

Sikandar Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Jun-19-2014

Judge : M.L. Tahaliyani

Appeal No. : Criminal Appeal No. 257 of 1998

Appellant : Sikandar

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

1. Heard learned counsel Mr. Daga for the appellant and learned Additional Public Prosecutor Mr. Bangadkar for the respondent State.
2. The appellant was tried for the offence punishable under Section 302 of Indian Penal Code by the learned Additional Sessions Judge, Chandrapur. At the conclusion of trial, he was convicted for the offence punishable under Section 304 Part-II of Indian Penal Code.
3. The incident in question had occurred at the bus stand of village Junona, within the jurisdiction of Ballarshah Police Station. The appellant was holding a gun and was accompanied by his wife at the time of incident. The deceased was an auto-rickshaw driver. He had come to Junona bus stand with some passengers. The passengers alighted from the auto-rickshaw and they were in process of paying

fare to the deceased Raju. The appellant wanted the deceased to take him to Chandrapur in Auto Rickshaw. The deceased refused to oblige the appellant. There was quarrel between the deceased and the appellant. During the course of quarrel, there was a scuffle also. In the said scuffle, the appellant has alleged to have fired a shot from bharma gun which proved to be fatal and caused death of the deceased. The brother of the deceased reached the spot immediately and took him to Civil Hospital, Chandrapur. The deceased was declared dead at Civil Hospital.

4. The First Information Report was registered on the complaint made by the brother of the deceased for the offence punishable under Section 302 of Indian Penal Code. During the course of investigation, statements of eye-witnesses were recorded and the spot panchnama was drawn. The gun was seized by the Police. The gun was examined by the Chemical Analyzer of Forensic Science Laboratory at Mumbai. It was stated by the Chemical Analyzer that the gun was a single barrel muzzle loading gun and was in working condition. Residues of fired gun powder was detected in the barrel washings of the gun. The Chemical Analyzer, therefore, concluded that the gun was used for firing before it was received in the laboratory. Few percussion caps from the laboratory stock and two percussion caps received by the laboratory from the Police were successfully test fired from the gun. As such, the gun was in working condition. The shirt of the deceased was also examined and it was opined that metallic lead in presence of blackening was found around the periphery of encircled shot-hole on the shirt. Fired gun powder residues were also found around the shot-hole. The Chemical Analyzer was of the opinion that the lead projectiles must have been fired from the close range of the muzzle loading gun. After completion of the investigation, charge-sheet was filed in the court of Magistrate. The case was committed to the Court of Sessions.

5. Before I proceed further, it may be stated here that first information report was initially registered at Chandrapur City Police Station and thereafter it was transferred to Ballarshah Police Station for further investigation.

6. The charge under Section 302 of I.P.C was framed against the appellant by the learned trial Judge. The appellant pleaded not guilty to the charge and claimed to

be tried. A charge under Section 3 read with Section 25 (1B)(a) of Arms Act was also framed to which also, the appellant had pleaded not guilty.

7. The prosecution had examined in all 13 witnesses in support of its case. PW-1 who is resident of village Junona is one of the eye-witnesses. PW-2 is also the resident of village Junona. He had travelled in the auto-rickshaw of deceased from Chandrapur to Junona. PW-3 had also travelled in the same auto-rickshaw from Chandrapur to Junona.

8. It is not necessary to refer to the evidence of almost all the witnesses to decide the present appeal. The Medical Officer PW-5 has stated in his evidence that the deceased had died due to injury to vital organs like lungs, heart and liver. He had found the circular injury perforating on chest left side. During the course of internal examination, he found that pleura was perforating, plural cavity was full with blood. There was fracture of right 8th rib. There were bruises on the margin of the left lingular lobe on left lung. Apex of right ventricle of heart was found punctured due to rubbing of bullet. According to this witness, all the injuries were ante mortem and were sufficient to cause death in the ordinary course of nature. It appears that there was no serious challenge to the opinion given by PW-5. As such, there is no doubt that the deceased had died due to bullet injury.

9. It now takes me to the evidence of PW-1 and PW-2. PW-1 has stated that he had seen the accused and his wife at the bus stand of Junona. The accused wanted the deceased to take him to Chandrapur in the auto-rickshaw. Deceased Raju refused to oblige the accused. Therefore, appellant got violent and he hit butt of his gun on PW-1 and fired a shot towards the deceased who was standing on the other side of the auto-rickshaw. The deceased received bleeding injury. His brother was called, who took the deceased to the Hospital immediately.

10. PW-2, however, has given little different story as compared to the evidence given by PW-1. According to this witness, there was a scuffle between the deceased and the appellant. The bullet was fired during the said scuffle and hit the deceased. This witness had also stated that the appellant had fired the bullet during the course of scuffle.

11. Cojoint reading of the evidence of these two witnesses leads one to conclusion that initially there was a quarrel between the deceased and the appellant and thereafter there was a scuffle. The bullet was shot during the course of scuffle. It is for this reason probably that the learned trial Judge has not convicted the appellant for the offence punishable under Section 302 of Indian Penal Code. It thus appears that the learned trial Judge was of the view that there was no intention on the part of the appellant to cause death of the deceased, nor there was an intention on the part of the appellant to cause injury to the deceased sufficient to cause death in the ordinary course of the nature. The learned trial Judge has come to the conclusion that the appellant knew that his act was likely to cause death of the deceased.

12. The learned counsel Mr. Daga is heard on behalf of the appellant and the learned Additional Public Prosecutor Mr. Bangadkar is heard on behalf of the State. Mr. Daga has submitted that it was an accidental death as there is no evidence that trigger was pressed by the appellant. He has invited my attention to the evidence of PW-2 in which PW-2 has stated that the gun was being pushed on either side by the appellant as well as the deceased. It is, therefore, contended that trigger might have been pushed accidentally by the finger of either the appellant or the deceased. The learned counsel has further submitted that the court is not inclined to acquit the appellant of the offence punishable under Section 304 Part-II of I.P.C., the court may consider to reduce the sentence imposed by the trial Court, particularly in view of the fact that the incident had occurred during the course of scuffle between the deceased and the appellant. It was also submitted that the incident had occurred in the month of January, 1997 and that more than 17 years have passed from the date of incident. The appellant has already undergone 20 months imprisonment. Mr. Daga has submitted that the imprisonment already undergone by the appellant is just and proper punishment considering the fact that the case is very old and appeal is being decided after 17 years of the date of incident.

13. The learned Additional Public Prosecutor has submitted that the time gap between the date of incident and the date of judgment may not be the consideration for reducing the sentence. It is submitted by him that the pendency

of old cases is the reason for delayed judgment and that the appellant may not get benefit of the same.

14. I have given my anxious consideration to the arguments submitted by both the sides. Ordinarily, the arguments of learned Additional Public Prosecutor could have been accepted, however, the court cannot lose sight of the fact that the delay is caused not because of any mistake on the part of the appellant. In my considered opinion, inordinate delay in disposal of the case or appeal may be, in a fit case, considered for reducing the sentence. As far as the present case is concerned, it has already been stated that the incident had occurred during the course of scuffle and therefore, in my opinion, this is a fit case in which court may seriously consider the submissions made on behalf of the appellant that the sentence may be reduced to already undergone by the appellant.

15. The learned counsel Mr. Daga has also submitted that there is no criminal record of the appellant and he was 21 years old at the time of incident. He has maintained peace and good behaviour during the pendency of the appeal. There is no report that the appellant has indulged into similar activities during the appeal period.

16. For all these reasons, I have come to the conclusion that period already undergone by him is just and proper sentence in the present facts and circumstances of the case. The sentence imposed for the offence punishable under Section 25(1B)(a) read with Section 3 of the Arms Act is not being disturbed. Hence, I pass the following order.

17. The appeal is partly allowed.

The conviction of the appellant for the offence punishable under Section 304 Part-II of I.P.C. and Section 25(1B)(a) read with Section 3 of Arms Act is maintained. The sentence of one year and fine of Rs.500/- imposed for the offence punishable under Arms Act is also maintained. However, the sentence of five years imposed for the offence punishable under Section 304 Part-II is reduced to the period already undergone by the appellant.

Appeal accordingly stands disposed of.

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