

Bombay High Court

Sunil Tanaklal Chauriwar vs The State Of Mah.Thr.Pso ... on 4 September, 2017

Bench: R. B. Deo

apeal484.04.J.odt

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.484 OF 2004

Sunil s/o Tanaklal Chauriwar,  
Aged about 40 years, Occ: Labour,  
R/o Bhanpur, Tahsil Gondia,  
District Gondia. .... APPELLANT

...V E R S U S...

The State of Maharashtra,  
through Police Station Officer,  
Police Station, Gangazari,  
District Gondia. .... RESPONDENT

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None for Appellant.  
Shri A.V. Palshikar, APP for Respondent/State.  
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CORAM: ROHIT B. DEO, J.

DATE: th  
4 SEPTEMBER, 2017.

ORAL JUDGMENT

1] The appellant seeks to assail judgment and order

dated 02.07.2004 in Sessions Trial 14/1998 delivered by the 1 st Ad hoc Additional Sessions Judge, Gondia, by and under which, the appellant is acquitted of offence punishable under section 302 of the Indian Penal Code and is convicted for offence punishable under section 323 of the Indian Penal Code and sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.500/-. The

accused is further directed to pay compensation of Rs.25,000/- to the legal representative of the deceased, under section 357 of the Code of Criminal Procedure.

2] None appears for the accused. Shri A.V. Palshikar, the learned Additional Public Prosecutor appears for the State. However, consistent with the dictum of the Hon'ble Supreme Court in Bani Singh and others vs. State of Maharashtra, (1996) 4 SCC 720, I have carefully scrutinized the record of proceedings and I propose to decide the appeal on merit with the assistance of the learned A.P.P. for the State.

3] The gist of the prosecution case is that the deceased was working as Peon in Bhanpur Primary Health Centre. He was alone in the Primary Health Centre on 07.12.1997 as the other staffs were in the field implementing the polio vaccination programme. The deceased was resting in the office on the bench. At about 10:00 a.m., the accused brought his father to the Primary Health Centre for treatment. The medical staff was not available and the accused therefore, sent his father home. However, the accused lingered on in the Primary Health Centre. The accused was annoyed and enraged. He uttered certain words and suddenly gave 2 to 3 blows to the deceased while he was sleeping on the bench. The accused then fled away.

4] The next morning, deceased narrated the incident to the medical staff. He complained of pain but then did not receive any medical treatment. The deceased went home and narrated the incident to his wife and son. His wife applied some balm which did not provide any relief to the deceased. On 08.12.1997 the son of the deceased took him to the Bhanpur Primary Health Centre, the Medical Officer gave preliminary aid and brought him to the K.T.S. Hospital, Gondia at 05:30 p.m. The statement of Mahadeo (Exh.29) was recorded at 07:15 p.m. by Head Constable Baliram Thakare (P.W.8). On 09.12.1997 at 12:45 p.m. the Executive Magistrate recorded dying declaration of the deceased in presence of Dr. Paunekar (P.W.9). The deceased expired at 07:15 p.m. on 09.12.1997. The accused was arrested, further investigation ensued, offence under sections 353, 333 and 302 of the I.P.C. was registered, and charge-sheet came to be filed before the Judicial Magistrate First Class, Gondia who committed the case to the Sessions Court. The learned Sessions Judge framed charge (Exh.8), the accused pleaded not guilty and came to be tried, the defence of the accused is of total denial as is discernible from the statement recorded under section 313 of the I.P.C. 5] The learned Sessions Judge, on a close evaluation of the evidence has recorded a finding that there was neither intent to cause death nor can knowledge be attributed to the accused that by delivering the kick blows death is eminent or most likely. The learned Judge acquitted the accused of offence punishable under section 302 of the Indian Penal Code and section 353 and 333 of the Indian Penal Code and convicted the accused of offence punishable under section 323 of the I.P.C.

6] I have closely scrutinized the evidence on record. The finding recorded that the accused did not intent to cause death nor can the necessary knowledge be attributed that death is likely to result cannot be attributed to the accused, is unexceptionable. The evidence however, clearly makes out an offence punishable under section 323 of the I.P.C. The accused was annoyed and enraged since his father did not receive the treatment as there was no medical staff in the Primary Health Centre. What he did was to take the law in own hand and vent anger and frustration by assaulting the deceased by kicks when the deceased was sleeping on a bench in the office of the Primary Health

Centre. However, considering the fact that the accused has already spent about three months in judicial custody, I am inclined to maintain the conviction and to alter the sentence to imprisonment already undergone.

7] The appellant is justified in contending that the direction in paragraph 3 of the operative order that the accused should pay Rs.25,000/- to the legal representative of the deceased Mahadeo is ultra vires the statutory provision. Section 357 of the Cr.P.C. reads thus:

357. Order to pay compensation.-- (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied--

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Sessions when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

8] Since the trial Court imposed fine of Rs.500/- as a part of sentence, it is only amount of fine, that can be given to the victim as compensation. Sub-section (3) of Section 357 cannot be invoked. The direction that the accused should pay Rs.25,000/- to the legal representative of the deceased is absolutely untenable and contrary to the statutory provisions. The said direction is set aside. The appeal is partly allowed in the above terms.

JUDGE NSN