Bombay High Court
Rajshekhar @ Pintya Chandriya vs The State Of Maharashtra on 28 September, 2017
Bench: A.A. Sayed

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.580 OF 2010

Rajshekhar @ Pintya Chandriya Paranandi]
Aged 22 years, Occupation - Service,]
Residing at Chinch Pada, Taluka - Pen,]
District - Raigad.]
(At present in Nashik Road Central Prison at]
Nashik.)] ... App
Or

Versus

State of Maharashtra,]
At the instance of Sou.Yamu Pandu Waghmare]
Residing at Dattwadi, Ashte Varsai, Tal. Pen,]
Dist. Raigad. Pen Police Station, Dist. Raigad.] ... Respondent

Mr. P. B. Naiknaware for Appellant.
Mr. H. J. Dedhia, APP for State.

CORAM :- A. A. SAYED &
SARANG V. KOTWAL, JJ.

DATE :- 28 SEPTEMBER, 2017 JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. The present Appeal is preferred by the Appellant challenging the Judgment and Order dated 05/06/2010 passed by the learned Sessions Judge, Raigad, at Alibaug, in Sessions Case No.113 of 2009 before him whereby the Appellant was convicted for having committed an offence punishable under Section 302 of the IPC and URS 1 of 7 2 APEAL 580-10-Judgment.doc-220 was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to suffer simple imprisonment for six months.

2. The prosecution case pertains to the murder of one Chandrakant. According to the prosecution case, the Appellant committed his murder on 06/06/2009 at ab out 7.15 p.m. at Village - Varsai, Taluka - Pen, District - Raigad. As per the prosecution case, the Appellant had gone towards Tadi shop to consume Tadi. There was an outstanding amount of Rs.4/- against his name and therefore a quarrel ensued between the cashier i.e. the Appellant and Chandrakant and in the quarrel, the Appellant throttled him with his hands due to which said Chandrakant died on the spot. The FIR was lodged by the sister of the deceased at Pen Police Station vide C.R.No.91 of 2009 under Section 302 of the IPC at about 8.45 p.m. The Appellant was arrested on 07/06/2009. Different

panchanamas viz. spot panchanama, inquest panchanama, seizure panchanama of clothes of the deceased etc. were carried out. The statements of various witnesses were recorded and after completion of investigation, charge-sheet was filed and thereafter the case was committed to the Court of Sessions for trial.

3. During the trial, the prosecution examined 7 witnesses. PW 1 was a Circle Officer who had prepared the map of the spot of the incident. PW 2 Smt. Yamu Waghmare was the first informant and the sister of the deceased. She claimed to have seen the incident. PW URS 2 of 7 3 APEAL 580-10-Judgment.doc-220 3 Bharati Gurao was an absolutely irrelevant witness and it is not clear as to why this witness was examined. PW 4 Muthaiya Afis was the owner of the Tadi shop where the incident had taken place. The shop owner was not present in the shop on the date of the incident as he was in Mumbai and he was informed about the incident by the Appellant himself. PW 5 Dr. Naresh Waghela had conducted the post- mortem examination on the dead body of the deceased. According to him, he had noted one injury on the throat and that was sub- cutaneous haemorrhage under the cricoid and thyroid cartilage with bleeding. The viscera was preserved. After the report of viscera analysis was received, the final cause of death was given by the Medical Officer as 'death could have been caused by throttling'. There was no other injury noted and therefore the final opinion was 'death due to asphyxia'. PW 6 Prakash Bagave was a panch witness in whose presence clothes of the deceased were seized. PW 7 Prashant Bacchav was the Investigating Officer.

4. As can be seen, the prosecution has relied on the evidence of PW 2 Yamu who was the sister of the deceased. According to her, on 06/06/2009 at about 6.00 p.m., she herself and her husband had gone to the market at Varsai and her brother, deceased Chandrakant, was in the Tadi shop. She has further deposed that she went back to the Tadi shop to bring Chandrakant. At that time, Chandrakant paid Rs.40/- to the Appellant who was sitting on the cash counter. According to her, the Appellant demanded further amount of Rs.4/- as the outstanding amount and therefore this witness PW 2 herself gave URS 3 of 7 4 APEAL 580-10-Judgment.doc-220 Rs.4/- to the Appellant. In spite of that, the Appellant beat Chandrakant for non-payment of Rs.4/-. She has further deposed that the Appellant caught Chandrakant by his neck and made him fall down and sat on his person. She has further deposed that the Appellant pressed the neck of Chandrakant and therefore Chandrakant died instantly. People gathered at the spot. Chandrakant was taken to the hospital. She herself was taken to Pen by the police and her FIR was registered which was exhibited at Exh.14. In her cross-examination, she has admitted that there were many houses around the shop.

5. We have heard Mr. P. B. Naiknaware, learned Advocate for the Appellant and Mr. H. J. Dedhia, learned APP for State and with their assistance, we have read the evidence and perused the record.

6. Mr. Naiknaware submitted that PW 2 had no business to be present in the shop when the incident had occurred. She was a chance witness. The prosecution evidence shows that there were many houses around the shop and yet nobody from the locality was examined and therefore her evidence is doubtful. He has further submitted that the incident had occurred on a petty issue of non-payment of a very small amount of Rs.4/- and therefore the entire incident, as deposed to by the PW 2, does not appear to be probable. In the alternative, he has submitted that even if it is assumed that the incident had taken place, the offence would not fall within the definition of 'murder' and would

be a much lesser offence.

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7. As against this, Mr. H. J. Dedhia, learned APP for State, has submitted that the prosecution has sufficiently proved that the incident had taken place. He has submitted that there is no infirmity in the evidence of PW 2 Yamu. She was a natural witness and she had gone to the Tadi shop from the market to bring her brother back and there is nothing unnatural in her evidence.

8. We have perused the evidence and we have considered the evidence on record. After considering the evidence, we are of the opinion that there is no infirmity in the evidence led by the prosecution as far as the deposition of PW 2 is concerned. Her FIR is immediately lodged at 10.45 p.m. and the incident had taken place at 7.15 p.m. The first informant was taken to Pen Police Station from Varsai village which took some time. However, there is no inordinate or unexplained delay in lodging the FIR. Since we find that her evidence is cogent and reliable, we are of the opinion that the incident had taken place in the Tadi shop where the deceased met with his death.

9. However, the question remains as to whether the offence would fall within the definition of 'murder' as provided under Section 300 of IPC. From the evidence on record, it appears that the incident was a result of a petty quarrel which took place as the deceased did not pay a meagre amount of Rs.4/- to the Appellant. The Appellant was working as a cashier and he was demanding the payment of the said amount. The evidence further shows that the quarrel began and URS 5 of 7 6 APEAL 580-10-Judgment.doc-220 in the quarrel, the Appellant throttled and pressed the throat of the deceased. Hence it can be seen that there was no premeditation and there was no preparation to commit the offence. The offence had taken place on the spur of the moment. The prosecution evidence itself shows that the incident occurred in a sudden fight upon a sudden quarrel and in the heat of passion, the Appellant pressed the neck of the deceased which resulted in the death of the deceased. We are of the opinion that the Appellant had not taken any undue advantage or had not acted in a cruel or unusual manner. There was no other injury on the person of the deceased except near the throat. Therefore, the present offence will squarely fall within the 4 th Exception provided under Section 300 of the IPC. It is also noteworthy that the Appellant had not used any weapon and therefore it can safely be concluded that the Appellant had no intention to commit murder. From the evidence on record, it can be concluded that the Appellant can be attributed with the knowledge that because of his act, it was likely that the deceased would die and therefore, the offence would fall within the second part of Section 304 of the IPC.

10. With the result, we hold that the Appellant has committed an offence punishable under Section 304 Part II of the IPC and not under Section 302 of the IPC. Hence, the following order :

ORDER

(i) The conviction and sentenced recorded by the learned Sessions Judge, Raigad, at Alibaug, in Sessions Case No.113 of 2009 convicting the Appellant for having URS 6 of 7 7 APEAL 580-10-Judgment.doc-220 committed an offence punishable under Section 302 of the IPC and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to suffer simple imprisonment for six months, are set aside. Instead, the Appellant is convicted under Section 304 Part II of the IPC and is sentenced to suffer rigorous imprisonment for seven years.

(ii) The Appellant shall be given set off under Section 428 of the Cr.P.C.

(iii) The Appeal is partly allowed in the aforesaid terms.

(SARANG V. KOTWAL, J.) (A.

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