

SUPREME COURT OF INDIA

Sunil Khergade

Vs.

State of Maharashtra

Crl.A.No.812 of 2008

(Kurian Joseph and Adarsh Kumar Goel,JJ.,)

13.08.2015

JUDGMENT

Kurian Joseph,J.,

1. The appellant along with his younger brother was convicted under Section 302 read with Section 34 of the Indian Penal Code (45 of 1860) (hereinafter referred to as ' I PC') and sentenced to undergo life imprisonment by the Court of 2nd Additional Sessions Judge, Nagpur. They were also sentenced to pay a fine of Rs.300/- each, a default sentence of two months. .

2. In appeal before the High Court of Judicature Bombay, Nagpur Bench, the High Court declined to interfere with the conviction and sentence, and hence, the present appeal.

3. The appellant's younger brother-Sanjay had also filed a Special Leave Petition before this Court as Special Leave Petition (Criminal) No. 7667 of 2007. Since he had not surrendered, as required under the Rules, the Special Leave Petition filed by him was dismissed by Order dated 02.05.2008.

4. The incident took place on 12.02.1999 between 07.00 A.M. and 08.00 A.M. The deceased had returned to the village only in the morning of that day, around the time of the incident. There was a quarrel between the families who were sharing common open space. The genesis of the quarrel was with regard to the conduct of wife of the deceased who allegedly threw night soil in the open space. They had picked up such quarrel earlier also. It has come in evidence that the co-accused was armed with crowbar and he had held the hands of the deceased and made him lie on the ground, at which time the appellant fetched a knife and inflicted the fatal injury on the left side of the chest. The following are the injuries:

"1. Stab wound in left mammary area medial to nipple 2 cm x 1cm x 5" directed upward forward and medially.

2. Abrasion on chest wall left side above the stab wound 4 x cm.

3. Incised wound on back left sides 5 cm x cm and akin deep tapering laterally."

5. The trial court mainly relied on the evidence of PW-1-father of the deceased, PW-2-wife of the deceased and PW-7-mother of the deceased. There was no evidence for the defense. In the Statement under Section 313 of The Code of Criminal Procedure, 1973, the appellant explained the injury as having been caused when the deceased fell on the bamboo fences amidst the scuffle. However, it was contended before the trial court that appellant inflicted the injury on the deceased in exercise of his private defence and the protection under Section 97 of IPC was canvassed. That contention was turned down in view of the overwhelming evidence that the deceased was wholly unarmed and the other members of the family were also unarmed. It was then contended that the act of stabbing was on account of grave and sudden provocation and that the act was done without any intention to cause death or to cause such bodily injury as is likely to cause death and hence canvassed for the benefit of Section 304 Part II of IPC.

6. The trial court, however, having regard to the evidence of PWs-1, 2 and 7, who were also injured witnesses, and taking note of the nature and manner of the commission of the crime, convicted the appellant and his brother under Section 302 read with Section 34 of IPC. However, on evidence, taking note of the young age of the accused and on reaching the conclusion that it is not a case of rarest of the rare cases, the appellant was sentenced to suffer imprisonment for life. The trial court found that accused no.1-Sanjay (younger brother of the appellant) had caught hold of the deceased, made him lie on the ground and the appellant brought knife from the house and inflicted a stab injury on the chest of the deceased.

7. In appeal, having analysed the evidence at length, the High Court was not inclined to take a different view.

8. Learned Counsel for the appellant mainly stressed for the conviction to be altered to Section 304 Part II of IPC. Even otherwise, private defence under Section 97 of IPC and the benefit under exception to Section 300 of IPC will not go together.

9. It is submitted that there was only one injury that is mentioned in the First Information Report, and with that, it cannot be held that the appellant committed murder. The First Information Report need not necessarily contain each and every particular injury sustained by the deceased. It needs to contain only some information about the crime and some information about the manner in which the offence has been committed. It is not required to contain the minute details of the whole crime. (*See Patai alias Krishna Kumar v. State of Uttar Pradesh* ¹). In the instant case, the First Information Report was prepared on the basis of the statement given by PW-1-father of the deceased. To him, it is not the number of injuries sustained what mattered but the death resulting from the stab injury. It has also come in evidence that the deceased had been inflicted with three injuries by the appellant and the fatal injury is the one which pierced the heart of the deceased.

10. Learned Counsel for the appellant, placing reliance on *Salim Sahab v. State of M.P.*², prayed for alteration of the conviction from Section 302 of IPC to Section 304 Part II of IPC. Reference is also invited to *Mohd. Ismail alias Haji Abdul Kadar Sheikh v. State of Gujarat*³. *Salim Sahab* (supra) is a case where the Court, having discussed the factual scenario, came to the conclusion that "... during a quarrel between the deceased and the accused, they were grappling and during that quarrel, the accused attacked the deceased with a pair of scissors. It was not a very big-sized weapon though it was certainly having a sharp-edged point". In that view of the matter, the conviction was altered to Section 304 Part-II of IPC. *Mohd. Shakeel v. State of A.P.*⁴ is also one where the conviction is altered from Section 302 of IPC to Section 304 Part II of IPC. It is a case of only one injury and the accused also suffering injury during the scuffle. The situation in the case of the appellant is totally different. It has been established in evidence that the deceased and the other members of the family were wholly unarmed, the deceased had come to his village only in the morning of the fatal day, the appellant and his younger brother, who is the co-accused, both were in possession of arms, the appellant had fetched the knife (Article-15) which had a wooden handle and 17 centimeter long blade portion with which the fatal injury was caused on the left side of the chest of the deceased. It is a situation where the appellant has taken undue advantage of the situation as held by this Court in *Babulal Bhagwan Khandare and another v. State of Maharashtra*⁵. Therefore, it is not a case where the appellant is entitled to alteration of sentence from Section 302 of IPC to Section 304 Part II of IPC.

11. There is no merit in the appeal, hence, it is dismissed.

Judgment Referred.

¹ (2010) 4 SCC 0429

² (2007) 1 SCC 0699

³ (2007) 3 SCC 0118

⁴ (2007) 3 SCC 0119

⁵ (2005) 10 SCC 0404