Laxman Kalu Nikalje vs The State Of Maharashtra on 5 April, 1968

Equivalent citations: 1968 AIR 1390, 1968 SCR (3) 685, AIR 1968 SUPREME COURT 1390, 1968 2 SCWR 557

Author: M. Hidayatullah

Bench: M. Hidayatullah, C.A. Vaidyialingam, A.N. Grover

PETITIONER:
LAXMAN KALU NIKALJE

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT:
05/04/1968

BENCH:
HIDAYATULLAH, M. (CJ)
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VAIDYIALINGAM, C.A.
GROVER, A.N.

CITATION:
1968 AIR 1390 1968 SCR (3) 685
CITATOR INFO :
R 1971 SC 953 (8)
RF 1971 SC1977 (11)
R 1972 SC 622 (33)
RF 1973 SC 460 (17,20)
R 1981 SC1441 (3)
R 1981 SC1552 (11,12)

ACT:
Indian Penal Code, (45 of 1860) ss. 299 and 300-Scope of-

HEADNOTE:
When appellant and his wife's brother-the decreased, were quarrelling about the time of his wife's going with him, the appellant whipped out a knife and gave one blow to the deceased, by which an injury on the right side of the chest

penetrating 4" deep into the chest cavity was caused, resulting in death. The appellant was convicted under s. 302 IPC.

HELD : The case fell within the third part of s. 299 IPC and was punishable under the second part of s. 304 IPC as culpable homicide not amounting to murder.

Though the injury was serious, it did not penetrate the lung. Death was caused mainly because it cut the axiliary artery and veins and caused shock and haemorrhage leading to death. The quarrel was not such as would have prompted the appellant to make a homicidal attack.

Thirdly of s. 300 requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts; the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was 'sufficient in the ordinary course of nature to cause death. The first part was complied with because the injury which was intended to be caused was the one which was found on the person of the deceased. But the second part was not fulfilled, because but for the fact that the injury caused the severing of artery, death might not have ensued. In other words, looking at the matter objectively, the injury which the appellant intended to cause did not include specifically the cutting of the artery but to wound the deceased in the neighbourhood of the clavicle. Therefore, thirdly of s. 300 did not cover the case. Inasmuch as death had been caused,, the matter came within at least culpable homicide not amounting to murder. There again, s. 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. The appellant did not intend causing death and the first part of s. 299 did not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also was not the intention of appellant. The matter therefore came within the third part. The act was done with the knowledge that the appellant was likely by such act to cause the death of the deceased. [690 E-691 C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1 of 1966.

Appeal by special leave from the judgment and order dated March 19, 1964, of the Bombay High Court in Criminal Appeal No. 257 of 1963.

M. R. K. Pillai, for the appellant.

D. P. Bhandari and S. P. Nayar, for the respondent. The Judgment of the, Court was delivered by Hidayatullah C. J. This is an appeal from the judgment of the High Court of Bombay setting aside the acquittal of the appellant Laxman Kalu Nikalje and convicting him under s. 302 with a sentence of imprisonment for life. The facts of the case are as follows This Laxman was married to Shantabai (P.W. 3) who is the daughter of one Bhika Ganpat Nikam (P.W. 2) a Railway employee working at a Railway crossing at Gartad District Dhullia. This crossing is situated on the Dhulia-Chalisgaon Railway line. Bhika was, residing in one of the quarters intended for such people near the Railway crossing with his wife Gangubai, his sons Ramrao, Laxman and Bharat. Shantabai was married some five years before the occurrence and lived with her husband, Laxman at Ganeshpur Pimpri in Taluka Chalisgaon.

Some days before Nag Panchami of the year 1962 Shantabai was brought to her parent's place. She stayed with them till the 10th August 1962. Laxman wanted his wife back and arrived at Gartad to take her away to his own house. Bhika put in some excuses saying that he had no money and he could only send his daughter back after he gets his. pay on the 21st or the 22nd. The excuse given by Bhika and his wife Gangubai was that they could not let the girl go without giving her some. presents and that money was needed for the purchase of these presents. However, as Laxman insisted on taking his wife away immediately, a sum of Rs. 10 was borrowed. It is said in one place that money was borrowed from one Tarachand and in another, from Laxman himself. Gangubai in the, company of Shantabai went to Dhulia to make some. purchases and returned ,on August 10 in the afternoon. It appears that a train was then due and Laxman is said to have insisted that his wife should go with him by that train. The parents, however, said that it was not auspicious to send the girl at night and that they could in the morning. It does not appear that any quarrel over the took. Whether Laxman was reconciled to this suggestion or was still angry is not known. In the evening at about 7 P.m. Laxman was sitting with Shantabai and Ramrao outside the quarter and Bhika was chopping some fuel at the back of the hut, Kamlabai (the widow of Ramrao), Gangubai, Bharat and Laxman were inside the room. According to Shantabai, Ramrao and Laxman had a few words and on that Laxman took out a knife and stabbed Ramarao on the shoulder and ran away. Ramrao shouted and so did Shantabai; Bhika and others arrived on the scene. They carried Ramrao, on a cot to, the Railway Crossing and when the train arrived, it was stopped by showing the danger signal. Ramrao was placed on the train and left on the train accompanied by Bhika, Gangubai and Kamlabai. On the train' Bhika told the Guard that his son-in-law had stabbed the injured man. The, Railway guard noted this fact in his log book. Ramrao was carried to the Dhulia hospital and was found to have died before his entry in the hospital. A report of the incident was then also made, in which the name of Laxman was mentioned as the assailant.

The" police, after investigation, prosecuted Laxman. On be- half of the prosecution, Shantabai was the main witness and in fact the only eye-witness. Gangubai and Bhika did not claim to have seen the actual happening. On behalf of the defence, Kamlabai, the wide of Ramrao was, examined and it is, because of the -contrary versions of these two, ladies that the conflicting decisions in Court and the Court of Sessions have taken place. - According to Shantabai it was her husband who had in flicted the injury. According to Kamlabai the injury was caused by one Kacharu, a son of Bhika who

has been missing from home for over 15 years and who had arrived and quarrelled with Ramrao and assaulted him. In support of the defence evidence of Kamlabai, three other witnesses were examined. One was C. Ananda Patil, M.P. who stated that his jeep had stopped near the level crossing because the gates were shut and the, train was due. He heard shouts from the quarter of Bhika and went there and enquired what had happened and he was told that, the "elder brother had stabbed the younger brother". In other words, his evidence was to the effect that it was Kacharu the elder missing brother of Ramrao who, had stabbed the victim. Two other witnesses who are railway employees also came forward to depose that after this incident they had met Kacharu and that Kacharu had threatened them and told them that he would cause them injury asking them about "circumstances of his family". These two persons made a report to their superior officer and in that it is mentioned that on the 10th, 11th and 13th August they had seen Kacharu. Kamlabai also made two written reports to the D.S.P. on the 26th and 27th August alleging that an innocent, person was being prosecuted instead of the right offender, namely, Kacharu. She adhered to her story in the Court of Sessions and said that these reports were prepared to, her dictation. The learned Sessions Judge who tried the case did not accept Shantabai's evidence in view of two or three contradictions which were brought out in her cross-examination on the basis of her previous statement in the committal court. He thought that in all the circumstances Kamlabai's version appeared to be the more probable, supported as it was by the evidence of Ananda Patil and the other two railway employees to whom we have referred. On appeal the High Court went into this question exhaustively. The learned Judges discussed the matter both from the point of view of actual evidence led in the case and also probabilities. The learned Judges discarded the evidence of Kamlabai holding that she was interested in saving Laxman, the appellant, because he was related in a distant way with her. They felt that there was no reason for Shantabai to have deposed against her own husband and the suggestion made in the Ses- sions Court that Shantabai wanted to get rid of her husband because he was a cripple and was ill-treating her had no substance in fact.

We have had the evidence of these two ladies read to us and also the judgments of the High Court and the Court of Sessions. We think that on a proper appraisal of all the circumstances of the case the view expounded by the High Court is to be preferred. We may say here that it is now the settled law that the powers of the High Court in an appeal against the acquittal are not different from the powers of the same court in hearing an appeal against a conviction. The High Court in dealing with such an appeal can go into all questions of fact and law and reach its own conclusions on evidence provided it pays due regard to the fact that the matter had been before the Court of Sessions and the Sessions Judge had the chance and opportunity of seeing the witnesses depose to the facts. Further the High Court in reversing the judgment of the Sessions Judge must pay due regard to all the reasons, given by the Sessions Judge for disbelieving a particular witness and must attempt to dispel those reasons effectively before taking a contrary view of the matter. It may also be pointed out that an accused starts with a presumption of innocence when he is put up for trial and his acquittal in no sense weakens that presumption, and this presumption must also receive adequate consideration from the High Court.

We have borne all these principles in mind and we think that the High Court was also alive to, them, because the High Court has considered the matter in a closely reasoned judgment in which it has taken into account every single reason given by the Sessions Judge in reaching the conclusion that

Shantabai's version was to be preferred and the evidence of Kamlabai to be rejected. If the evidence which has come before the High Court in support of Kamlabai's version had existed before the incident took place, it would have been a significant but not conclusive fact. It is, however, clear that these persons speak to have seen Kacharu after the incident and not before. Only one witness said that he was living for five months with his parents. It is. significant that the father and the mother were not closely questioned about Kacharu living with them for as many as five months. That apart, if Kacharu had been living in the village for as many as five months, much more evidence would have been available, to prove the fact. The evidence which has, been brought before the Court is of his doings on the 10th and after the 10th of August and there is nothing to show that there was any other thing he had done in the village before. The fact is that he had disappeared from home as many as 15 years ago and it is unlikely that he would have appeared just at the crucial time when Laxman had gone to fetch his wife and had a difference of opinion as to; whether she should go by the evening train or the morning train. In our opinion advantage was taken of the fact that Kacharu had disappeared from home. There was no risk in naming him as the assailant with a view to saving Laxman from the charge, which was immediately brought against him not only by his father-in-law but also by his own wife and was reported to, the guard on the Railway train

-and also stated in the report to the Police made immediately afterwards. Kamlabai seems to have delayed making her statement to the Police and there is nothing to. show on the record of the case that she ever named Kacharu as the real assailant to the Police. It is unfortunate that our law does not admit of cross-examination of such a witness in respect of statements before the Police. We endorse the action of the Sessions Judge in excluding reference to this statement in the Sessions trial. The fact thus remains that the evidence did not disclose that Kacharu came on the scene at any earlier moment and the only evidence is that of Ananda Patil who, on enquiry, was told, we do not know by whom, that the elder brother had stabbed the younger brother. This in any case, is hearsay evidence and cannot be acted upon. Therefore, without going too much into the details of the matter, we only wish to say that between the two judgments which we have closely examined, and which have been read to us in full, we prefer that of the High Court and think that in all the circumstances of the case, it was a fair and proper appraisal of the divergent evidence in the case. We must therefore hold that it was Laxman, the appellant who was responsible for causing the injury to Ramrao. The next question is what was the offence which was brought home to him? The injury is a single one. Shantabai did not speak about the weapon; she only stated that he hit him With a weapon and ran away. On examination the injury was found to be situated 2 inch below the outer 1/3 of right clavicle on the-

right side of the chest and penetrated to the depth of 4 inch into the chest cavity. It is no doubt true that the injury was serious, but it is to be noticed that it did not penetrate the lung. Death was caused mainly because it cut the axiliary artery and veins and caused shock and haemorrhage leading to death. In these circumstances, it is necessary to consider whether this case is covered by any of the clauses of S. 300 of the Indian Penal Code. Mr. Bhandari who appeared before us for the State frankly conceded, and we think rightly, that the case was not covered by the first and the second clause. It must be remembered that the quarrel between Ramrao and Laxman was not such as would have prompted Laxman to make, a homicidal attack upon his brother-in-law. The quarrel was only this much, whether Laxman's wife, should accompany him by the evening train or the

morning train. It may be that some abuses might have ensued as is common among these people, and Laxman having lost his temper whipped out his knife and gave one blow. It must be remembered that he gave one blow and although it was given on the chest, it was not on a vital part of the chest and but for the fact that the knife cut an artery inside, death might not have ensued. Therefore the question is whether the offence can be said to be covered by thirdly of s. 300 of the Indian Penal Code. That section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts; the first part is a subjective, one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with, because the injury which was intended to be caused was the one which was found on the person of Ramrao. But the second part in our opinion is not fulfilled, because but for the fact that the injury caused the severing of artery, death might not have ensued. In other words, looking at the matter objectively, the injury which Laxman intended to cause did not include specifically the cutting of the artery but to wound Ramrao in the neighbourhood of the clavicle. Therefore, we are of opinion that the thirdly of s. 300 does not cover the case. Inasmuch as death has been caused, the matter must still come within at least culpable homicide not amounting to murder. There again, S. 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, Laxman did not in- tend causing death and the first part of S. 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Laxman. The matter therefore comes within the third part. The act which was done was done with the knowledge that Laxman was likely by such act to cause the death of Ramrao. The case falls within the third part of s. 299 and will be punishable under the second part of s. 304 of the Indian Penal Code as culpable homicide not amounting to murder. We accordingly alter the conviction of Laxman from s. 302 to s. 304 of the Indian Penal Code and in lieu of the sentence of Imprisonment for life imposed on him, we impose a sentence of rigorous Imprisonment for 7 years. With this modification, the appeal shall stand dismissed.

Y.P. Appeal dismissed.-