

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 442 OF 2001

Nanasaheb Kacheshwar Jondhale,
Age : 25 years, Occu : Driver,
R/o At Post Kokangaon,
Taluka : Sangamner,
District : Ahmednagar

.. APPELLANT

VS.

The State of Maharashtra

.. RESPONDENT

Mr. R.N. Dhorde, Sr. Advocate i/b. Mr. V.R. Dhorde, Advocate
with Mr. Vasant N. Shelke, Advocate for the appellant
Mr. P.N. Muley, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 15/09/2015

ORAL JUDGMENT :

. Heard both sides.

2. Aggrieved by the conviction for the offence punishable under section 304 Part-II of the Indian Penal Code and consequential sentence to suffer rigorous imprisonment for a period of 8 years and to pay fine of Rs.3000/-, as recorded by the learned Additional Sessions Judge, Sangamner vide judgment and order dated 15/10/2001 in Sessions Case No. 131 of 2000, the present

appeal is preferred by the original accused no.1.

3. Accused no.2 – Rayees Sallauddin Shaikh, who was also tried by the learned Sessions Judge for the offences punishable under section 302, 337, 323 and 504 r/w. 34 of the Indian Penal Code, was acquitted while the present appellant was though acquitted from the offence punishable under section 302 of the Indian Penal Code, was convicted, as detailed supra.

4. The prosecution case in brief is as under:-

. That on 17/8/1998, complainant Muzafar Rafiq Shaikh alongwith deceased Ananda and Ananda's sister Ashwini and alognwith other witness Vijay intended to proceed to Nizarneswar temple, which was at village Nizarneswar from Sangamner on account of Shravan Monday. At about 12.00 in the noon, they were on the bus stop for that purpose. The bus however did not stop. Therefore, they boarded the taxi which happened to be of the present appellant. However, certain dispute arose as according to serial number, who should take the passengers. Therefore, this group got down from the

taxi and by another taxi, they went upto the Nizarneswar bifurcation (called as phata). The temple happens to be at a distance of 2 – 2-1/2 km from the said bifurcation. Therefore, all of them started proceeding on foot. At that time, the taxi of the present appellant also happened to come from behind and proceeding towards the temple. Therefore, the group asked the appellant to give them lift upto Nizarneswar. Verbal brawl ensued between them.

. In the circumstances, as the present appellant refused to give lift, the group proceeded ahead. However, at that time again, the appellant uttered certain words by giving abuses and even by questioning, as to whether the taxi belonged to their father. In view thereof, the deceased Ananda, complainant himself and other witnesses marched towards the taxi of the appellant.

. In the incident, the appellant gave slap to deceased Ananda. He got down from the taxi and started beating the deceased. When complainant Muzafar went to rescue Ananda at that time, accused no.2 pelted stone.

In the incident, the appellant gave one fist and kick blow over the deceased. The deceased fell down. Still, the appellant continued to beat him. In the said beating, the deceased became unconscious.

. The driver of the taxi, by which the group had reached the bifurcation came there. He questioned the appellant as to why he has mercilessly assaulted the deceased and thereupon, the appellant himself took the deceased to the hospital alongwith the witnesses, initially at the Hospital of Dr. Shinde at village Wadgaon Pan. Thereafter, upon his advice, the appellant took the deceased and the group to the hospital of one Dr. Ethape. He also further advised them to go to Cottage Hospital, Sangamner and, thereafter, the deceased was taken to Sangamner hospital, however, he was declared dead and, therefore, further course of action started.

5. The complainant Muzafar filed complaint at Exhibit 21. Post-mortem notes were collected. Inquest panchanama was drawn and statements of the witnesses were recorded and the chargesheet came to be filed.

6. Before the learned Additional Sessions Judge, Sangamner, the complainant Muzafar was examined as PW4. Another eye witness PW7 Vijay Abhang was also examined. The Medical Officer was examined as PW6. Further the other peripheral witnesses like the panch witness, the Investigating Officer were also examined.

7. The learned Additinal Sessions Judge found that the accused no.2 has not committed any offence as the case of the prosecution that he pelted stone was not believed. He (accused no.2) therefore was acquitted.

. As regards the present appellant, in view of the learned Additional Sessions Judge, it was the case of the commission of culpable homicide not amounting to murder - an offence punishable under section 304 Part II of the Indian Penal Code and, therefore, the conviction and sentences came to be recorded against the present appellant.

8. Mr. R.N. Dhorde, learned Senior Counsel instructed by Mr. V.R. Dhorde appearing for the

appellant submits that the evidence on record would clearly show that under the bonafide mistake that the appellant was giving certain abuses to the deceased and his group, the said group marched towards the taxi of the appellant and the brawl ensued. In the incident, the appellant while he was in his own vehicle just gave a push to the deceased. The deceased however slipped and fell down on the guard-stone of the road and became unconscious.

. He further submits that the further conduct of the appellant that he himself took the deceased while he was unconscious from hospitals to hospitals, would show that he had neither any intention nor the knowledge of causing death of the deceased. In the circumstances, he submits that the appeal be allowed.

. In the alternative, he submits that the offence would not be of culpable homicide not amounting to murder but at the most, it would be offence punishable under section 325 of the Indian Penal Code i.e. causing hurt.

. He further submits that in the facts of the present case that the appellant was only 25 years old when the incident has occurred in the year 1998, the appellant be released on probation.

9. On the other hand, the learned A.P.P. submits that the fact that the appellant kicked the deceased though he fell on the ground, would show that he had knowledge that the injury being caused by him would cause the death of the deceased and, therefore, the learned Additional Sessions Judge has rightly convicted the appellant for the offence punishable under section 304 Part II of the Indian Penal Code. He further submits that no case is made out for releasing the appellant on probation.

10. On the basis of this material, following point arises for my determination :-

I) Whether the prosecution has proved that whether on 17/08/1998 in in the noon near the village Nizarneswar, the present appellant has committed culpable homicide not amounting to murder of the deceased ?

My finding to the said point is in the negative. The offence would be punishable under section 325 of the Indian Penal Code and the appellant deserves to be released on probation by suspending the substantive sentences for the reasons to follow.

R E A S O N S

11. The prosecution case as well as the defence would show that while the deceased and his group, first climbed down from the taxi of the present appellant at Sangamner, they took another taxi and went upto the bifurcation of Nizarneswar. From that bifurcation when they were proceeding on foot to the proper temple, taxi of the present appellant came from behind. At that time, when the deceased and his group asked the appellant to carry them in the same vehicle, hot words were exchanged. The reason was obvious as the deceased and his group earlier had refused to go by the taxi of the appellant and later-on, their act of asking for lift must have enraged the present appellant.

. In the said incident, according to PW4, the complainant - eye witness, after the appellant refused to give lift, when the deceased and other members of the group were proceeding ahead from the taxi, they heard something and they thought that the appellant was giving certain abuses. Therefore, deceased Ananda turned and had questioned the appellant and in the circumstances, the incident, as detailed by him had ensued.

12. The deposition of the Medical Officer PW6 Dr. Rajiv Ghodake coupled with the post-mortem examination note at Exhibit 29 would reveal that externally, the deceased had bluish black discolouration over right lower chest. Internally, the deceased had fracture of 9th right lower rib. This internal injury has ultimately caused the death of the deceased due to laceration of the right lobe of the liver.

13. If all these facts are taken into consideration then it would be clear that after the verbal brawl was over, the deceased Ananda and his group started proceeding ahead. However, they heard something and,

therefore, under the assumption that the present appellant was abusing them, they turned back and the incident has occurred.

. The post-mortem examination note would show that the blow on the right lower chest was the cause of fracture of the 9th right rib. This can be attributed to the kick, as deposed to by the complainant i.e. PW4. In that view of the matter, it cannot be said that the appellant had knowledge that the kick given to the deceased would cause his death. In that view of the matter, even the offence punishable under section 304 Part II of the Indian Penal Code is not made out. It would be an offence punishable under section 325 of the Indian Penal Code.

14. As regards the sentences, the record would show that at the time of the incident, the appellant was 25 years old. The incident has occurred in the year 1998. The appellant was behind the bar for a period of six weeks. He is a poor taxi driver. Not only he had any intention to cause the death of the deceased but even after the incident, finding that the deceased was

unconscious, he himself took the deceased by his own taxi to the hospitals. Ultimately, however, the deceased has died.

15. Taking into consideration all these facts, in my view, the appellant deserves to be sentenced to suffer rigorous imprisonment for 1 year. The said punishment deserves to be suspended by granting benefit under the provisions of the Probation of Offenders Act, 1958, as has been reiterated in "**Rajesh Anantram Thakur V. The State of Maharashtra**" 1993 CRI. L.J. 208, relied on by Mr. Dhorde. In the result, the following order:-

16. Criminal Appeal is hereby partly allowed and the impugned order of the learned Additional Sessions Judge, Sangamner, convicting the present appellant for the offence punishable under section 304 Part II of the Indian Penal Code is hereby set aside. Consequently, the term of sentence awarded by the learned Additional Sessions Judge is also set aside.

. Instead, the appellant is convicted for the offence punishable under section 325 of the Indian Penal

Code. He is sentenced to suffer rigorous imprisonment for a period of 1 year. The sentences, however, shall stand suspended and the appellant be released on probation, upon his execution of bond of good behaviour for a period of three (3) years, to be furnished in the trial Court, within a period of eight (8) weeks from the date of this judgment.

17. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/