

SUPREME COURT OF INDIA

Kallu @ Kalyan Atmaram Patil

Vs.

State of Maharashtra

Crl.A.No.1443 of 2008

(R. V. Raveendran and Lokeshwar Singh Pantia JJ.)

10.09.2008

JUDGMENT

Lokeshwar Singh Pantia, J.

1. Delay condoned.
2. Leave granted.
3. Appellant has filed this appeal against the judgment and order dated 23.02.2006 passed by a Division Bench of the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Appeal No.649/2004 confirming the conviction and sentence of imprisonment for life in respect of an offence punishable under Section 302 of the *Indian Penal Code* [for short 'IPC'] and a fine of Rs.500/- with a default stipulation of imprisonment for six months awarded by the learned Additional Sessions Judge, Amalner on 29.09.2004 in Sessions Case No.28/2000.
4. Brief facts, which led to the trial of the appellant, are as follows:

“Kallu @ Kalyan Atmaram Patil, appellant herein, along with 16 others were tried for the offences of rioting, murder of Shivaji Patil and causing grievous hurt to PW-12 Deepak on 31.12.1999 at about 7.47 p.m. The prosecution case was that on the day of the incident at village Mhasave one Vimalbai Patil was elected as a Sarpanch of the village. PW-12 Deepak Patil and his father Shivaji Patil were the supporters of Vishwas Pahelwan, whereas the appellant and other accused persons supported Vimalbai Patil. The prosecution alleged that the appellant along with 20 to 25 more persons armed with sticks and wooden rods proceeded towards the house of PW-12 Deepak. They asked PW-12 as to why he canvassed for the group of Vishwas Pahelwan in the Gram Panchayat Election. The accused persons allegedly inflicted sticks blows on the head and forehead of PW-12 Deepak and also gave beating to Shivaji Patil, who was standing on the platform of his house. The appellant alleged to have given stick blow on the head of Shivaji Patil, who as a result thereof fell down

and became unconscious. PW-13 Vithoba and PW-14 Sukdeo were also assaulted by the accused. On seeing the co-villagers coming on the scene of occurrence, the accused persons went away. Thereafter, PW-15 Arun Patil with the help of one Nimba and Vijay shifted PW-12 Deepak and his father Shivaji Patil to Cottage Hospital at Parola. After the first-aid treatment, PW-12 lodged complaint [Ext. 152], on the basis of which First Information Report bearing Crime No.210/1999 came to be registered against 17 accused persons under Sections 307, 143, 147, 148, 149 and 452 of IPC with the Parola Police Station. Shivaji Patil was shifted for medical treatment to Civil Hospital, Dhule. On 01.01.2000, Shivaji Patil succumbed to the injuries. On his death, the offence came to be converted to under Section 302 of IPC. In Civil Hospital at Dhule, Inquest panchnama [Ext. 118] came to be recorded in the presence of panch witness Vishwas Patil.”

5. PW-23 Dr. Avinash Ruikar conducted autopsy on the dead body of Shivaji Patil and noticed the following two external injuries:-

"[i] C.L.W. on right front parietal region 8.5 cm. x 1.4 cm. Scalp deep.

[ii] Abrasion on left arm medially upper 1/3rd 3.8 x 0.2 cm."

Both the injuries were found ante mortem. On internal examination, doctor noticed haemorrhage all over the skull. There was also a crack fracture of left parietal bone. As per the post mortem notes [Ext. 212], Dr. Avinash opined that the cause of death of the deceased Shivaji Patil was due to head injury.”

6. PW-19 Jagatrao Patil, Police Constable, prepared Panchnama [Ext. 171] of the clothes of the deceased. Spot Panchnama [Ext. 116] was recorded in the presence of PW-1 Hemant Patil. PW-22 P.I. Mahajan arrested the accused persons on different dates. At the instance of the appellant, sticks were discovered which were seized under Panchnama [Ext. 126]. The seized articles were sent to the Chemical Analyser. On receipt of the reports of chemical analysis [Exts. 200 and 211], charge sheet was filed against the appellant and 16 other accused persons in the Court of J.M.F.C. at Parola, who committed the case to the Court of Additional Sessions Judge at Amalner by order dated 31.03.2000.

7. The trial court found a prima facie case against the appellant and other accused persons under Sections 143, 147, 148, 452 and 302 read with Sections 149 and 324 read with Section 149 of IPC. All the accused pleaded not guilty to the charges and claimed to be tried. During trial of the case, the prosecution examined as many as 23 witnesses. The accused persons in their statements recorded under Section 313 of the Criminal Procedure Code pleaded that Pankaj Suryabhan Patil (accused No.7) was elected as Deputy Sarpanch, so the prosecution witnesses belonging to opposite group were annoyed and they had assaulted Suresh Suka, father of Ananda Suresh Patil (accused no. 1). The said incident was reported to the Police and crime was registered against prosecution witnesses and because of political rivalry, the accused have been falsely implicated in the case.

8. The learned trial Judge, on analysis of the entire oral and documentary evidence on record, held the appellant and five other accused persons guilty under Sections 148, 302, 325 read with Section 149 of IPC. They have been acquitted for the offences under Sections 452, 504 read with Section 149 of IPC. Other accused have been acquitted for all the charges.

9. Being aggrieved, the appellant and other accused persons filed three separate sets of appeals before the High Court.

10. The High Court acquitted the other accused for offence under Sections 148 and 302 read with Section 149 of IPC and convicted them for lesser offences. Criminal Appeal No.649 of 2004 filed by the appellant was partly allowed to the extent that his conviction under Sections 148, 325 read with Section 149 of IPC and Section 302 read with Section 149 of IPC is set aside and instead he is convicted under Section 302 IPC for murder of Shivaji Patil and aforesaid sentence has been imposed upon him.

11. Hence, the appellant has filed this appeal by special leave questioning the correctness and legality of the judgment of the High Court.

12. This Court on 21.01.2008 issued notice to the respondent-State limited to the question of sentence.

13. We have heard Mr. Naresh Kumar, Advocate for the appellant, and Mr. Ravindra Keshavrao Adsure, Advocate for the respondent-State and with their assistance examined the material on record.

14. On scrutiny of the oral evidence of PW-12 Deepak, it stands proved that the appellant has inflicted single stick blow on the head of Shivaji Patil which proved to be fatal. The second injury found on the person of the deceased by Dr. Avinash was in the nature of abrasion on left arm. The other eyewitnesses including the injured witnesses have not supported the prosecution case. The evidence of PW-12 Deepak is not sufficient to establish that the appellant inflicted fatal injury on the head of the deceased with an intention to cause his death or with a knowledge that the injury so inflicted shall cause the death of the deceased in the ordinary course of nature. It is also found from the evidence of PW-12 that no other injury was caused by the appellant to the deceased after he became unconscious. The ocular evidence of PW-12 Deepak corroborated by the medical evidence, in our opinion, would prove that the offence committed by the appellant fell under Section 304 Part-I of IPC and not under Section 302 of IPC. We, accordingly, convict the appellant under Section 304 Part-I, IPC, for causing the death of Shivaji Patil and sentence him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.500/-. In default of payment of fine, the appellant shall undergo simple imprisonment for one month.

15. In the result, for the afore-said reasons, this appeal is partly allowed to the extent of holding the appellant guilty of the offence punishable under Section 304 Part-I, IPC, and imposing the aforesaid sentence upon him. The judgment and order of the High Court

confirming the conviction of the appellant under Section 302, IPC, and sentencing him to undergo imprisonment for life shall stand modified to the extent indicated hereinabove.