

Sunil Vs. The State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Sep-28-2015

Judge : V.M. Deshpande

Appeal No. : Criminal Appeal No. 525 of 2014

Appellant : Sunil

Respondent : The State of Maharashtra

Advocate for Pet/Ap. : Shri. Mandpe

Judgement :

Oral Judgment:

1. Exception is taken to the judgment and order of conviction passed by the learned Additional Sessions Judge, Chandrapur in Sessions Case No. 130 of 2012 Dt.29-4-2014 by which the appellant is convicted for the offence punishable under Section 304I of the Indian Penal Code and directed to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- and in default to suffer rigorous imprisonment for three months.

Factual Matrix :

2. Bharat Ninaji Thakare (P.W.6) was attached to police station, Rajura. On 29/7/2012 he was present in the police station. That day Sangeeta Durge (P.W.1)

came to police station and lodged her oral report. The report was reduced into writing. It is at Exh.12. The report was disclosing commission of cognizable offence. Therefore, a crime was registered by Bharat Thakare vide Crime No. 126 of 2012 for the offence punishable under Section 302 of I.P.C. against the appellant. Printed F.I.R. is at Exh.13. Sangeeta Durge (P.W.1) is the widow of deceased Santosh Durge. She, along with her husband, used to reside at Yergavan. Deceased Santosh was having two real brothers, they are Sanjay and Sunil (appellant). Sanjay used to reside in the house of his father-in-law at Yergavan. Sangeeta used to reside along with her father-in-law, accused Sunil and his wife jointly in the same house, however, their kitchen was separate. The agricultural field was partitioned and every member of the family was allotted five acres of land. Father-in-law of Sangeeta purchased a motorcycle for accused Sunil about two years back. He was habituated to drinks. The first information report further discloses that on 29/7/2012 she and her husband went to agricultural field for agricultural operations. That time appellant Sunil was present in the house. At about 3.00 p.m. the couple returned back to house. That time Sunil was not there in the house. His wife came from the agricultural field at about 5.00 p.m. At about 5.30 p.m. Sunil came to the house. At that time deceased was talking with the father-in-law of the first informant that he is not giving any word of advise to appellant Sunil, who is not doing any work, he just wander in the village and he is miscreant. In spite of that, he is not giving word of advise to him. That time Sunil came there. At that time deceased asked him that he has already spent Rs.2,000/- received from the State Government. Upon that, verbal exchanges took place between the deceased and the appellant. At that time the deceased gave one slap to the appellant. Upon that, the appellant went inside the house, brought a dagger and gave its blow on the chest of Santosh. Due to that when Santosh sat down, the appellant gave two blows on his head. These are the basic facts asserted in the first information report.

After the crime was registered, P.W.6 Bharat Thakare arrested the appellant under arrest memo (Exh.35). The Investigating Officer reached to the spot and in presence of independent panchas a spot panchanama was drawn (Exh.16). He also seized blood with cotton swab from the spot under seizure memo (Exh.17). Clothes of the deceased were seized from his wife (P.W.1) Sangeeta under

seizure memo (Exh.18). He also recorded statement of witnesses. The clothes of the appellant were also seized under seizure memo (Exh.30).

When the appellant was in police custody, he made disclosure statement and laid the police party for recovery of the weapon. After completion of usual investigation, since the Investigating Officer was of the view that sufficient material is collected during investigation to send the appellant for trial, a charge-sheet was filed before the Court of law.

A Charge was framed against the appellant by Additional Sessions Judge, Chandrapur in Sessions Case No. 130 of 2012 vide Exh.6 for the offence punishable under Section 302 of the Indian Penal Code.

In order to bring home the guilt of the appellant, the prosecution, during the course of the trial, examined six prosecution witnesses and also relied upon the various documents duly proved. After a full-fledged trial, the learned Judge of the trial Court though found that the prosecution has failed to prove the charge against the appellant for the offence punishable under Section 302, however, the learned Judge was of the view that the prosecution has successful in bringing the case against the appellant for the offence punishable under Section 304I of I.P.C. and has convicted him accordingly.

Submissions:

3. I heard Shri Mandpe, learned Counsel for the appellant and Shri Laddhad, learned Assistant Public Prosecutor for the State.

4. According to learned Counsel Shri Mandpe, the Court below has committed mistake in convicting the appellant for the offence punishable under Section 304I of I.P.C. According to him, the learned Judge of the trial Court ought to have convicted the appellant for the offence punishable under Section 304II of I.P.C. Thus, according to him, on the touchstone of the prosecution evidence, the appellant was entitled to conviction for lessor offence and lessor punishment. The learned Counsel for the appellant has relied upon the judgment of this Court in the case of Monica @ Mona D'souza Vs. State of Goa, reported in **2009 (4) Mh.L.J.**

(Cri) 193. Alternatively, he submitted that even if this Court is of the view that the appellant is required to be convicted for the offence punishable under Section 304I of I.P.C., the quantum of sentence can be reduced by increasing the fine amount.

5. Per contra, learned Assistant Public Prosecutor for the State submitted that the learned trial Judge has taken a lenient view and has imposed lessor punishment than ordinarily awarded for the offence punishable under Section 304I of I.P.C. He further submitted that from the quality of evidence, it is crystal clear that the appellant was having intention to cause death of the deceased.

Consideration:

6. The presence of the appellant at the spot is not disputed. It is also not disputed that the appellant is author of the injuries appearing on the person of deceased Santosh. The dead body was sent for autopsy. Dr. Ashok Jadhav (P.W.4) is Autopsy Surgeon. On 30/7/2012 he was attached to Rural Hospital, Rajura. On that day, dead body of Santosh was brought to him for postmortem vide memo (Exh.24). The Autopsy Surgeon found following external antemortem injuries on the dead body.:

(1) Stab wound of size 2 cm x 1.5 cm x 4 cm deep with hematoma present with clotting blood on left chest on fourth intra-costal space on chest. Subcutaneous tissues were injured with hematoma present.

(2) Incised wound of size 6 cm x 2 cm x 3 cm deep on scalp left side on frontal region of scalp.

Incised wound of size 7 cm x 11/2 cm x 3 cm on scalp on temporal region of scalp.?

After the dead body was opened, he found following internal injuries.:

(1) Incised wound on left side on frontal region of scalp.

(2) Incised wound on left side of temporal region on scalp with hematoma present.

Skull of fracture on temporal bone on upper side of scalp. Brain matter was dura matter injured with brain congested. In thorax 4th rib left side injury with internal space with plural injury with hematoma present with black areas present.

In pleura “ Injury on pleura was present. Lyings, trachea and bronchi were intact. Right lungs congested. Left lung ruptures with bleeding with hematoma present with collection of fluid about 50 ml. Both chamber of heart were clotted, about 100 ml. blood was present.?

According to Autopsy Surgeon, the cause of death was injury to the vital organs i.e. lungs and brain with shock cardio respiratory arrest. The postmortem notes are proved by him. Those notes are at Exh.25.

7. From the evidence of the prosecution, it is clear that the appellant has not stopped by giving the blow on the chest but he continued to give more blows on the deceased when he sat down after receiving a blow on his chest. When he sat down, blows were given on his head. The evidence of Sangeeta (P.W.1) to that effect is well supported by the medical evidence. Further, the first information report is lodged immediately. Immediate lodging of the first information report rules out the possibility of false implication.

8. No doubt true that the incident has occurred in a spur of moment. There is no challenge to the evidence of Sangeeta that the appellant was vagabond. It is also clear that he was in a habit of spending money just for that. From the evidence of the prosecution, which remained unchallenged, after the initial verbal exchanges between the appellant and deceased, when the deceased gave a slap on the face of the appellant, the appellant went inside the house and thereafter brought a dagger. Though the witnesses have described the weapon as suri?, perusal of the weapon by this Court with the assistance of learned Counsel for the appellant as well as the learned Assistant Public Prosecutor, it is crystal clear that it is not a kitchen knife meant for cutting the vegetables. On the contrary, it shows that it can be used for chopping the mutton.

CONCLUSION

9. The intention can be gathered from the attending circumstances. The intention is mental process. It has to be gathered from the act of a person to which he had rather acted to the situation. In the present case, the deceased has given a slap to the appellant. The deceased was elder brother of the appellant. In order to give a word of advise, if a slap is given by a elder person, the younger may loose his temper. But, surely that should not give a cause to the younger sibling to finish his elder. Going inside the house and thereafter bringing dangerous weapon, in my view, is one of the factum by which the intention can be attributed to the appellant. Further, the nature of the injuries is one of the indicative of the intention. That shows the force which the appellant had used. If the appellant was not having any intention to cause murder of his elder brother, he would not have used such a force on the vital part of the body. Further, the appellant did not stop there after giving the chest blow. When the deceased sat down, the appellant continued to give the knife blows on the head of the deceased. If really, it was not the intention on the part of the appellant, the appellant would not have given the other blows. Thus, the appellant had taken undue advantage of the situation. In that view of the matter, I see no reason to disturb the findings recorded by the learned trial Court in awarding the conviction for the offence punishable under Section 304I of the Indian Penal Code.

Hence, the appeal is dismissed.

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