

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPEAL NO. 358 OF 2000

Gotiram s/o Bhaulal Bighot,
age 50 years, occ. Agril.,
R/o Sarola, Tq. Kannad,
District Aurangabad

...Appellant
[Orig.Accused]

VERSUS

1] The State of Maharashtra

...Respondent

.....
Shri H.F.Pawar, advocate for the appellant
Smt. Pratibha Bharad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 10th April , 2015

ORAL JUDGMENT : -

1] Being aggrieved by the judgment and order of conviction, passed by the learned II Additional Sessions Judge, Aurangabad, dated 11.8.2000, in Sessions Case No. 344 of 1996, whereby the learned trial court convicted the appellant for the offence punishable under Section 325 of the Indian Penal Code and directed that he should suffer rigorous imprisonment for one year and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for two months.

2] I have heard Shri H.F.Pawar, learned counsel for the appellant and Smt. Pratibha Bharad, learned Additional Public Prosecutor for the respondent/State.

Shri Pawar, learned counsel submitted that the prosecution has utterly failed to prove that the appellant is responsible for the death of minor Munnibai daughter of Champalal (PW 1). According to the learned counsel, in fact for death of Munnibai her father Champalal (PW 1) himself is responsible. In order to save his skin, the appellant has been falsely implicated. Alternatively, the learned counsel submitted that the appellant can be directed to pay more amount of fine and can be directed to be released on the sentence he has already undergone.

Per contra, Smt. Bharad, learned Additional Public Prosecutor has pointed out that the appellant is author of the injury which has caused to Munnibai. The said fact, according to her, is properly appreciated, and therefore, the appeal needs to be dismissed.

3] The appellant was charged by the learned Sessions Judge that on 2.8.1996 he voluntarily caused hurt to Champalal and also on the said date and time he caused death of Munnibai by giving a spade blow on her head when she was on the shoulder of her father Champalal and thereby he has committed an offence punishable under Section 302 of the Indian Penal Code.

4] The prosecution, in order to bring home the guilt, has examined eight witnesses. The learned trial court, on appreciation of the evidence, has acquitted the appellant for the offence punishable under Section 302 of the Indian Penal Code, however, convicted the appellant for the offence punishable under Section 325 of the Indian Penal Code and directed that he should suffer rigorous imprisonment for one year and to pay fine of Rs.2,000/-.

Though the appellant is acquitted for the offence punishable under Section 302 of the Indian Penal Code, no appeal was preferred by the

State against the said acquittal.

5] The first information report is lodged by Champalal the father of deceased Munnibai. It is at Exh.12. The said report is registered as Crime No. 92 of 1996 for the offence punishable under Section 302 of the Indian Penal Code. The first information report shows that on 2.8.1996 when the first informant and his wife Gangabai (PW 2) were weeding out the grass in their agricultural field, that time appellant Gotiram, who is having his agricultural land adjacent to the land of the first informant, was causing destruction to the common boundary. Therefore, the first informant went there, that time Munnibai was on the shoulder of the first informant. The first informant asked appellant Gotiram not to cause destruction to the said common bandh. That time, Gotiram used abusive words and continued to cause destruction. Thereupon, when the first informant tried to obstruct his acts, appellant gave spade blow on his shoulder, that time Munnibai who was sitting on the shoulder of first informant received the said blow. She suffered bleeding injury and ultimately she died.

6] The postmortem report of Munnibai is at Exh.25. It shows following injury on her person.

“ Contused lacerated wound 3 x 2 by bone deep over left parietal eminence. Vertical edges of the wound gapping plus, everted, swollen, blood clotted.”

Internal examination shows the fracture of the skull bone of left parietal, temporal and frontal area. The doctor has given opinion about the death as shock due to head injury.

7] Champalal, the first informant, is also examined medically. His injury certificate is at Exh.24. The said injury certificate is duly proved by

Dr. Arun Thorat (PW 7). On examination of PW 1 Champalal, the doctor found one injury of contusion of size 3 x 2 over left forearm flexor area near wrist joint horizontal red coloured and the age of the injury was found to be within 24 hours of the examination. Champalal was examined on 2.8.1996 i.e. on the day of the incident itself at 10.00 p.m.

The injury of Chamapal corroborates his version from the witness box that firstly a blow was given to him and second stroke of the spade hit to Munnibai.

8] The evidence of PW 1 Champalal is also duly corroborated by his wife Gangabai (PW 2). The presence of Gangabai is most natural.

9] PW 3 Samadhan is an agriculturist having his land situated on the eastern side of the land of Champalal. He was in his agricultural field for plowing. He heard hue and cry from the field of Champalal. Therefore, he rushed towards his field. He saw that near the bandh, Champalal and his wife were present and a small girl of Champalal was lying on the lap of Gangabai having bleeding injury on her head.

Evidence of Samadhan discloses that he was informed by Champalal that during the quarrel between him and Champalal the girl had sustained injury.

Much argument is made by the learned counsel for the appellant on the basis of evidence of Samadhan that disclosure to him by Champalal shows that there was a quarrel between him and the appellant. It is even clear from the evidence of Champalal that he has obstructed appellant from causing destruction to the common bandh which was preceded by verbal exchanges. It appears that this was viewed by both Champalal and Samadhan as a quarrel, however, it confirms the version of Champalal.

10] Learned counsel for the appellant submitted that the first informant has admitted that wife of the appellant had filed case against him and his wife. Learned counsel further submitted that though Munnibai was having bleeding injury, the clothes of Champalal were not seized. The said aspect is properly considered by the learned trial court that due to the lapses on the part of the investigating officer, the evidence of Chapalal and Gangabai cannot be discarded.

11] In the totality of the circumstances, it is clear that the appellant was knowing that Munnibai was on the shoulder of Champalal and in spite of that he has given spade blow which landed on the head of small girl, resulting into the fracture and ultimately her death.

12] Learned trial court has acquitted the appellant of the offence punishable under Section 302 of the Indian Penal Code on the ground that though the appellant is author of the injury, it was never intention of the appellant. We need not go into that aspect, since the acquittal of the appellant for the offence punishable under Section 302 of the Indian Penal Code has reached finality.

13] In so far as alternative argument of the learned counsel that the appellant be directed to pay more fine amount and the sentence awarded to him be reduced to the period already undergone cannot be accepted. The appellant is sentenced only for a period of one year. Learned trial court has already shown much leniency to the appellant. The appellant was hardly for few days in jail. Learned trial court, in my view, since has already shown leniency, further leniency cannot be extended to the appellant.

14] In the result, the appeal is dismissed. The appellant to surrender to his bail bonds. Learned trial court is directed to take necessary steps to secure the presence of the appellant for serving out remain sentence.

(V.M.DESHPANDE, J.)

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