

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 532 OF 1996

Prakash Baburao Ingale
R/o Shivaji Nagar, Ajara,
District : Kolhapur.

.....Appellant

V/s.

The State of Maharashtra

....Respondent

Mr. Subir Sarkar appointed Advocate for Appellant
Mrs. A. A. Mane APP for the State.
Mr. Rupesh Zade appointed Advocate for Respondent

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 1, 2016.

JUDGMENT:

Learned counsel Mrs. J. P. Akolkar fairly submits that since 1996 appellant has not contacted her. Her all efforts of communication have failed. In view of this, she prays that she be discharged from conducting the trial. Taking into consideration the statement of Mrs. Akolkar, she is discharged from appearing in the matter. In view of this, this Court has requested Advocate Mr. Subir Sarkar to espouse the cause of the appellant. He has graciously accepted to do so. Since respondent no. 2 is not represented by

anyone, this Court had requested Advocate Rupesh Zade to espouse the cause of the respondent. He has graciously accepted to do so.

2) Appellant herein is convicted for offence punishable under section 304 Part – II of Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years and fine of Rs. 10,000/- in default to suffer further rigorous imprisonment for 2 years by Additional Sessions Judge, Gadhinglaj in Sessions Case No. 17 of 1996 vide Judgment and Order dated 07/09/1996. Hence, this appeal.

3) Such of the facts necessary for the decision of this appeal are as follows.

4) Deceased Mahadev Ingale was uncle of the present appellant. He was working at Mumbai for some years, however, due to closure of the mills, he had returned to his native village Ajara and was residing in his own house. Accused/appellant and deceased Mahadev were residing in the same building. There were disputes between them in respect of the house property and several complaints were made to the police by both the sides. A meeting was also held to resolve the issue, however, the settlement could not be materialized.

5) It is the case of prosecution that on 10/11/1994, Mahadev had left the house at about 5.00 p.m. to purchase vegetables along with his two sons Kiran and Nitin. After sometime, Kiran returned home. Thereafter Nitin rushed home and informed that appellant herein had assaulted his father in the Chowk and that he has sustained bleeding injury. Soon thereafter, wife of Mahadev rushed to the spot only to find her husband unconscious. According to the prosecution, appellant was present at the scene of offence. Upon arrival of the wife of the deceased, appellant had allegedly informed her that he had killed Mahadev and that it is open for her to take any action. The said remark was allegedly made in abusive, humiliating manner. Thereafter, appellant had fled from the spot. Incident had occurred in front of Aadarsh Footwear near a Gutter. Wife of deceased Mahadev had immediately rushed to the police station to inform the police, however, police had received the information and had deputed some police to the scene of offence. Thereafter, she returned to the spot only to find her husband dead. She then approached police station and lodged a report at the police station as was narrated to her by her son Nitin. On

the basis of her report, crime no. 43 of 1996 was registered. Investigation was set in motion. After completion of investigation, charge-sheet was filed against accused for offence punishable under section 302 of Indian Penal Code. Charge was framed against him for offence punishable under section 302 of Indian Penal Code. Prosecution examined 16 witnesses to bring home the guilt of the accused.

6) The relative witnesses would be P.W. 1 who happens to be wife of the deceased Mahadev and is the first informant in the present case. P.W. 2 Nitin happens to be son of the deceased and also an eye witness to the incident. P.W. 3 Subhash Gilbale happens to be a chance eye witness. P.W. 4 Ajit Jadhav is the son of the owner of Aadarsh Footwear, where the incident had taken place.

7) Sunanda Ingale has deposed before the court that the house at Ajara owned by them was given on lease when they were residing in Mumbai. After they had returned to Ajara, accused and his father were insisting upon them to vacate the house and therefore, there used to be intermittent quarrels between both the families. Despite efforts by friends and relatives, parties could not arrive at any settlement. Father

ism

of appellant was running hair cutting Saloon near S.T. stand and accused/appellant was assisting his father at that time. She has deposed before the court in consonance with the F.I.R. lodged by her which is marked at Exhibit 13. The material omission elicited in the cross-examination of P.W. 1 is to the extent that she had in fact disclosed to the police, in her statement under section 161 of Code of Criminal Procedure, 1973 that the accused had reacted by informing her that he had killed her husband and she can go wherever she wants. The word 'killed' does not find place in the F.I.R. In any case, since accused has admitted the incident, the question would not arise as to whether the word 'killed' was used or not. She has further admitted that police station is in close proximity of the scene of offence.

8) P.W. 2 Nitin Ingale happens to be son of the deceased who had rushed home and informed his mother that he had seen the accused beating his father near shoe mart and that his father had sustained a bleeding injury to his head. He had returned to the scene of offence along with his mother. Accused had met them on the way. He has admitted in the cross-examination that on the day of deposition before

the court,¹ his mother and the police had informed him about the manner and contents of his deposition. He has further admitted in the cross-examination that at that relevant time, his father had addressed appellant as a 'Trans Gender'. He had made derogatory remark against his mother. That he had hurled filthy abuses to him. Accused had become annoyed. Accused had then picked up the stick lying nearby in the Gutter and assaulted his father on the head. It is also admitted that thereafter, accused had fled away from the scene of offence and that his father had fallen in the gutter. Persons who had gathered on the scene of offence had taken him to his house. It is categorically admitted that thereafter, he had not met the accused.

9) P.W. 3 Subhash Gilbale who happens to be a chance witness has deposed before the court that on 10/11/1994 at about 5.15 to 5.30 p.m., he was returning home after collecting the amount as he was working as Pigmi agent. He has noticed a crowd near Aadarsh Footwear. He had seen the accused beating someone with sticks in hand. It was only on the next day that he learnt that Mahadev was assaulted by the accused/appellant. There are inherent omissions and

ism

contradictions in the substantive evidence of P.W. 3.

10) Prosecution has relied upon the recovery of the stick at the instance of the accused pursuant to his memorandum under section 27 of Indian Evidence Act. Learned counsel appointed for the appellant rightly submits that recovery under section 27 of Indian Evidence Act cannot be relied upon in the present case as it is the case of prosecution that accused had picked up a stick lying nearby. Soon after the assault, crowd had gathered at the scene of offence and there was no occasion for the appellant to conceal the stick in the wire mesh and that he had simply fled from the scene of offence.

11) Learned counsel further submits that substantive evidence of P.W. 1 contending therein that they had met the accused at the Par (Common platform in the village) is negated by P.W. 2 in his cross-examination. P.W. 2 has categorically stated that he had accompanied his mother to the scene of offence and had not seen the accused thereafter. Hence, there was no occasion for the accused to make Extra Judicial confession to P.W. 1 that he had killed Mahadev and that she may take appropriate action. This very aspect goes to the root of the

ism

matter.

12) Learned counsel appointed for the appellant submits that in fact accused/appellant has not denied the incident nor the act attributed to him, however, according to the appellant prosecution has blown the incident out of proportion. According to learned counsel, this is a case of grave and sudden provocation. P.W. 2 happens to be an eye witness and was accompanying the deceased at the time of incident and has categorically admitted that deceased had addressed the appellant as Trans Gender and had passed derogatory remarks against his mother which could not be tolerated by the appellant who was a young lad of 19 years. The incident has occurred in a fit of rage. Appellant had lost his control and therefore, according to the Advocate appointed for the appellant, the case falls under exception 1 to section 300 of Indian Penal Code.

13) Exception 1 to section 300 of Indian Penal Code reads thus:

“Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or

causes the death of any other person by mistake or accident”

14) According to learned counsel, appellant has categorically made out a case of grave and sudden provocation by the admissions elicited in the cross-examination of P.W. 2 who was an eye witness to the incident.

15) Learned APP submits that although, the appellant was deprived of his control in a fit of rage, he had taken undue advantage of the situation and had not stopped after giving a single blow but had given multiple blows upon the deceased which resulted in fracture of skull and oedematous brain. That according to learned APP, appellant had taken undue advantage of the situation and had brutally assaulted the deceased to such an extent that it had resulted into instantaneous death. This submission cannot be considered for the simple reason that learned Sessions Judge has held that appellant had no intention to eliminate the deceased but by his act of multiple blows was having sufficient knowledge that his act would result in the death of Mahadev.

16) In the given circumstances, it would not be sufficient to only

consider the act of the accused but what needs to be considered is the prelude to the incident. The circumstances in which the incident had occurred and therefore, as is rightly submitted, the case would fall under section Exception 1 to section 300 of Indian Penal Code. At the time of incident, appellant was hardly 19 years old and could not have, in any manner, digested the remarks made to his individuality as well as towards his mother. It is true that he was deprived of his control. Taking into consideration the number of injuries sustained by the deceased, accused cannot be simply acquitted of all the charges. Although, the Law contemplates that it would not be culpable homicide amounting to murder when it falls under Exception 1 to section 300 of Indian Penal Code, accused would be liable to be convicted under section 324 of Indian Penal Code and deserves to be sentenced to the period already undergone.

17) Learned counsel appointed for respondent no. 2 fairly submits that at the time of incident, deceased had two minor children. According to the learned counsel, although it is true that deceased had given provocation to the appellant, it would not mean that he would

assault him in such a manner that it would result into his death. After giving the first blow the deceased had fallen unconscious on the ground but the appellant could not control his passion and continued to assault. Learned counsel appointed for respondent no. 2 further submits that P.W. 1 had to maintain the family. Firstly, deceased had lost his job in Mumbai and had returned to village Ajara. That the children have suffered the consequences of the act of their father. That deceased was uncle of the appellant and keeping in mind the relation between the parties, appellant ought not to have caused injuries which would result into instantaneous death. He prays for enhancement of the fine in order to support P.W. 1.

18) The submissions are fair enough and hence, fine is enhanced to Rs. 20,000/- i.e. Rs. 10,000/- in addition to the fine imposed by Additional Sessions Judge, Gadhinglaj vide Judgment and Order dated 07/09/1996. Learned Sessions Judge had directed that out of fine amount, Rs. 5000/- to be paid to P.W. 1. Learned counsel appointed for respondent no. 2 submits that it would be a meagre amount. That P.W. 1 has faced hardships for the past 20 years and as on today, Rs. 5000/-

would be a meagre amount and hence, it is prayed that compensation be enhanced. Statement is accepted. Out of fine amount of Rs. 20,000/-, Rs. 18,000/- to be paid to P.W. 1. Learned Sessions Judge shall issue notice to P.W. 1 and call upon her to receive the amount of compensation.

19) It would be difficult to part with the Judgment without appreciating the efforts taken by learned counsel on a short notice and that he has put in the best of efforts to espouse the cause of the appellant. His professional fees is quantified to the tune of Rs. 3000/- to be paid to him within 3 months from today. Learned counsel appointed for respondent no. 2 has also put in best of efforts. His professional fees is quantified to the tune of Rs. 1000/- to be paid to him within 3 months from today.

20) In view of the aforesaid discussion, following order.

ORDER

- (i) Appeal is partly allowed.
- (ii) Appellant is acquitted of offence punishable under section 304 part II of Indian Penal Code.

- (iii) Appellant is convicted for offence punishable under section 324 of Indian Penal Code and is sentenced to the period already undergone.
- (iv) The sentence of fine is enhanced to Rs. 20,000/- i.e. Rs. 10,000/- in addition to the fine imposed.
- (v) Out of Rs. 20,000/-, Rs. 18,000/- be paid to P.W. 1.
- (vi) Bail bonds of appellant stand cancelled.
- (vii) Learned Sessions Judge to verify as to whether appellant had deposited the amount of fine at the time of being enlarged on bail.
- (viii) If the fine amount is paid, appellant shall pay further amount of Rs. 10,000/- within 8 weeks from 05/03/2016.
- (ix) Professional fees of appointed Advocate for appellant is quantified to the tune of Rs. 3000/- to be paid to him within 3 months from today. Similarly, professional fees of appointed Advocate for respondent no. 2 is quantified to the tune of Rs. 1000/- to be paid to him within 3 months from today.
- (x) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)