

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 331 OF 2001

Yaseen Khan S/o Ashraf Khan Pathan,
Age : 32 years, Occu.: Fish Seller,
R/o Rameshwar Plot,
Parbhani .. Appellant

Vs.
The State of Maharashtra .. Respondent

Mr. S.V. Mundhe, Advocate for the appellant
Mr. V.P. Kadam, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 31/07/2015

ORAL JUDGMENT :

. Heard both sides.

2. The present appellant, who has been convicted by the learned Additional Sessions Judge, Parbhani vide judgment and order dated 03/08/2001 passed in Sessions Trial No.15 of 2000, for the offence punishable under section 304 Part II and 323 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of 5 years and to pay fine of Rs.15,000/-, in default to suffer rigorous imprisonment for 1 year, for the offence punishable under section 304 Part II of the Indian Penal Code and no separate sentence for the

offence punishable under section 323 of the Indian Penal Code, is before this Court.

. In-fact, the appellant was charged for the offence punishable under section 302 of the Indian Penal Code.

3. F.I.R. at Exhibit 16 filed by the brother of the deceased Kumarswami S/o Venkanna would show that on 7/8/1999, he returned to his house at Parbhani upon receiving the message that his brother i.e. Kumarswami was brought to home after some fighting. When he reached to the deceased, he was unable to make any statement. At that time, P.W. 3 Rajiv Ramaswami Deshanna told him that on that day between 11.00 am. to 11.30 am., the deceased was beaten by the present appellant and there was a fight between them. Thereafter, the deceased was taken to the Civil Hospital at Parbhani on the direction of the private Physician. However, the Doctor at the Civil Hospital, Parbhani declared him as dead. In the circumstances, the crime for the offences punishable under section 302 and 323 of the Indian Penal Code was registered against the appellant.

4. The appellant also suffered injuries in the said incident. Therefore, his medical certificate produced by the prosecution at Exhibit 11 would show that he was admitted in Civil Hospital, Parbhani.

5. The appellant has admitted the memorandum of post-mortem examination note at Exhibit 12. The post-mortem examination note would show that the deceased was about 25 years young male. Upon external examination, abrasion on the back over right limb region admeasuring 1 cm X 1 cm was found. The same injury, according to the Medical Officer may have been caused within six hours and by a blunt and hard object. During internal examination, nothing incriminating was found. Viscera was sent to the Chemical Analyzer.

. Upon receipt of the Chemical Analyzer's report, the Medical Officer has opined that the death might have been caused due to neurogenic shock. Accordingly, opinion at Exhibit 13 was passed by the Medical Officer, Civil Hospital, Parbhani.

6. The injuries suffered by the present appellant at Exhibit 11 would show that he had received following

three injuries :-

Sr. No.	Type of Injury	Size of injury
1.	Scratch Abrasion	3 cm X 1/2 cm
2.	Abrasion	1 cm X 1 cm
3.	Contusion	2 cm X 2 cm

. All the injuries were within 24 hours of his examination on 7/8/1999 and all of them were simple injuries and the injuries were caused by hard and blunt object.

7. Before the learned Additional Sessions Judge, Parbhani, P.W. 3 - Rajiv Deshanna was examined as eye witness. The learned Additional Sessions Judge, relying on this statement of the eye witness, came to the conclusion that the present appellant was responsible for the death of the deceased.

. According to the learned Additional Sessions Judge, case of murder is not made out. However, it would be a case of culpable homicide not amounting to murder i.e. offence punishable under section 304-II and 323 of the Indian Penal Code. Therefore, the conviction and sentence, as detailed supra, came to be recorded.

8. Learned counsel for the appellant submits that even if the prosecution case is accepted fully, the statement of the eye witness would show that both the deceased and the appellant started abusing each others over payment of an amount of Rs.2,000/-. Thereafter, both of them started fighting with each others. In the fighting, while deceased has given blows to the present appellant and assaulted him with hard and blunt object, as is clear from the injury certificate at Exhibit 11, according to the eye witness, the appellant dashed the deceased to the ground, due to which he died as a result of the neurogenic shock. He therefore submits that the learned Additional Sessions Judge ought to have taken into consideration that in a free fight, the deceased as well as the appellant had suffered injuries and in the said fight, 25 years young man has died due to the neurogenic shock. In the circumstances, even no intention or knowledge can be attributed to the present appellant of causing the neurogenic shock. He therefore submits that the appeal be allowed and the appellant be acquitted.

9. Learned A.P.P. however submits that the

deposition of the eye witness would show that present appellant has dashed the deceased to the ground and, therefore, no interference in the impugned judgment and order is warranted.

10. On the basis of this material, following points arise for my determination:-

. Whether the prosecution has proved that on 7/8/1999 at about 11:30 am, the present appellant has caused the culpable homicide not amounting to murder of the deceased at shop no.10 at Parbhani ?

My finding to the said point is in the negative. The appeal is therefore allowed and the appellant is acquitted of the offences punishable under section 304-II and 323 of the Indian Penal Code, for the reasons to follow.

R E A S O N S

11. The opinion of the Medical Officer alongwith the post-mortem note would show that no external injury except abrasion on the neck admeasuring 1 cm x 1 cm was

found. Internally also, no incriminating material was seen. Since the Chemical Analyzer's report was negative about the poison, the Medical Officer at Exhibit 13 opined that the death was due to neurogenic shock.

12. The deposition of P.W. 3 would show that he himself alongwith deceased Kumarswami and the appellant Yasim Khan were chit-chating in the shop of the appellant. At that time, deceased Kumarswami gave Rs.2,000/- to the appellant. Thereupon, the appellant questioned him, as to how he can pay that amount to him. Upon that, the deceased as well as the appellant started abusing each other. During the verbal quarrel, each of them started fighting with each other. In the fight, the appellant gave a blow on the stomach of the deceased and then, he lifted him and threw on the ground.

. All these facts would show that there was no premeditation. There was a free fight between the appellant and the deceased. The appellant has suffered three injuries, as detailed supra, while the deceased, a youth in his 25th year, has suffered one abrasion, as

detailed supra. Unfortunately, however, the deceased had neurogenic shock, which caused his death.

13. The provisions of section 304 of the Indian Penal Code runs as under:-

"304. Punishment for culpable homicide not amounting to murder. — Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

The provisions of this section thus would show that if there would be intention to cause the bodily injury, which is likely to cause death, then the offence would fall within part I of section 304 of the Indian Penal

Code. On the other hand, if the assailant can be attributed with the knowledge, that the act done by him is likely to cause death without any intention to cause death, or to cause such bodily injury, as is likely to cause death, then the offence would fall within part II of section 304 of the Indian Penal Code.

14. Here we have found that there was a free fight between deceased and the appellant. The appellant has received three injuries in the said incident. According to the eye witness, the appellant had given one blow in the stomach of the deceased and, thereafter, hit the deceased to the ground. Deceased externally suffered an abrasion admeasuring 1 cm X 1 cm on the back. There was no internal injury and the deceased had suffered neurogenic shock. The neurogenic shock cannot be said to have been contemplated by the present appellant and, therefore, we cannot attribute knowledge of causing some neurogenic shock to the deceased, to the appellant.

15. In that view of the matter, the appellant cannot be convicted for any of the offences. In the circumstances, the following order:-

16. Criminal Appeal is hereby allowed.

17. The impugned judgment and order dated 03/08/2001 passed by the learned Additional Sessions, Parbhani in Sessions Trial No. 15 of 2000, convicting and sentencing the present appellant for the offences punishable under section 304 Part II and 323 of the Indian Penal Code, is hereby set aside.

. Instead, the appellant is acquitted of both the offences.

18. Bail bonds of the appellant, if any, shall stand cancelled.

19. Fine amount deposited by the appellant be refunded to him, after a period of sixty (60) days from the date of this judgment.

20. Criminal Appeal is accordingly disposed of.

[M.T. JOSHI]
JUDGE

arp/