute between the deceased Dnyaneshwar Patil and accused A1-Dipak, A2-Prashant and A3-Pawan over the boundary of the field and on 22.10.1997 accused No. 1 assaulted Dnyaneshwar Patil by means of sickle on the left ear and A2 and A3 assaulted him by means of sticks on his head and mouth. When PW1 Narayan Patil intervened, accused Nos. 1 to 3 assaulted him with sticks on his arm and head. PWs 2 to 4, PW8 and PW9 witnessed the occurrence. The injured were taken to Sewagram Hospital.

4. PW6 Dr. Rajeshkumar examined and found the following injuries on the person of Dnyaneshwar Paul:

- (i) Bleeding from nose and left ear.
- (ii) Lacerated wound on left mastoid, 5 cm x 2 cm.
- (iii) Lacerated wound on medial aspect of pinna.
- (iv) Fracture of mandible.

Exh. 64 injury report was issued by him.

PW6 Dr. Rajeshkumar found the following injuries on the person of PW1 Narayan Patil:

- (i) Lacerated would on left side of the back 5 cm x 3 cm.
- (ii) Abrasion on left upper arm 7 cm x 5 cm.
- (iii) Abrasion on right upper arm 7 cm x 4 cm.
- (iv) Abrasion on right side of back 10 cm x 4 cm.

He opined that all the above injuries were simple in nature and caused by blunt object.

5. The head constable of medical booth Sewagram Hospital recorded the complaint given by PW1 Narayan Patil and sent the same to Sindi Police Station, on which a case in Crime No. 122 of 97 came to be registered Under Section 326 read with Section 34 Indian Penal Code and PW14 P.S.I. of Sindi Police Station took up the case for investigation. In the meantime, both injured were shifted to Nagpur Medical College Hospital. Dnyaneshwar Patil died on 25.10.1997 in the

hospital and on receiving the intimation the case was altered to one Under Section 302 Indian Penal Code. Inquest was conducted and witnesses were examined.

6. PW12 Dr. Pradip Jadhao and Dr. V.R. Agrawal conducted post mortem on the body of Dnyaneshwar Patil in the Nagpur Hospital on 26.10.1997 and they found fracture base of skull and haematoma under the scalp over left temporo parieto occipital region. The opinion was given that death was caused due to injuries No. 3 and 4 mentioned in the post mortem report. After the investigation charge sheet came to be filed and the case was committed to the court of Sessions. Charges Under Section 302 read with Section 34 and Section 324 read with Section 34 were framed against the accused and they were convicted and sentenced as stated supra. Challenging the same accused Nos. 1 to 3 preferred appeal and the High Court altered the conviction and sentence as mentioned above. Aggrieved by the same, the State as well as the complainant, have preferred the present appeals.

7. We heard learned Counsel for the Appellant in both the appeals and the learned Counsel for the Respondents. The ocular witnesses PWs1 to 4, PW8 and PW9 have testified about the attack made by Respondents 2 to 4/accused Nos. 1 to 3 on Dnyaneshwar Patil at the time of occurrence. Relying on their testimonies the courts below have rightly concluded that the occurrence stands proved.

8. After the occurrence Dnyaneshwar Patil was taken to Sewagram Hospital and PW6 Dr. Rajeshkumar examined him and found lacerated wounds on left mastoid, medial aspect of pinna and noticed fracture of mandible. He was shifted to Nagpur Medical College Hospital where he succumbed to injuries. PW12 Dr. Pradip Jadhao along with another surgeon conducted autopsy on his body and they found fracture of skull with haematoma present under the scalp over left temporo parieto occipital region. They have expressed opinion that the death has occurred due to the injuries found on left mastoid region and over left pinna. PW12 Dr. Pradip Jadhao has also stated in the chief-examination that the said injuries are sufficient to cause death in the ordinary course of nature. Accepting the medical evidence it is clear that Dnyaneshwar Patil died of homicidal violence.

9. After analyzing the evidence the High Court held that there was quarrel which led to the occurrence and the accused had also injuries and they cannot be held guilty of the offence of murder and since they had knowledge that their act is likely to cause death they are liable to be convicted for the offence Under Section 304 Part-II Indian Penal Code. We do not find any error in the said conclusion of the High Court.

10. The disturbing feature is the sentence awarded by the High Court to the Respondents 2 to 4 for the conviction Under Section 304 Part-II Indian Penal Code. As mentioned in the impugned judgment the Respondents 2 to 4/accused Nos. 1 to 3 were arrested on 29.10.1997 and they were ordered to be released on bail on 28.9.1998 and they have undergone only eleven months

imprisonment. The High Court while altering the conviction to Section 304 Part-II Indian Penal Code, altered the sentence to imprisonment for period already undergone and directed to pay a sum of Rs. 35000/- each to the complainant. Both the State and complainant have challenged this alteration of sentence.

11. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. With reference to sentencing by courts, this Court in the decision in State of U.P. Vs. Shri Kishan, made these weighty observations:

5. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc....

7. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

8. ...Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

9. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society"s cry for justice against the criminal.

12. The facts and circumstances of the case which have been proved by the prosecution in bringing home the guilt of the accused Under Section 304 Part-II Indian Penal Code undoubtedly show a despicable aggravated offence warranting punishment proportionate to the crime. The sentence of eleven months awarded by the High Court to the Respondents for the said conviction is too meagre and not adequate and in our view it would be travesty of justice. It is true that each of the Appellant was directed to pay compensation of Rs. 35000/- but no amount of compensation could relieve the family of victim from the constant agony. We are of the considered view that imposition of five years rigorous imprisonment on each of the Respondent Nos. 2 to 4 for the conviction Under Section 304 Part-II

Indian Penal Code would meet the ends of justice. We sustain the other conviction and sentence imposed on the said Respondents.

13. In the result both the criminal appeals are partly allowed and the sentence of imprisonment for period already undergone for the conviction Under Section 304 Part-II Indian Penal Code is set aside and instead the Respondents 2 to 4/ accused Nos. 1 to 3 are sentenced to undergo five years rigorous imprisonment each. All other conviction and sentence imposed on them by the High Court are maintained. They are directed to surrender before the 2nd Additional Sessions Judge, Wardha to serve out the remaining sentence, failing which the learned 2nd Additional Sessions Judge is requested to take them into custody and send them to jail to serve their left over sentence.