

Bhagwan Munjaji Pawade

Vs

State of Maharashtra

Criminal Appeal No. 492 of 1977

(Sarkaria, J. ) (Not in the list)

03.05.1978

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against a judgment, dated April 23, 1976, of the Bombay High Court, whereby the conviction of the appellant by the Additional Sessions Judge, Nanded, for an offence under Section 302, Penal Code, with a sentence of life imprisonment, was upheld.

2. The facts are as follows :

2A. Accused 1, 2 and 5 are the sons of accused 4, while accused 3 is the wife of Munjaji. They all resided in village Wadi Buzrug. The deceased Devidas had three brothers, namely, Purbha, Jaiwanta and Ananda. Baijabai (PW 8) is their mother. At the time of occurrence, Devidas and Ananda were living together, while his other brothers were residing separately. Baijabai was residing in a portion of the Wada, while the accused were residing in the other portion of the same Wada. There is a court-yard between these two portions of the Wada. According to the prosecution, there was long standing dispute between Baijabai and her sons on the one hand and the accused on the other with regard to the open land in front of their houses.

3. On October 7, 1972 at about 7.45 p.m. Shrimati Baijabai (PW 8) returned home the field. Her she-buffalow the vegetable creepers of Jaijabai. Accused 3 picked up a quarrel with Baijabai. Some sharp words were exchanged between these two women. At this juncture Tatyia accused 2, who was present at the door of his premises asked Baijabai to hold her tongue. He and accused 4 were carrying sticks while the appellant (accused 1) was armed with an axe. Just at this juncture Devidas deceased returned home. He questioned Tatyia, accused 2, why he was quarreling with his mother ? The appellant then suddenly surged ahead and gave three blows to Devidas two with the blunt side and one with the sharp side of the weapon on the head. Accused 2 and 4, also used their against the deceased. Ananda (PW 9) came to the rescue of his brother, but the appellant hit him with the axe while his companions assaulted him with sticks. The mother of the accused tried to intervene; the assailants dealt blows to her also. On receiving the blows dealt by the appellant, Devidas dropped dead at the spot. Ananda also fell unconscious. Baijabai also went into a swoon. The assailants then bolted away.

4. On the basis of the testimony rendered by the injured witnesses, namely Smt. Baijabai (PW 8), Ananda (PW 9) and Jaiwanta (PW 10), both the courts below have found the appellant guilty of murder.

5. Before us, Mrs. Sunanda Bhandare, learned Counsel for the appellant, has drawn out attention to the observation of the High Court which is to the effect that "it is clear from the medical evidence and other evidence discussed in the foregoing paragraphs that he (appellant) has far exceeded the limits of his right of private defence". On the basis of this observation, it is urged that the case of the appellant was covered by Exception 2 to Section 300, Penal Code. In the alternative, it is submitted that the circumstances disclose that the quarrel had erupted suddenly and that the injuries were inflicted by the appellant in the heat of passion without premeditation during a sudden fight, and, as such, he was entitled to the benefit of Exception 4 to Section 300. In either case - proceeds the argument - the offence committed by the appellant was one under Section 304, Part I, and not under Section 302, Penal Code.

6. We do not think much can be made out of the stray observation of the High Court 'that the appellant had far exceeded his right of private defence'. The circumstances of the case disclose that no right of private defence, either of person or of property, had ever accrued to the appellant. The deceased was unarmed. Exception 2 can have no application. It is true that some of the conditions for the applicability of Exception 4 to Section 300 exist here, but not all. The quarrel had broken out suddenly, but there was no sudden fight between the deceased and the appellant. 'Fight' postulates a bilateral transaction in which blows are exchanged. The deceased was unarmed. He deceased was unarmed. He did not cause any injury to the appellant or his companions. Furthermore, no less than three fatal injuries were inflicted by the appellant with an axe, which is a formidable weapon on the unarmed victim. Appellant, is therefore, not entitled to the benefit of Exception 4, either.

7. We, therefore, think that he has been rightly convicted under Section 302, Penal Code. The fact that the crime was unpremeditated, has been taken into account in mitigation of the sentence. We find no good ground to interfere with the conviction of the appellant.

8. The appeal is accordingly dismissed.

</html