

Vijay Ramkrishan Gaikwad

v.

State of Maharashtra & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE GYAN SUDHA MISRA

Criminal Appeal No. 102 Of 2012 | 02-02-2012

1. Leave granted.

2. This appeal arises out of an order passed by the High Court of Bombay at Aurangabad whereby Criminal Appeal No.290 of 2008, filed by the appellant has been dismissed (Vijay Ramkrushna Gaikwad v. State of Maharashtra, Criminal Appeal No.290 of 2008, decided on 11-3-2010 (Bom)), the appellant's conviction under Section 302 of the Penal Code, 1860 and the sentence of life imprisonment with a fine of Rs 20,000 awarded to him was upheld. In default of payment of fine the appellant has been sentenced to undergo rigorous imprisonment for a further period of four months.

3. The prosecution case, in brief, is as under: the deceased, Utkarsha Barku Pawar, was a resident of Swami Narayan Colony near Priti Sudhaji High School, Dhule. On 8-9-2007, at about 6.30 p.m. the appellant along with four others is alleged to have come to the front of the house of Kamalabai (PW 6), mother of the deceased and called out for the deceased. In response the deceased appears to have stepped out of the house along with his brother, Gaurav (PW 8). The prosecution case is that when the duo came out of their house the appellant and others accompanying him started abusing the deceased and his brother. The exchange led to a scuffle between the deceased and his brother on the one side and the appellant and his four companions on the other. It is in the course of this scuffle that the appellant appears to have taken out a knife, stabbed and grievously injured the deceased Utkarsha Barku Pawar. The deceased was rushed to the hospital where he died, while the appellant was nabbed at some distance from the spot after a brief chase by others who were present on the spot. In the hospital, the statement of Smt Kamalabai (PW 6) was recorded by PSI Mahire (PW 11), in which she narrated the sequence of events leading to the occurrence. FIR No.178 of 2007 was on that basis registered in Police Station Azad Nagar for offences punishable under Section 302 read with Section 34 IPC.

4. The police completed the investigation and filed a charge-sheet against the appellant and his companions for commission of murder of the deceased punishable under Section 302 read with Section 34 IPC. On the basis of the evidence adduced before it, the trial court found the presence of Accused 2 to 5 at the place of incident to be doubtful, hence acquitted them of the

charges framed against them. Significantly enough, the first information report did not mention the names of the companions of the appellant who were subsequently roped in on the basis of a supplementary statement made by Kamalabai (PW 6). The appellant was, however, found guilty of murder and sentenced to undergo imprisonment for life and a fine of Rs 20,000 and in default of payment of fine to undergo rigorous imprisonment for a further period of four months, as already mentioned. Aggrieved by the conviction and sentence, the appellant appealed to the High Court of Bombay at Aurangabad Bench. The High Court has by the impugned judgment and order (*Vijay Ramkrishna Gaikwad v. State of Maharashtra*, Criminal Appeal No.290 of 2008, decided on 11-3-2010 (Bom)), dismissed the said appeal and affirmed the view taken by the trial court.

5. When the matter first came up before this Court on 17-9-2010, this Court issued (*Vijay Ramkrishan Gaikwad v. State of Maharashtra*, SLP (Cri) No.5777 of 2010, order dated 17-9-2010 (SC) wherein it was directed: "Issue notice restricted to the nature of offence."), notice to the respondent, restricted to the question of nature of offence committed by the appellant. The limited issue on which the learned counsel for the parties therefore made their submissions was whether the fact situation, in the present case, discloses the commission of an offence punishable under Section 302 IPC. Certain features which have persuaded us to hold that the facts do not make out a case of murder punishable under Section 302 IPC may be summarised at this stage.

6. The first and foremost of the circumstances is that the incident in question was not premeditated. The evidence on record establishes that the appellant was provoked by certain accusations made against him by the deceased. It is common ground that the appellant as also family of the deceased were engaged in the business of breeding pigs. The deceased it appears had accused the appellant of being a thief stealing pigs. That being the genesis of the incident all that the appellant perhaps intended when he came in front of his house was to question him about the accusations made by him. It is also evident from the depositions of Kamalabai (PW 6) and Gaurav (PW 8) that on account of the abuses hurled by the two groups a scuffle had started between the deceased and his brother on the one hand and the appellant and his companions on the other. It is further seen from the evidence on record that Kamalabai (PW 6) and her brother, Bhura Natthu Vadar (PW 7) came out of the house with a view to separate the two groups, and that it was in the course of the scuffle that the appellant inflicted a knife-blow to the deceased. Apart from one injury on the body of the deceased sustained in the course of the scuffle, even the appellant received an injury on his three fingers is a fact duly certified by Dr Sushant Mahale (PW 2).

7. The occurrence thus has the features of an incident in which an injury is inflicted in a sudden fight without premeditation in the heat of passion upon a sudden quarrel within the contemplation of Exception 4 to Section 300 IPC, which takes the case out of the purview of murder as defined in the said section. It is true that only one injury was caused to the deceased but the same is not conclusive by itself, for even a single injury can in a given case constitute murder, having regard to the weapon used and the part of the body chosen for

inflicting the injury. The legal position in this regard is well settled by the decision of this Court in *Bavisetti Kameswara Rao v. State of A.P* ((2008) 15 SCC 725: (2009) 3 SCC (Cri) 1175): (SCC pp. 729-31, paras 13 & 16)

“13. It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the learned counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

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16. In the present case we do not have any reason to take any different view of the matter. Here was the case where a long screwdriver having a sharp end was plunged into the abdomen of the deceased with such savage force that it caused injury which was 12 cm deep cutting liver and spleen. This is apart from the fact that the deceased also suffered other injuries. The deceased was unarmed and there was a heated exchange of words before the incident. After the incident also the deceased was chased. Therefore, we find that this is not the case where conviction could be for the offence committed under Section 304 Part II IPC.”

8. Having said that and keeping in view the fact that the appellant used a knife and chose the abdomen of the deceased for inflicting the injury as also keeping in view the nature of the injury itself which was sufficient in the ordinary course to cause death, it is a case that would squarely fall within Part I of Section 304 IPC. We may in this regard refer to the following passage from the decision of this Court in *Jai Prakash v. State (Delhi Admn.)* ((1991) 2 SCC 32: 1991 SCC (Cri) 299): (SCC p.43, para 13)

“13. ... when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are

such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in Virsa Singh case (Virsa Singh v. State of Punjab, AIR 1958 SC 465: 1958 Cri LJ 818) the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused. In some cases, an explanation may be there by the accused like exercise of right of private defence or the circumstances also may indicate the same. Likewise there may be circumstances in some cases which attract the first exception. In such cases different considerations arise and the court has to decide whether the accused is entitled to the benefit of the exception, though the prosecution established that one or the other clauses of Section 300 IPC is attracted.”

9. We accordingly allow this appeal in part, set aside the conviction of the appellant for the offence punishable for murder under Section 302 IPC and convict the appellant for culpable homicide not amounting to murder punishable under Section 304 Part I IPC and sentence him to undergo rigorous imprisonment for ten years. The fine of Rs 20,000 and sentence in default of payment of fine awarded to the appellant shall remain unaltered.

10. With these observations, the appeal is disposed of.