
(2002) 06 BOM CK 0104
In the Bombay High Court
Case No : Criminal Appeal No. 431 of 1997

Vitthal Kangale and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2002) 104 BOMLR 173

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

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Batta, J.—The appellants alongwith three others, had been tried for the murder of Champat Ragho Nehare u/s 302 read with Section 149 of the Indian Penal Code. They were also tried for attempt to murder Ragho Pandurang Nehare and Pundlik Ragho Nehare u/s 307 read with Section 149 of the Indian Penal Code. In addition, they were also charged and tried for causing grievous and simple hurt to Lalita Raghoji Nehare and Ku. Sunanda Raghoji Nehare under Sections 326, 324 read with Section 149 of the Indian Penal Code. Besides this, they were also charged and tried for the offences under Sections 147, 148, 458 read with Section 149 of the Indian Penal Code. The prosecution had in all examined five witnesses in support of the charges. The learned Additional Sessions Judge, Yavatmal vide Judgment dt. 12.12.1997 found the appellants guilty of the charge of murder u/s 302 read with Section 34 of the Indian Penal Code and has sentenced them to undergo life imprisonment and a fine of Rs. 500/- in default 3 months R. I. The appellants have also been convicted for causing grievous hurt with dangerous weapons u/s 326 read with Section 34 of the Indian Penal Code and sentenced to 6 months R. I. as also a fine of Rs. 200/- in default R. I. for one month. In addition, they have been convicted for voluntarily causing hurt u/s 324 read with Section 34 of the Indian Penal Code and have been sentenced to R. I. for 3 months. Besides this, the appellants have

also been convicted for the offence u/s 458 read with Section 34 of the Indian Penal Code and sentenced to suffer 6 months R. I. and a fine of Rs. 200/- in default further R. I. for one month. The substantive sentences have been ordered to run concurrently. The other three co-accused were acquitted of all the charges.

2. The appellants have challenged their conviction and sentence for the aforesaid offences by filing this appeal. We have heard the learned Advocate for the appellants and learned A. P. P.

3. The learned Advocate for the appellants urged before us that even after the merits of the case are considered, no offence is made out u/s 302 of the Indian Penal Code as against the appellants in the light of the medical evidence on record. In this respect, he has relied upon the post-mortem report of deceased Champat Ragho Nehare which was admitted u/s 294 of the Cr. P. C, The learned Advocate for the appellants pointed out the injuries on the person of the deceased as listed in column No. 17 of the post-mortem report which are as under :

1. Incised wound seen at side of right eye brow 1" x 1/4" injury deep.
2. Incised wound at below right eye 1" x 1/4" injury deep.
3. Incised wound at right side of face below left eye 1" x 1/4".
4. Incised wound at right arm 2" above wrist joint 3" x 2" x 1/4".
5. Incised wound at right inguinal region 1/2" x 1/4".
6. Incised wound at near left knee joint laterally 1/2" x 1/4".
7. Incised wound at right thigh posterior 1/4" x 1/4".
8. There is contusion wound at right side of chest at place of 8th right thoracic rib.

According to him, injuries 1 to 7 are not only superficial in nature but none of them are sufficient, in the ordinary course of nature, to cause death nor the said injuries can be said to be grievous. It was further urged by him that injury No. 8 is a contusion wound at the right side of the chest at place of 8th right thoracic rib. It is pointed out that internal examination reveals fracture of the 8th rib thoracic rib which had pierced into the liver resulting in rupture of upper lateral lobe of liver. It is then pointed out that according to the post-mortem report the probable cause of death is due to hemorrhagic shock and rupture of liver. On the basis of this medical evidence of postmortem in relation to the deceased, it is urged that even if the prosecution is able to establish the nexus between said injuries and the appellants, no intention or knowledge to cause death can be attributed to the appellants. He, therefore, contends that the offence in respect of deceased Champat Ragho Nehare which is disclosed shall, at the most, be u/s 325 of the Indian Penal Code and not u/s 302 of the Indian Penal Code, On this aspect, learned A. P. P. took us through the evidence on record and found it

rather difficult in the light of the post-mortem of the deceased to disagree to subscribe to the view that in the light of the medical evidence on record, it was not possible to attribute the intention or knowledge to cause death to the appellants. The external examination of the dead body revealed contusion wound at the right side, of the chest at the place of 8th thoracic rib. The internal examination reveals fracture of the 8th thoracic rib which had, in fact, pierced into the liver causing rupture and death of the deceased. In this set of facts, even on the basis of the evidence on record, it is not possible to sustain conviction of the appellants u/s 302 read with Section 34 of the Indian Penal Code. The offence, at the most, as rightly argued by the learned Advocate for the appellants, would fall u/s 325 read with Section 34 of the Indian Penal Code.

4. The learned Advocate for the appellants does not press for the challenge in appeal in relation to the conviction of the appellants u/s 326 read with Section 34 of the Indian Penal Code as also u/s 324 read with Section 34 of the Indian Penal Code and Section 458 read with Section 34 of the Indian Penal Code. These sentences were ordered to run concurrently. The learned Advocate for the appellants urged before us that the appellants except appellant No. 2 Narayan who is at present around 75 years of age, have been in custody from 12.12.1997 to date and they were also in custody from 8.11.1991 after commission of the offence till they were released on bail on 23.4.1992. Thus, according to him, the appellants except appellant No. 2 are already in custody for more than 5 years and the said period be treated as sufficient punishment for the offence u/s 325 read with Section 34 of the Indian Penal Code. In so far as appellant No. 2 Narayan, who is now aged about 75 years, was in custody after commission of the offence from 8.11.1991 till he was released on bail on 23.4.1992 and after Judgment he was in custody from 12.12.1997 to 27.1.1998. Thus, according to him, he was in custody for almost 6 months. But, taking into consideration his age which is 75 years now, the said period be treated as sufficient sentence u/s 325 read with Section 34 of the Indian Penal Code. Learned A. P. P. submitted that she would leave the matter imposition of sentence to the discretion of the Court.

5. For the aforesaid reasons, the appeal is partly allowed. The conviction of the appellants u/s 302 read with Section 34 of the Indian Penal Code is set aside but instead their conviction is altered to u/s 325 read with Section 34 of the Indian Penal Code. The conviction and sentences under Sections 326 read with Section 34 of the Indian Penal Code. Section 324 read with Section 34 of the Indian Penal Code and Section 458 read with Section 34 of the Indian Penal Code are maintained. Taking an overall view of the matter and the fact that the appellants had also suffered incised injuries in the transaction in respect of which the reports are available on record (appellant No. 3 Pandurang had suffered 3 incised injuries as per the report at page No. 291; appellant No. 2 Narayan had suffered one incised injury and one contusion as per report at page 296 and appellant No. 1 Vitthal had suffered one incised wound as per report at page 298) and that incident took place a decade ago, we are of the opinion that the ends of justice

would meet by treating the period already undergone as a sufficient sentence on appellant No. 1 Vitthal, appellant No. 3 Pandurang and appellant No. 4 Deorao. In the case of appellant No. 2 Narayan also we find that the period during which he was in custody which is for 6 months be treated as a sufficient punishment taking into consideration his age which is 75 years now. All the sentences were ordered to run concurrently. Accordingly, all the appellants are deemed to have undergone sentences imposed on them and they are ordered to be set at liberty forthwith if they are not required in any other case. Of course, appellant No. 2 Narayan is on bail. Bail bonds of appellant No. 2 Narayan are cancelled.

The appeal is allowed in the aforesaid terms.