

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 838 OF 2015

1. Bhatusing Virangya Ravtale,
Age : 65 years, Occ : Nil,
2. Kailas Bhatusing Ravtale,
Age : 28 years, Occ : Nil,
3. Vishwanath Bhatusing Ravtale,
Age : 30 years, Occ : Nil,

All R/o. Aadgaon, Taluka : Shahada,
District : Nandurbar.

...Appellants.

Versus

The State of Maharashtra.

...Respondent.

Advocate for Appellants : Mr. A.S. Savale.
APP for State : Mr. S.J. Salgare.

CORAM : Smt. Sadhana S. Jadhav, J.
Dated : 16th July, 2019

Judgment :

1. This is an appeal challenging the judgment and impugned order passed by the Additional Sessions Judge, Shahada, dated 14.09.2015, in Sessions Case No. 20/2014, wherein, the appellants are convicted for the offence punishable under Section 304 (I), 308, 323 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 1,000/-

each i/d to undergo simple imprisonment for two months.

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

3. The complainant appears to be nephew of present appellant No. 1. There were cordial relations between both the families. However, due to some matrimonial disputes, Pramilabai - the wife of Diwan i.e. the daughter-in-law of Bhatusing had withdrawn herself from her matrimonial home and was residing with her parents. P.W. 8 - Ramesh Verangya Ravtale had gone to the matrimonial house of Pramilabai and convinced her to return to her matrimonial home. The return of Pramilabai had enraged the appellants as they did not wish to welcome Pramilabai back to the matrimonial home. It is the case of the prosecution that on 08.01.2014, the appellants had called Vinod to their house and questioned the intervention of his father in their matrimonial disputes. He had tried to explain to them that Pramilabai also happens to be the daughter-in-law of his father as she is the wife of his nephew and therefore, in the interest of both the families, he had asked her to return to her matrimonial house. Being enraged by the said answer, the appellants had assaulted Vinod with sticks. The assault

was so brutal that he had fallen unconscious. He had cried and upon hearing his cries, P.W. 2 – Nitesh Devidas Ravtale and P.W. 9 – Akhiraj Rehatam Ravtale had rushed to the scene of offence. They rescued Vinod and had taken him to hospital at Mhasawad. Since, the condition of Vinod was serious, he was referred to Civil Hospital Nandurbar.

4. On 11.01.2014, the statement of Vinod was recorded by Police Head Constable Purushottam Kautik Khonde i.e. P.W. 11. The said statement is at Exhibit 32.

5. Vinod had expired on 12.01.2014 and hence, the said statement was admissible under Section 32 of the Indian Evidence Act. Vinod had disclosed to P.W. 11 that on 08th January, 2014 at about 6:00 to 6:30 p.m., the present appellants had called him home. They had questioned him about his father's act of bringing Pramilabai back to her matrimonial house and thereafter, have mounted assault upon him with sticks. There are several eye witnesses to the incident, who had in fact rescued Vinod from the clutches of the present appellants. He was taken to the hospital by the relatives.

6. After the demise of Vinod, his body was sent for

performing autopsy. The *post-mortem* notes are at Exhibit 20. It is pertinent to note that column No. 17 of the *post-mortem* notes indicates as follows :

17. <i>Surface wounds and injuries-</i> Their nature, position, dimensions (measured) and directions to be accurately stated - their probable age and causes to be noted. If bruises be present what is the condition of the subcutaneous tissues? (N.B.-- When injuries are numerous and cannot be mentioned within the space available they should be mentioned on a separate paper which should be signed).	1. Abrasion on neck backside. 2. Contusion on chest. 3. Abrasion on waist. 4. Right arm - contusion. 5. Left arm - contusion. 6. Contusion on left thigh. 7. Contusion on right thigh. 8. Left great toe - contusion.
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7. The doctor has opined that there was dislocation of the Cervical Spine and compression of C-4, C-5 Vertebra. The cause of death is as follows :

“Cardio respiratory failure occurred due to fracture dislocation of spinal column Cervical Vertebrae C4-C5 noted with spinal cord compression.”

8. Crime No. 07/2014 was registered at Mhasawad Police Station against the appellants on the basis of the dying

declaration, which was recorded on 11.01.2014, for the offence punishable under Section 302 read with 34 of the Indian Penal code.

9. The case was committed to the Court of Sessions and registered as Sessions Case No. 20/2014. The prosecution examined in all 14 witnesses to bring whom the guilt of the accused. In fact, on 11.01.2014, on the basis of the statement of the injured, offence was registered under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal Code and after the demise of Vinod, Section 302 of the I.P.C. was added.

10. In the present case, it is more than clear that the case solely rests on Exhibit 32 - the dying declaration, which stands corroborated by P.W. 2 and P.W. 9. The same is supported by the *post-mortem* notes. Hence, it would not be necessary to refer to the evidence of other witnesses.

11. It is true that P.W. 8 has specifically mentioned that the relations between both the families were cordial. That the only bone of contention was that of fetching of Pramila Bai back to her matrimonial home by the father of the deceased i.e. P.W. 8. Learned counsel for the

appellants submits that the dying declaration cannot be believed for the following reasons :

12. That there is no certificate by the doctor that the patient was not oriented and in a fit condition to give the statement while it was recorded. However, the said submission cannot be considered for the simple reason that P.W. 11 has specifically stated that he had called the Medical Officer. He took opinion of the Medical Officer as to whether the patient was in a proper state of mind for giving statement and the doctor after examining the patient, had informed P.W. 11 Mr. Khonde, that the patient was conscious and oriental to give the statement.

13. In this case, an implicit reliance can be placed upon the judgment in the case of *Laxman Vs. State of Maharashtra* **[AIR 2002 Supreme Court 2973]**, wherein, the Hon'ble Apex Court has held that the test for relying upon the dying declaration is only as to whether the statement is voluntary, truthful and inspire the confidence of the Court.

14. In the present case, needless to reiterate that the narration of the dying declaration is corroborated by P.W. 2

and P.W. 9. P.W. 2 has deposed before the Court that he had heard the noise of abuses from the house of the present appellants. He along with Akhiraj i.e. P.W. 9, Pramilabai and his wife Meenakshi and Vijaysing had rushed to the house of the appellants. They saw that the quarrel was going on between Vinod and the present appellants and that the present appellants were assaulting Vinod with sticks on back of his neck and his hands and legs. They pacified the quarrel and had rescued Vinod from their clutches. They had taken him to Primary Health Center, Aadgaon, and then Vinod was further referred to Government Hospital at Mhasawad and from Mhasawad to Government Civil Hospital, Nandurbar. He has also stated that at the time of admission, Vinod was unconscious. Subsequently, he had regained consciousness on 11.01.2014. His statement was recorded by the Police. The defence has failed to create any dent in his examination-in-chief. He has denied the suggestions that he is not an eye witness.

15. Then same is the case with P.W. 9 i.e. Akhiraj Rehatam Ravtale, who along with P.W. 2, had witnessed the incident, rescued Vinod and had taken him to the hospital. He has denied the suggestion that Vinod had fallen on the ground while running.

16. Hence, in the present case, the contents of the dying declaration are corroborated by P.W. 2 and P.W. 9.

17. The learned counsel for the appellants submits that the incident even if admitted to have occurred as stated, it can neither be said that the appellants had any intention to cause homicidal death of Vinod nor it can be said that they had knowledge that the assault would be fatal and therefore, the offence without addition or subtraction would be under Section 325 of the Indian Penal Code.

18. The learned counsel for the appellant further submits that there were no blood stains on the clothes of the deceased as he had not sustained bleeding injury. The said submission also cannot be taken into consideration for the simple reason that inflicting consecutive blows on the neck and the spinal cord would naturally be fatal. The appellants ought to have realized that the blow dealt was on vulnerable part of the body which was likely to result in his death. Moreover, there was common intention and the allegation is that all the three accused were assaulting with sticks.

19. The said submission cannot be taken into consideration for the simple reason that the appellants had

given consecutive blows with sticks so much, so that there was compression of the vertebra. Moreover, the prelude to the incident and the conduct of the appellant need to be taken into consideration. The appellants with an intention to assault Vinod had called him to their house. It was a pre-meditated assault on Vinod and, therefore, it cannot be said that the offence would fall under Section 325 or 326 of the Indian Penal Code.

20. Undue and misplaced sympathy would result into failure in administration of justice in the present case. It cannot be said that there was no brutality in the said act as consecutive blows were given on his back of neck thereby causing internal injury.

21. Learned APP in contra submits that in fact the assault was so brutal that in the eventuality, had the neighbours not rushed to the scene of the offence, Vinod would have died an instantaneous death as a result of grievous injury to his neck. This is not a case of a single blow where they only intended to teach him lesson or assault him. There was no injury to his forearms, legs and other non-vital parts of the body.

22. The learned APP placed reliance upon the judgment of the Supreme Court in the case of *Dharam and Others Vs. State of Haryana*, **[2006 AIR SCW 6298]**, wherein, the Supreme court had an occasion to consider similar set of facts wherein, the deceased was assaulted by the appellants who happened to be in blood relations. The Apex Court has observed as under :

“In the very nature of things, the appellants could not have entertained any intention to cause death of their brother/ uncle and therefore, we are of the opinion that the offence committed by the appellants would fall within the ambit of section 304, Part – II, IPC.”

23. The learned APP has also placed reliance on the decision of this Court in the case of *Kaka @ Anil Namdeo Magar Vs. State of Maharashtra*, **[2009 ALL MR (Cri) 3597]**, wherein this Court was pleased to acquit the accused under Section 302 of the Indian Penal Code and convicted under Section 304 II of the Indian Penal code and sentenced to suffer rigorous imprisonment of seven years. However, in that case, there was no pre-mediation and a sudden quarrel had ensued.

24. In the case of *State of Rajasthan Vs. Jora Ram*, **[2005**

AIR SCW 2393]. The Hon'ble Apex Court had sentenced the appellant for offence punishable under Section 304-II of the Indian Penal Code. The Hon'ble Apex Court was of the opinion that there was no evidence to prove that the injuries inflicted on the deceased were sufficient in the ordinary course of nature to cause death.

25. In the present case, the doctor has not opined that the injuries sustained by Vinod were not grave to that effect. In view of this, it cannot be safely inferred that the appellants had the knowledge that severe blows on the back of the neck would result into death and therefore, it can be said that the accused appellants have committed an offence punishable under Section 304 (II) of the Indian Penal Code.

26. In the case of *Mer Dhana Sida Vs. State of Gujarat*, **[1985 (1) Supreme Court Cases 200]**, the Hon'ble Apex court has held that where the accused persons simultaneously attacked the deceased with sticks and caused as many as ten injuries, one of them being a fracture of tenth and eleventh ribs and rupture of the spleen. All persons participating in such an attack could at least be imputed with the knowledge that they were likely to cause injuries which were likely to cause death.

It was held that the High Court was right in holding that on factual and medical evidence, the accused persons were guilty of committing an offence under Section 304 (II) read with Section 34 of the Indian Penal Code.

27. The appellants are in custody from 13.01.2014. They were under trial persons. It appears from the record that they have undergone a substantive sentence of five years. However, there is no specific report that they had misused parole and furlough and, therefore, it appears that they would be entitled to remission in due course. Hence, the appellants are convicted for the offence punishable under Section 304-II of the IPC and sentenced to suffer rigorous imprisonment for seven years. Hence, the following order :

Order

- (I) The appeal is partly allowed.
- (ii) The conviction of the appellants for the offence punishable under Section 304 (1) of Indian Penal code is quashed and set aside.
- (iii) The appellants are convicted for an offence

punishable under Section 304 (II) of the Indian Penal Code. They are sentenced to suffer rigorous imprisonment for seven years. The sentence of fine is maintained.

(iv) In the eventuality that the appellants have undergone the sentence of seven years along with remission, they be released forthwith.

(v) Appeal stands disposed off, accordingly.

(Smt. Sadhana S. Jadhav, J.)

S.P.C.