

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 78 OF 2016

Raju Ratansingh Pawar	]
Age-26 years	]
Currently at Kolhapur Central Prison	]
Kalamba, Kolhapur	]..Appellant (Ori. Accused)
V/s.	
The State of Maharashtra	]
(Through Akkalkot South Police Station	]..Respondent (Ori. Complainant)

Mr. Veerdhaval Kakade Advocate appointed for Appellant.
Mr. Y.M. Nakhwa-APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 11th December 2018.

JUDGMENT :-

1. The appellant is convicted for the offences punishable under section 304 Part II of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/-, in default rigorous imprisonment for six months by the Sessions Judge, Solapur vide judgment and order dated 25th August 2014 in Sessions Case No. 102 of 2013. Hence, this appeal.

2. Such of the facts necessary for the decision of the appeal are as follows:

3. On 12th November 2012 at about 3.30 p.m. the villagers of village Tadval were in a funeral procession of Chanappa Swami. When they were passing from front of the house of Raju Pawar i.e. appellant they noticed that he was mercilessly beating a man, about 45 to 50 years old, with fist blows and kicks. Some responsible persons like the Sarpanch Sanjay Abaji (Complainant) attempted to intervene and rescue the victim from the clutches of the accused and thereafter, they had proceeded towards burial ground. They had seen the accused returned back to his house and therefore they hoped that they had rescued the victim. However, they had hardly passed some distance, when they again heard the cries of the victim and returned back and they noticed that the accused-appellant was armed with girmit (hand drill) and the accused was assaulting the victim. He dragged the victim up to the house of Vasant Shinde and dropped him at the said place. He had left the instrument at the spot and ran away from the spot. The Police Patil of the village informed the police station and on the basis of the said report the investigation was set in motion. The victim had succumbed to the injuries. Name of the deceased was Ambanna Rama Kattimani, original resident of village Jire-Ankalgi, Tal-Indi, District-Vijapur. On the basis of the report Crime No. 153 of 2012 was registered for commission of offence punishable under section 302 of the Indian Penal Code.

4. At the trial the prosecution examined as many as 10 witnesses to bring home the guilt of the accused.

5. The case of the prosecution mainly rests upon the evidence of the eye witness PW-1 Bheemashankar Kolape, PW-3

Maruti Ratnakar, P.W.-4 Satish Ratnakar, P.W.-5 Maruti Dhotre, P.W.-6 Sanjay Abaji who are eye witnesses to the incident and P.W.-8 Dr. Ravindra Bansode who conducted the autopsy on the dead body of the deceased and investigating officer H.P. Mulani.

6. In cases of direct evidence the quantity of witnesses would be immaterial, more so when they are consistent with each other. It is the quality of the evidence which is adduced by the prosecution at the trial and hence it would not be necessary to discuss the evidence of all the witnesses. It is pertinent to note that they were all passing by with the dead body when they had seen the said incident and intervened in order to rescue the unknown victim. PW-1 Bheemashankar Kolape was the president of Tanta Mukti Samiti of village Tadval. He knew the accused, who was alcoholic and bootlegger. He used to wander in the village in an inebriated state of mind and was in a habit of hurling abuses at the villagers. There were several complaints filed against him. He was summoned by the police on few occasions. PW.-1 has deposed before the Court that on 22nd November 2012 burial of Swami was arranged at about 3.30 p.m. and hence they were taking the dead boy to the burial ground. There were respectable persons proceeding with the dead body. When they were passing through Wadar Wasti they noticed that the accused was beating Ambanna. With the intervention of the people, the victim was released by the accused. However, when the people had passed ahead he was again assaulted. According to P.W.-1, they had seen the accused piercing drill in the chest of the deceased and then the dead body of the deceased was dragged in

front of house of Shinde after abandoning the hand drill at the same spot.

7. First Information Report is lodged by P.W.-1 which is at 'Exhibit-16', he has proved the contents of the same. The other eye witnesses have also reiterated the contention of P.W-1 as far as the incident is concerned.

8. P.W.8–Dr. Ravindra Bansode, Medical Officer has conducted autopsy on the dead body of the deceased-Ambanna. According to him, he had noticed the following injuries:-

1. Bluish discolouration of skin on right side of chest of size 4 x 3 cm., 3 x 3 cm. And left lateral side of chest of size 3 x 3 cm. 4 x 4 cm. Respectively.
2. At sternal angle, abrasion of size 3 x 1 cm.
3. Bruise on left side of face of size 3 x 3 cm.
4. Bleeding through nostrils seen.
5. Subcutaneous blood present.
6. During palpation, multiple rib fracture noticed.

9. According to him there were multiple rib fractures on left and right side, internal bleeding in the lungs due to multiple ribs penetrating. There was haemothorax in right lung and bleeding through heart due to ribs penetrating heart. Pericardium was ruptured and hence, he opined that the cause of death was due to haemothorax due to injury in internal organ lung and heart due to multiple ribs fracture.

10. It is elicited in the cross examination that the possibility that there was bleeding through nostril due to severe hypertension cannot be ruled out.

11. It is pertinent to note at this stage that the weapon which was seized on the spot was an iron hand drill 11 inches long which was used for welding and it had a 10 inches iron drill with a sharp edge. The post-mortem notes would falsify that the victim was rather assaulted with the said hand drill and thereby causing fatal injuries. It appears that the fractured rib was due to heavy blows by fist and kicks. (The inquest panchnama which at 'Exhibit-34' also does not show that there was any drilling or piercing injury and other injury which are in nature of abrasion and contusions). There is no penetrating injury as such which was noticed either in inquest panchnama or in the post-mortem notes.

12. In any case, even according to prosecution the accused used to roam in the village in an inebriated condition and used to hurl abuses at the people.

13. At the trial the accused had challenged the time at which the FIR was registered. PW-10 has deposed before the Court that at about 16.05 hours he had proceeded to village Tadval for investigation on the basis of the report received from the said village. In the cross examination he had denied the suggestion to that effect.

14. The issue that remains for determination is as to whether the accused had knowledge that the kicks and blows given by him would be fatal. Section 304 Part II of the Indian Penal Code reads as

follows:

“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 ”.

15. It is clear from the medical evidence that the accused-appellant had not used hand drill to assault the victim. He had assaulted with fist and kicks blows with no knowledge that the same would cause fracture to the ribs and would further result into internal bleeding causing Hemothorax.

In the case of State Tr.P.S.Lodhi Colony, New Vs Sanjeev Nanda, reported in AIR 2012 SC 3104, the Hon'ble Apex Court has held thus:-

“to make out an offence punishable under [Section 304\(II\)](#) of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew such act of his is likely to cause death.”

16. What has not surfaced on record is the cause or motive for assault. The deceased was not even resident of the same village. Grave and sudden provocation cannot be ruled out. The incident had occurred in front of the house of the accused. The intervenors had also not inquired with either of them the cause for assault. All the witnesses have echoed in the voice and language of PW-1. The incident is admitted.

17. The evidence of PW-1 also shows that the accused used to wander in the village. The possibility that he had lost his mental equilibrium at the time of incident also cannot be ruled out. It is not the case of the prosecution that the accused-appellant was under the influence of alcohol at the relevant time.

18. Taking into consideration, the nature of the evidence adduced by the prosecution it cannot be said that the accused had no role to play. In view of this, the appellant deserves to be acquitted for offence punishable under section 304 Part II of the Indian Penal Code. Instead the appellant deserves to be convicted for an offence punishable under section 325 of the Indian Penal Code, which reads as follows:-

“Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Hence, following order would meet the ends of Justice.

ORDER

(i) Appeal is partly allowed.

(ii) The conviction of the appellant for offence punishable under section 304 Part II of the Indian Penal Code awarded by Sessions Judge, Solapur vide Judgment and Order dated 25/8/2014 is hereby quashed and set aside.

(iii) The appellant is convicted for offence punishable under section 325 of the Indian Penal Code and is sentence to suffer rigorous imprisonment for a period of 5 years and fine of Rs. 2000/- in default to suffer simple imprisonment for six months.

(iv) It appears from the record that appellant has undergone the substantive sentence as well as the default sentence as on today. In view of this, the appellant be released forthwith, if not required in any other offence.

(v) Superintendent of Jail, Kalamba Central Jail, Kolhapur shall send compliance report in respect of his release of the appellant-accused.

(vii) The professional fees of the appointed Advocate Shri Veerdhaval Kakade be paid to him as per Rules within 6 weeks from today.

19. Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J)