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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.544 OF 2010

Sandip Shamrao Satpute & Ors. ...Appellants
vs.
The State of Maharashtra
and others ...Respondents

Mr.S.A.Masal for the Appellant
Ms P.P.Shinde, APP for the respondent-State

CORAM : A.S.OKA AND A.S.GADKARI, JJ.
DATE ON WHICH JUDGMENT IS RESERVED: FEBRUARY 1, 2019
DATE ON WHICH JUDGMENT IS PRONOUNCED:FEBRUARY 21,2019

JUDGMENT: (PER A.S.OKA,J.)

1 Being aggrieved by the Judgment and Order dated 29th June 2010 passed by the learned Sessions Judge, Satara in Sessions Case No.172 of 2004, the appellants-accused have preferred this Appeal. The appellants have been convicted for the offences punishable under section 302 read with section 34 of the Indian Penal Code (for short "IPC") for committing murder of one Subhash Dhondiram Satpute (for short "the deceased"). They have been also convicted for the offence punishable under section 324 read with section 34 of the IPC for voluntarily causing grievous hurt to Bhairavnath Satpute (P.W.No.1) and Chandrabhaga Satpute (P.W.No.9) (injured witnesses). For the first offence under section 302 read with section 34 of the IPC, they have been sentenced to undergo life imprisonment and for the second offence, they have been sentenced to

undergo R.I for 10 years.

2 The prosecution case in brief is that the deceased and the P.W.No.1-Bhairavnath were real brothers. The case of the prosecution is that Chandrabhaga (P.W.No.9) who also sustained injuries is their mother. It appears that the appellants-accused are related to the victims of the offence. Both of them were having landed property in village Dhankavadi (Shenwadi), Taluka Khatav, District Satara. The said property is known as Malvi. The appellants on the one hand and the victims and their family on the other hand were having disputes and they were on cross terms. Three to four years prior to the date of incident, the appellants-accused were prosecuted at the instance of the victims for the offence for setting ablaze the roof of their house. The case ended in acquittal. It is an admitted position that the appellants and the family of the victims were having a dispute over the land known as Malvi.

3 On 7th August 2004, P.W.No.9 Chandrabhaga was working in the field known as Malvi. P.W.No.1 Bhairavnath was grazing cattle and the deceased was looking after she-goats. At about 4.00 p.m., the accused No.1 Sandeep and the accused No.3 Namdeo along with the accused No.2 Ankush (present appellants) entered the said field. While the accused Nos.1 and 3 were holding axes in their hands, the accused No.2 was holding a stick. It is

the prosecution case that in the morning of the same day, there was a quarrel between the accused No.1 and P.W.No.1-Bhairavnath. It was alleged that the accused had broken the pipeline in the field. The case of the prosecution is that after the accused arrived at the field at 4.00 p.m on 7th August 2004, the accused No.1 assaulted P.W.No.1-Bhairavnath on his head by an axe in his hand and the accused No.3 assaulted the P.W.No.1- Bhairavnath by using buttock side of the axe on his both legs and below the waist. At the same time, accused No.2 Ankush assaulted P.W.No.1-Bhairavnath with stick on his hands, head and back. At that time when P.W.NO.9-Chandrabhaga tried to intervene, the accused No.1 gave a blow of axe on her head. The Accused No.3 assaulted P.W.No.9-Chandrabhaga on her head with the handle of the axe. After noticing the scuffle, the deceased Subhash rushed to the spot to rescue his mother and brother. The allegation of the prosecution is that the accused No.1 gave a blow of axe on the head of the deceased Subhash as well as on his right eyebrow. The Accused No.3 assaulted the deceased by axe on right leg and right arm while the accused No.2 gave blows of sticks on the person of the deceased. The deceased Subhash fell down on the ground while shouting that he was dying.

4 P.W.No.9-Chandrabhaga went to the village and informed about the incident. P.W.No.3-Dinkar Satpute rushed to the field along with one Aadhik Waghmare. Some villagers gathered there and thereafter,

Chandrabhaga and Bhairavnath were taken to the Cottage Hospital at Karad by a jeep. P.W.No.3 Dinkar filed a report at about 10.30 a.m to the police station at Aundh about the incident on the basis of which FIR was registered. After completion of investigation, charge sheet was filed. The prosecution examined 12 witnesses including P.W.No.1-Bhairavnath and P.W.No.9-Chandrabhaga who are injured witnesses.

5 The learned counsel for the appellants have taken us through the notes of evidence of material prosecution witnesses. He submitted that the prosecution has failed to bring home the guilt of the appellants. Inviting our attention to the evidence of prosecution witnesses and injured witnesses, he submitted that in any event, there was never any intention on the part of the appellants to kill the deceased Subhash. He submitted that the assault on the deceased Subhash is without any premeditation in as much as on the background of history of quarrel between the parties, at the spur of moment, the appellants seem to have attacked the deceased Subhash. He would, therefore, submit that Exception 4 to section 300 of the IPC is attracted and therefore, at highest, the offence under the second part of section 304 of IPC is made out. He would urge that as the appellants have already undergone sentence for 17 to 19 years (inclusive of all remissions), substantive sentence under part-II of section 304 and section 326 be ordered to be run

concurrently. He relied upon various decisions. The learned APP supported the impugned Judgment and Order and contended that the none of the exceptions under section 300 of IPC are attracted.

6 We have carefully perused the evidence adduced by the prosecution. There is no dispute that the appellants-accused and three victims of the offence were closely related. The Accused No.1 is the nephew of P.W.No.1-Bhairavnath. The Accused Nos.2 and 3 are his cousins. It is an admitted position that there was an ongoing dispute between the appellants and the family members of the victims regarding the fields held by the parties in the same village. P.W.No.1 had lodged a complaint against the appellants-accused four years prior to the incident which ended in acquittal. P.W.No.1-Bhairavnath in paragraph 2 of his deposition has stated thus:

"2 On 7/8/2004 the said accused had come in my field at about 16.00 hours. The accused no.1 Sandip was having axe in his hand. The accused No.3 Namdev was having custody of weapon axe in his hand. The accused No.2 Ankush was having a stick in his possession. Thereafter, the said accused No.1 Sandip had assaulted me on my head by axe. There was injury by that assault where said axe was hit. The accused No.3 Namdev had assaulted me with the said axe on both the legs, by back side of the axe. The accused No.2 Ankush Satpute had assaulted me by stick on my back, hand and also on my legs he had beaten me. The said accused No.2 Ankush had also beaten me by the said stick on my

head. My mother had come at that time in the field and had asked that the accused not to beat me. The accused No.1 Sandip had also beaten on the head of my mother and therefore there was bleeding injury on the head of my mother. The accused No.2 Ankush Satpute had assaulted by stick on the head, back and on the hands to my mother. With the stick of axe the accused No.3 Namdev had assaulted to my mother on her shoulder, on head and on legs. **Thereafter my brother Subhash Satpute came in the said field. The said Subhash Satpute had requested accused not to beat me and my mother to the accused. The said accused No.1 Sandeep Satpute had assaulted by sharp aged axe on the head of Subhash Satpute and also on the eye leads. The said accused Namdev Satpute had assaulted to Subhash Dhondiram Satpute by axe on his head, right leg. The accused No.2 Ankush had assaulted by stick on the head of Subhash Satpute and on back and on shoulders and on legs. The said Subhash had said "Melo Melo" and he has falled down and died on the spot."**

(emphasis added)

7 The version of P.W.No.9-Chandrabhaga is the same. Perusal of cross examination of both the witnesses shows that the said version is hardly shaken in the cross examination.

8 The evidence of P.W.No.10-Dr.Arjun who medically examined both the witnesses also supports the prosecution case. He examined the P.W.No.1-Bhairavnath when he was brought to the hospital. He noted 9 injuries on his person. He opined that CLW on right parietal area of head having size of 6 cm X

4 cm X 1 cm which was scalp deep having sharp edges is possible by an axe and rest of the injuries are possible by a stick and handle of an axe as well as buttock of an axe. The said witness examined injured witness Chandrabhaga (P.W.No.9) and stated that the first injury out of four injuries noticed on her person viz; CLW on occiput area of the head measuring 4 cm X 4 cm X 1 cm could be possible by an axe. The witness admitted that both the injured witnesses did not suffer any incise wound.

9 The evidence of Dr.Sunder Sadamate who conducted autopsy on the dead body of the deceased Subhash also supports the prosecution case in as much as he opined that the injuries on the person of the deceased could be caused by the weapons of assault as per the prosecution case. Moreover, there is a discovery of an axe at the instance of the accused No.1. Even at the instance of the accused No.3, there was recovery of an axe. A stick was seized from the scene of offence.

10 The evidence of P.W.No.2 and P.W.No.9 is consistent about the incident which is not shaken in the cross examination. Both the witnesses have suffered head injuries. As regards assault on the deceased, we may note that the deceased Subhash came to the field when the accused were assaulting the two prosecution witnesses and there was an ongoing fight. He tried to intervene. Perusal of the evidence of P.W.No.2 and P.W.No.9 shows that there

was prior enmity between the family of the injured and deceased on one hand and the family of the accused on the other hand. On 7th August 2004, the present appellants came armed with weapons such as axes and stick to the field of the injured witnesses. They assaulted the first injured witness Bhairavnath. At that time, the second injured witness Chandrabhaga came to the spot of the incident and even she was assaulted. Thereafter, the deceased Subhash came and he tried to intervene. On his entry, the appellants assaulted Subhash. Thus, there was no premeditation on the part of the appellants to kill the deceased Subhash. There was absence of any intention to kill Subhash. The deceased Subhash came to the field obviously after he must have learnt about the assault by the appellants on his brother and mother. The evidence on record indicates that his appearance at the scene of offence must have led to a sudden fight. Assault on the deceased appears to be in the heat of passion. Therefore, exception 4 of section 300 of the IPC will be applicable to the facts of the case and the offence committed by the appellants is of culpable homicide not amounting to murder. It will attract the second part of section 304.

11 Now, the question is whether sentences for the offence punishable under section 304 Part II and section 326 should be ordered to run concurrently or consecutively. The learned counsel for the appellants relied upon the decision of this Court in the case

of Hitesh Pravinchand Shah vs. State of Maharashtra and another¹. This was a case where the Court imposed two life sentences which were to run consecutively. Considering the fact that the accused was already undergoing life imprisonment, the Court held that the second sentence must run concurrently. The learned counsel for the appellants relied upon the decision of the Apex Court in the case of Mohd. Akhtar Hussain Alias Ibrahim Ahbd Bhatti vs. Assistant Collector of Customs (Prevention), Ahmedabad². The Apex Court noted that the basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments, generally it is wrong to have consecutive sentences.

12 In the facts of the case, the appellants came to the field of the injured witnesses. Two of them were carrying axes and one was carrying stick. They assaulted the first injured witness. When the second injured witness entered the field, she also suffered in the same fate. Subsequently, when the deceased entered the field perhaps with a view to save his brother and mother, he was assaulted by the appellants and as a result of the injuries sustained by him, he succumbed to death. Therefore, this is a fit case where the sentences will have to be ordered to run consecutively.

1 2004 (1) Bom.C.R. (Cri.) 4

2 1988 DGLS (SC) 523 (SC)

13 This is a fit case where for the offence punishable under the second part of section 304, sentence of 10 years will have to be imposed. As we are imposing sentence of 10 years for this offence, and as we are ordering consecutive running of sentences, we propose to reduce the sentence for the offence punishable under section 326 read with section 34 of 8 years of R.I. We may note here that the Nominal Roll signed by the Jail Superintendent which are of January 2019 show that the appellant No.1 has undergone sentence for 18 years, 2 months and 13 days upto 31st December 2018 including remissions. The Accused No.2 Ankush has undergone sentence for 17 years, 8 months and 11 days which is including remission till 31st December 2018 and the accused No.3 was released on undergoing sentence for 19 years and 7 months including remissions.

14 Hence, we dispose of the appeal by passing the following order:

(I) Conviction and sentence of the appellants- 1)Sandip Shamrao Satpute, 2)Ankush Ramchandra Satpute and 3)Namdeo Ramchandra Satpute for the offence punishable under section 302 read with section 34 of IPC is hereby set aside. They are convicted for the offence punishable under second part of section 304 read with section 34 of the IPC. They are sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5000/- (Rupees five thousand) each. In default, they shall suffer

further R.I for two years each;

(II) The conviction of the appellants for the offence punishable under section 326 read with section 34 of the IPC is maintained. However, substantive sentence of 10 years is brought down to 8 years. The order regarding fine is maintained.

(III) The direction under clause 3 of the operative part of the Judgment is also maintained;

(IV) The sentences for the aforesaid two offences shall run consecutively;

(V) The appellants will be entitled to set off as directed under the impugned Judgment and order;

(VI) Appeal is partly allowed on above terms.

(A.S.GADKARI,J.)

(A.S.OKA,J.)