

SUPREME COURT OF INDIA

Ramchandra Dhondiba Kaware

Vs.

State of Maharashtra

SLP (Crl.) No.5369 of 2008

(Dr. Arijit Pasayat and Asok Kumar Ganguly)

27.01.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court dismissing the appeal filed by the appellant. Learned 2nd Additional Sessions Judge, Sangli, had convicted the appellant for offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC') and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- with default stipulation.
3. Prosecution version in a nutshell is as follows:

“The accused-appellant and one Shivaji Baba Lohar who was working with Keru (hereinafter referred to as the `deceased') were on inimical terms. Shivaji's sister was married to the accused. The accused had borrowed money from Shivaji which he had not returned. The accused used to visit Shivaji in the field owned by the deceased. Keru and his family knew the accused and would often give him agricultural produce from their lands since the accused was jobless. Shivaji demanded repayment of the loan he had advanced to the accused. The accused was annoyed by this and on 3.6.2000 he went to Keru's farm. Keru was asleep at a little distance from the rest of the members of his family. Shivaji was sleeping at another spot on the farm, a little further away from the family. The accused entered the farm before daybreak, at about 3 am. The dogs started barking and Maruti, the son of the deceased saw the accused beating the victim with a yoke. Maruti alerted Shivaji and they chased the accused, but he managed to escape their clutches. Maruti and Shivaji returned to the spot where the victim was lying. They found that his skull had been fractured and a part of his brain was protruding. Three fingers of his right hand were fractured and broken. His head and ears were bleeding. Maruti lodged a complaint with the police. The dead body of Keru was taken for the autopsy. The required panchamas were drawn up

and statements of witnesses were recorded. The accused was apprehended and charged for having committed an offence punishable under section, 302 IPC. His trial was committed to Sessions. The Sessions Court after consideration of the evidence on record as noted above convicted the accused.

Before the High Court the only stand was that the evidence of the so called eye witnesses PWs 1 and 4 cannot be relied upon. It was also submitted that a case under Section 302 IPC was not made out. The High Court found no substance in the plea and dismissed the appeal as afore- noted.”

4. The stand taken before the High Court was re-iterated in the present appeal.

5. The evidence of PWs 1 and 4 does not suffer from any infirmity. PW- 1 has categorically stated that he was awakened by the barking of dogs. He heard the sound of somebody being beaten. He saw the incident in the light from a lantern when the accused was hitting his father on the head with a yoke. The witness claimed to have chased the accused but could not catch him. The evidence of PW-4, the widow was to the similar effect. Both the trial Court and the High Court have referred to the evidence in great detail and found that their evidence is credible and cogent and unerringly points at the accused to be author of the crime. The other question is regarding applicability of Section 302 IPC. It appears that the accused and the deceased were in inimical terms. Only one blow was given with the yoke in the night. PW-4 has categorically admitted that it was dark, but he identified the accused because he was known to him. Number of injuries is always not a determinative factor regarding applicability of Section 302 IPC. The nature of the weapon, place where it was struck and several other relevant factors throw light on this aspect. Considering the background facts of the present case according to us the appropriate conviction would be under Section 304 Part I IPC. Custodial sentence of 10 years would meet the ends of justice.

6. The appeal is allowed to the aforesaid extent.