

Babu Vs. the State of Maharashtra

Babu Vs. the State of Maharashtra

SooperKanoon Citation : sooperkanoon.com/353929

Court : Mumbai

Decided On : Jan-22-1979

Reported in : 1980CriLJ378

Judge : Dharmadhikari and ;Kotwal, JJ.

Appellant : Babu

Respondent : The State of Maharashtra

Judgement :

Dharmadhikari, J.

1. This is an appeal .filed by original accused No. I Babu alias . Subhash Kalaskar against the judgment, of the learned Sessions Judge, Nanded dated. 3-12-1975 in Sessions Case No. 46 of 1975 convicting him for the offence punishable under Section 302 of the I. P. C. and sentencing him to suffer rigorous imprisonment for life.

2. The facts of the case are in a narrow compass. The deceased and accused No. 1 were cousin brothers and were living as neighbour On 27-4-1975 the accused persons who were two in number were flinging stones at the bullocks tethered in the cattle-shed of Rajabai (P. W. 3) mother of the deceased. At the same-time the accused were dumping stones into the cattle-shed. When the deceased Pandurang returned from outside, he admonished the accused for their action.

This rebuke enraged the accused so much so that they caught hold of Pandurang. Initially they dashed him two-three times against Tulsi platform in the court-yard facing the house of the accused or the floor near it. After this he was released but was caught again by accused No. 2. Accused No. 1 picked up a stick lying nearby and with it inflicted a severe blow on the head of the deceased Pandurang, who fell down and lost consciousness. Then the ladies raised a hue and cry. Pandurang was removed to the civil dispensary at Kandhar, Even before that the accused fled away. Rajabai (P. W. 3) went to the Police Station and lodged a report, vide Ex. 12. The offence was registered and the investigation was carried out. The Medical Officer, Kandhar found a lacerated wound on the scalp of the deceased. The surface underneath that injury indicated multiple fractures. He issued the certificate vide Exh. 7 and advised Pandurang's immediate removal to the General Hospital, Nanded. On 28-4-1975 the deceased was admitted to Nanded Hospital where he expired on 4-5-1975. During the course of the investigation the statements of the witnesses were recorded. The clothes from the persons of accused Nos. 1 and 2 were attached and ultimately they were prosecuted for the aforesaid charges. The defence of the accused was one of denial.

3. The prosecution mainly relies upon the evidence of Rajabai (P.W. 3), Satyabhamabai (P.W. 4) and Mahadu (P. W. 5) as well as the medical evidence on record. After appreciating all the evidence on record the learned Judge, found accused No. 1 Babu alias Subhash Kalaskar guilty of the offence under Section 302 of the I. P. C. whereas he found accused No. 2 guilty for the offence under Section 323 and under Section 323 read with Section 114 of I. P. C. As already observed only accused No. 1 has filed the present appeal against the judgment of conviction and sentence.

4. With the assistance of Mr. Bandiwadkar, learned Counsel appearing for the accused and Mr. Barday, learned Public Prosecutor, we have gone through the entire evidence on record. From the evidence of Rajabai (P. W. 3) it is quite clear that on the date of the incident the accused were pelting stones at the bullocks tethered in Kotha. The stones were huge ones. The deceased admonished them on his return. They initially caught hold of him and bodily dashed him thrice against

the floor of the Tulsi platform. The ladies begged of the accused to let him go. Then Babu - accused No. 1 pulled out a wooden post and with it struck the deceased Pandurang on his head with great force. This blow fell on Pandurang's head and he fell on the ground. Rajabai (P. W. 3) has stated how Pandurang was taken to the hospital and she also made a report to the police. Nothing useful has been brought out in her cross-examination to discredit her testimony. She has seen the incident from a very close proximity, that is barely 5 to 6 feet away. She finally admitted that after the deceased Pandurang fell down on the ground, the accused did not assault him again. The testimony of Rajabai gets substantial corroboration in the first information report lodged by her vide Exh. 12 as well as the medical evidence on record.

5. Satyabhamabai (P.W. 4) corroborates the testimony of Rajabai (P.W. 3). According to this witness also on his return the deceased Pandurang asked the accused persons not to dump stones in their Kotha as that would adversely affect them. At this the accused retorted. Then Pandurang said that he would not allow dumping of stones to continue as that will trouble their bullocks. Then Subhash, accused No. 1 caught hold of Pandurang's waist, Accused No. 2 Dadarao also caught hold of Pandurang and both of them dashed him against Tulsi platform and thereafter accused No. 1 was entreated to let the deceased go. However, accused No. 1 picked up a plough stick lying nearby while accused No. 2 had caught Pandurang and accused No. 1 struck him on the head. Though in the examination-in-chief this witness stated that three blows were inflicted by accused No. 1 on the head of the deceased Pandurang, in the cross-examination she practically admitted that only one blow was given.

6. The evidence of these two women witnesses gets substantial corroboration in the evidence of Mahadu (P. W. 5) who came to the spot immediately thereafter. In this view of the matter, in our opinion the learned Sessions Judge was right in accepting the testimony of these witnesses and then coming to the conclusion that accused No. 1 gave a stick blow on the head of the deceased, as a result of which he sustained an injury which was ultimately found by Dr. Subhedar (P.W. 2) in the post-mortem examination.

7. From the evidence of the Doctor it appears that there was only laceration of brain piece over frontal area, 3 1/4' x 1/2' on left side. According to the Doctor causing of the damage noticed by him was sufficient in the ordinary course of nature to lead to one's death and that the injury was ante-mortem. According to him the blow leading to the injury and internal damage must have been very severe and the victim must have become unconscious immediately. There was no chance of the victim regaining consciousness and surviving. He further opined that the internal damage noticed could have been the result of the single blow or more than one blow. However, from the evidence of Satyabhamabai (P.W. 4) it is clear that none of the wooden logs before the Court was the weapon with which the accused was struck on the head. Therefore, it is not possible to know as to what was the exact nature of the weapon. From the evidence on record it is also clear that before the deceased was assaulted with the stick, there was some exchange of words between the parties and thereafter accused No. 1 gave one blow, with the stick, which was lying there, to the deceased. If cumulative view of all these circumstances is taken into consideration, in our opinion, it cannot be said that the accused had intention to cause the death of the deceased or to cause such bodily injury, which in all probabilities, was likely to cause death of the deceased. The accused and the deceased were cousins. They were living in the neighbourhood. The assault took place after certain quarrels and incidentally after the deceased had rebuked the accused. However, having regard to the nature of the injuries as deposed to by the Doctor and the weapon as deposed to by Rajabai (P.W. 3), though not produced before the Court, it can safely be said that the accused had knowledge that by his act he was likely to cause death of the deceased or to cause such bodily injury as was likely to cause his death. Therefore, in our opinion, the conviction of the accused under Section 302 of the I. P. C. cannot be sustained. He can safely be convicted for an offence punishable under Section 304, 'Part II of the I. P. C.

8. On the question of sentence we have heard Mr. Bandiwadekar, learned Counsel for the accused and Mr. Bar-day, learned Public Prosecutor. It is contended by Mr. Barday that the accused and the deceased were cousins and the assault was not premeditated, but it took place on the spur of the moment because the deceased rebuked the accused. In our opinion, having regard to the

facts and circumstances of the present case the ends of justice will be met if the accused is sentenced to undergo rigorous imprisonment for five years for the offence punishable under Section 304, Part II of the I. P. C.

9. In the result, therefore, the appeal is partly allowed. The accused is acquitted of the offence punishable under Section 302 of the I. P. C. and his conviction and sentence in that behalf are set aside. However, the accused is convicted for the offence punishable under Section 304, Part II of the I. P. C. and is sentenced to undergo rigorous imprisonment for 5 years. It is needless to say that the accused will be entitled to the benefit of set off as contemplated by Section 428 of the Cr. P. C.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com