

SUPREME COURT OF INDIA

A. Kadar Mujawar

Vs.

State of Maharashtra

Crl.A.No.327 of 2005

(H. S. Bedi and Chandramauli Kumar Prasad JJ.)

19.10.2010

ORDER

1. Altogether six persons were put on trial for commission of offence under Section 147, 148, 302/149, 302/34 and 324/149 of the Indian Penal Code. The Trial Court held them guilty for the offence under Section 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life. They were also held guilty under Section 324/34 of the Indian Penal Code but no separate sentence was awarded. However, they have been acquitted of all other charges.

2. Aggrieved by the conviction they preferred Criminal Appeal No. 137 of 1988 and the Bombay High Court by its judgment and order dated 15th July, 2004, set aside the conviction and sentence of all the Appellants excepting Appellant before us. His conviction under Sections 302 has been upheld. However, his conviction under Sections 324 read with 34 of the Indian Penal Code has been set aside.

3. Appellant aggrieved by his conviction and sentence has preferred this appeal by leave of the Court.

4. According to the prosecution the deceased Raghunath purchased a piece of land from Rahimatabi by a registered sale deed and came in possession of the land. Deceased Raghunath wanted to cultivate the purchased land but was obstructed by all the accused and they were claiming to be the owners of the land purchased by Raghunath. On 5/3/1986 while PW.7 Laxman was ploughing the field, accused No. 1, who was grazing cattle near by, came there and obstructed the same. Thereafter, accused Nos. 2 and 3 also came there. Accused No. 3 is the Appellant before us. Accused No. 2 was armed with a stone whereas the Appellant was armed with yoke pin. The accused accosted the deceased as to why he is ploughing the field, he replied that he had purchased the land from Rahimatabi and then asked his servant to continue with the ploughing work. Thereafter, accused Nos. 1 and 2 pelted stones causing injury on the head of the deceased. Sustaining the injuries, the deceased fell down, whereupon the Appellant attacked the deceased with yoke pin.

5. The Trial Court on appreciation of evidence came to the conclusion that accused had acted in the right of the private defence but they inflicted more harm necessary for the purpose of defence and accordingly convicted all the accused as above. However, in appeal the High Court set aside the conviction of all the accused persons excepting the Appellant herein and his conviction under Section 302 has been maintained. To put the record straight, though the High Court had sustained the conviction of the Appellant under Section 302 of the Indian Penal Code, but in fact he was convicted by the Trial Court under Section 302/34 of the Indian Penal Code. It is relevant to state that PW.13-Dr. Arvind Khiste, the Autopsy Surgeon, had found altogether twelve injuries on the person of the deceased and in his opinion the cause of death was shock and hemorrhage due to fracture of skull and laceration of brain. Those injuries are as follows:

“1. Contused lacerated wound at centre of occipital region bone deep 20 x 10 cms. fracture of bone vertex into multiple pieces and laceration of brain;

2. Contused lacerated wound at centre of vertex 4x2 cms. bone deep, fracture of skull with laceration of brain;

3. Contused lacerated wound on right parital region behind right ear, bone deep 7x5 cms, fracture of right parietal region;

4. Contused lacerated wound 2x2 cms near to occipital region at face bone deep.”

6. Mr. Nitin Sangra, the learned Counsel for the Appellant submits that even if the entire prosecution story is accepted to be true the Appellant cannot be held guilty of offence under Section 302 of the Indian Penal Code. He submits that according to the prosecution itself the stone pelted by other accused caused injuries on the head of the deceased and therefore for conviction of the Appellant under Section 302 of the Indian Penal code the prosecution is required to prove that the Appellant was the author of the fatal injury.

7. Mr. Sushil Karanjakar, the learned Counsel appearing on behalf of the State however submits that in the facts of the present case the High Court rightly held the Appellant guilty under Section 302 of the Indian Penal Code.

8. We have bestowed our consideration to the rival submissions and we find substance in the submission of the counsel for the Appellant. It is worth mentioning here that the Appellant has been held guilty for offence under Section 302 of the Indian Penal Code simplicitor. In order to maintain conviction under Section 302 of the Indian Penal Code the prosecution has to establish that it was the Appellant who was the author of the fatal injuries. According to the prosecution itself injuries Nos. 1 to 4, which is the cause of death have not been attributed to the Appellant alone but were attributed to the other accused persons including the Appellant. According to the prosecution itself accused Nos. 1 and 2 pelted stones aiming at the head of the deceased, which hit him on the head and he fell down. Thereafter this

Appellant had assaulted him with yoke pin. It is not the case of the prosecution that injuries Nos. 1 to 4, which were the cause of death were inflicted by the Appellant or for that matter injury caused by the Appellant led to the death of the deceased.

9. In view of the aforesaid, we are of the opinion that conviction of the Appellant under Section 302 of the Indian Penal Code simplicitor is not fit to be sustained.

10. Accordingly, this appeal is allowed, the judgment and order of conviction and sentence is set aside and the Appellant is acquitted of the charge. The Appellant is on bail, his bail bonds stand discharged.