SUPREME COURT OF INDIA

Ramkishan

Vs

State of Maharashtra

Crl.A.No.21 of 2007

(Arijit Pasayat and S. H. Kapadia, JJ)

08.01.2007

JUDGMENT

Dr.Arijit Pasayat, J.

S.L.P.(Crl.)No.2581 of 2006

1. Leave granted.

2. Appellant along with two others faced trial for alleged commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial court found each of the accused persons guilty and convicted each to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- each with default stipulation. The conviction and the sentence were challenged by the three accused persons in appeal before the Bombay High Court, Aurangabad Bench. By the impugned judgment the High Court set aside the conviction of the co-accused i.e. accused no.2 and accused no.3 before the trial court. However, the appeal filed by the appellant was dismissed.

3. Background facts in a nutshell are as follows:

4. The incident in question was alleged to have taken place on 22.01.2002. It was reported to Police Station, Newasa by Narsingh Mohan Gavane (PW-5) by his complaint (Exh-21). On this complaint, ASI Laxman Pawar (PW-10) registered an offence punishable under section 302 IPC vide CR No.17/02. Further investigation was conducted by Police Inspector Pandharinath Kedare (PW-11).

5. On 22.01.2002 between 2.30 to 3.00 pm near the field of accused no.1-appellant on the bank of Godavari river within the jurisdiction of village Galnimb, Mohan Gavane (hereinafter referred to as the 'deceased') along with his family members including his sons Narsing (PW-5), Devising (PW-6) and his wife Chandrabhaga (PW-9) was staying on the bank of river by erecting a hut. Accused persons whose land is also on the side of bank of river, had their farm house in their field. Deceased was mainly doing a business of fishing.

6. The deceased and his family members used to plant watermelons in the alluvial land. The accused claiming to be the owners of the said land used to take objection to the deceased and his family members and were giving threat to kill in case they cultivate that alluvial land. On the day of incident, Narsing (PW-5) had gone to the river to catch fish. His brother Devising (PW-6) had gone in the village on a cycle to fetch fertiliser. Their mother Chandrabhaga (PW-9) along with her daughter-in-law was looking after their watermelon crop and were busy in cutting grass. Deceased Mohan was taking his cattle towards the well. While he was proceeding from the field of accused persons, accused-appellant Ramkishan rushed towards him having an axe. His sons Sadashiv and Kakasaheb also rushed towards deceased while uttering abuses. That time, they were having swords in their hand. Deceased was caught hold by accused nos.2 and 3, who threw him down on the ground. Thereafter, accused no.1 inflicted a blow by axe on the head of the deceased. This incident was witnessed by Narsing (PW-5) as well as Chandrabhaga (PW-9) who were at some distance. They immediately rushed to the spot. Before their arrival, accused had left the spot and ran away. Devising (PW-6) who was coming towards the field had seen the accused who were running away from the spot. Deceased was unconscious. With the help of one Shivaji Mule, Narsing (PW-5) took deceased Mohan to the village and from the village, he carried him to a doctor at Salbatpur. However, on the way, deceased Mohan succumbed to the injuries and Dr. Praihad Nagargoje (PW7) declared him dead. Thereafter, complaint (Exh-21) was lodged and offence was registered.

7. On completion of investigation, the charge sheet was placed. In trial, each of the accused persons was found guilty, convicted and sentenced as aforesaid.

8. Before the High Court the stand taken by the accused was that the evidence of the so called eye witnesses clearly show that they are exaggerated, full of holes and do not depict a correct position of the factual scenario. The role of accused Nos. 2 and 3 was not established. In any event, the occurrence took place because of the fact that the deceased had encroached on the land of the accused-appellant and in spite of being told not to encroach upon his land, he repeatedly came upon the land and created disturbances. Further, a single blow was given and Section 302 IPC was ruled out. The High Court had found substance in the stand taken by the accused persons so far as the A2 and A3 are concerned, but found the evidence to be adequate so far as A1 is concerned. Accordingly, the appeal filed by the present appellant was dismissed.

9. The stand taken before the High Court was reiterated by learned counsel for the appellant before this Court. Additionally, it was submitted that a single blow was given, and there was no pre-meditation. In fact, when the accused found that the deceased was encroaching upon his land, who did not stop in spite of being told repeatedly not to do so, and did not pay any heed, and thereafter the blow was allegedly given. Since the High Court accepted that A2 and A3 had been falsely implicated, in essence, evidence which was discarded being exaggerated and untrustworthy, so far as the other accused persons are concerned, has been relied upon to convict the accused.

10. The assault undisputedly was given on the course of the sudden quarrel, without pre-mutation and without the accused taking any undue advantage.

11. Learned counsel for the respondent-State supported the judgment of the High Court. The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception

12. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In *Kikar Singh v. State of Rajasthan*[1] it was held that if the accused used deadly weapons against the unarmed man and struck a blow on the head it must be held that using the blows with the knowledge that they were likely to cause death, he had taken undue advantage.

13. The above position was highlighted by this Court in *Babulal Bhagwan Khandare and Anr. v. State of Maharashtra*[2] When the background facts are considered on the touchstone of

a legal principle as set out above, the inevitable conclusion is that the conviction needs to be altered to be one under Section 304 Part I IPC instead of 302 IPC as was held by the trial court and the High Court. Custodial sentence of 10 years would suffice. The appeal is allowed to the aforesaid extent.

[1]*(1993) 4 SCC 0238*
[2]*(2005) 10 SCC 0404*