

A RANGNATH SHAMAO DHAS & ORS.

v.

STATE OF MAHARASHTRA
(Criminal Appeal No. 194 of 2002)

B FEBRUARY 27, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

C *Penal Code, 1860 — s.304 Part II r/w s.149 – Assault with
swords and axes – Death due to cumulative effect of the
injuries caused – Held: Accused-appellants liable to be
convicted u/s.304 Part-II r/w s.149.*

D According to the prosecution, owing to a previous
enmity, the accused-appellants assaulted PW4's father
with swords and axes which resulted in his death.
Placing reliance on the evidence of PW 4, 5 and 6, the
Courts below convicted the appellants in terms of s.304,
Part II r/w s.149 IPC. Hence the present appeal.

E Dismissing the appeal, the Court

F HELD: 1. The First Information Report was lodged
within a very short time. The alleged occurrence took
place around 2.45 p.m. and the FIR was lodged at 7.15
p.m. at the Police Station which was situated at about 22
K.M. from the place of incident. The evidence of PWs 4,5
and 6 clearly established the complicity of the accused
persons. Added to that, as rightly noted by the High Court
the medical evidence is not at total variance with the
G ocular evidence. [Para 5] [530-D-F]

*Solanki Chimanbhai Ukabhai v. State of Gujarat, AIR
1983 SC 484, referred to.*

H 2. In the instant case the doctor has categorically

stated that the cumulative effect of the injuries was the cause of death. That being so, the judgment of the High Court affirming that of the trial Court cannot be said to be in any way unsustainable. [Para 6] [531-B-C]

Case Law Reference:

AIR 1983 SC 484 referred to **Para 5**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 194 of 2002.

From the Judgment/Order dated 16.8.2001 passed by the High Court of Judicature at Bombay in Criminal Appeal No. 441 of 1985.

Shivaji M. Jadhav for the Appellant.

Ravindra Keshavrao for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court upholding the conviction of the appellants for offence punishable under Section 304 Part II read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). Two appeals were disposed of by a common order. Criminal Appeal No.441 of 1985 was filed by the present appellants questioning their conviction while Criminal Appeal No.608 of 1985 was filed by the State of Maharashtra contending that the appropriate conviction should have been under Section 302 read with Section 149 IPC.

2. Background facts in a nutshell are as follows:

The informant Murlidhar Krishna Ronge (PW-4) is the son of Krishna (hereinafter referred to as the 'deceased'). At the time of the incident, the informant, Manik Suryabhan Dhas (PW-5), Vasant Bhagwan Dhas (PW-6) and the appellants

A were living in Village Dhas Pimpalgaon within the limits of Taluka Barshi, District Solapur. The appellants are closely interconnected. Appellants Rangnath and Ganpati are brothers and appellant Govardhan is their relation. Appellants Narsing and Dattu are also brothers.

B There was enmity between the deceased, the informant on one hand and the appellants on the other. There were two pieces of land known by the name of Vanjechi Patti and Chinchechi Patti. The former was admeasuring two acres and the latter one- and-half acres. The land known as Chinchechi C Patti originally belonged to one Atmaram Ronge and was purchased in auction by the deceased Krishna. After purchasing it, the deceased started cultivating it. One Dnyandeo Ronge, who was a tenant of the said land, had given up his rights. Appellant Govardhan's niece was married D to the son of the said Dnyandeo Govardhan and Dnyandeo wanted that the land known as Chinchechi Patti should be sold without consideration. The deceased, on account of threats of Govardhan, executed sale deed of that land in favour of Dnyandeo. About one-and-half years prior to the incident, E the marriage of the informant Murlidhar was settled with the daughter of one Vithal, resident of village Dhas Pimpalgaon. The appellants were irked by this because they did not want the deceased to settle the marriage of informant with Vithal's daughter. The appellants used to also threaten the informant F and the deceased, saying that they should give up the land Vanjechi Patti.

On 22nd November, 1984 at about 7.30 a.m., the informant Murlidhar, his father Krishna (deceased), his G labourers Manik Dhas and Vasant Dhas came to land gat No.98, where crops of sugarcane, jowar and gram were standing. They started cutting the sugarcane crop. At about 2.00 p.m. all of them had lunch, which was brought by the informant's mother. Thereafter, the informant went to take a round and the deceased Krishna directed Manik and Vasant H

to get to the northern side of the field for work. At about 2.45 p.m., the informant, Manik and Vasant heard the shouts of Krishna "Melo Melo" (I am dying, I am dying). Consequently, they rushed towards the place from where the cries were coming. They saw appellants Rangnath and Govardhan armed with swords, appellants Ganpat, Narsing and Dattu armed with axes, chasing Krishna. They also saw that they overtook Krishna in the jowar crop, and thereafter, started assaulting him with weapons in their hands resulting in his falling down. The informant asked them not to assault Krishna and to save him from being assaulted fell on his body. Thereupon, the appellants stopped assaulting Krishna. When Manik and Vasant tried to intervene, appellants Rangnath and Govardhan threatened them with dire consequences. Thereafter, the appellants ran away.

As a consequence of the assault, and the informant falling down on Krishna's person to save him from being assaulted by the appellants, the clothes of Krishna were stained with blood.

After the appellants had run away, the informant Murlidhar brought a bullock cart, put his father Krishna in the said bullock cart, and proceeded with him to village Khadkalgaon. At the outskirts of the said Village, Krishna breathed his last. Thereafter, the informant carried the corpse of his father to his house and proceeded to Pangari Police Station to lodge the F.I.R.

On completion of investigation charge sheet was filed. Charges were framed and as the accused persons pleaded innocence, trial was held. PWs 4, 5 and 6 were stated to be eye witnesses and placing reliance on their evidence the trial Court recorded the conviction in terms of Section 304 Part II IPC and imposed 7 years of rigorous imprisonment.

3. In appeal before the High Court the primary stand was that the offence under Section 304 Part II IPC is not made out

A and the evidence of so called eye witnesses is unworthy of
credence. It was submitted that the time as indicated by the
eye witnesses is unacceptable because the medical evidence
shows that there was no undigested or semi-digested food. It
was also submitted that the doctor's evidence clearly showed
B that the injuries could not have caused death cumulatively in
some cases. That being so, the conviction under Section 304
Part II IPC is not proper. The High Court held that the medical
evidence did not wholly belie the prosecution version and did
not render the eye witnesses' version suspect. The High Court
C did not accept appellants' stand and observed that the doctor
has given a hypothetical answer that in some cases it might
cause death and in some cases it might not cause death, but
stated in clear terms that in the instant case it has caused
death. The High Court held that the conviction as recorded by
D the trial Court under Section 304 Part II IPC is in order.

4. In support of the appeal, learned counsel for the parties re-iterated the respective submissions before the High Court.

E 5. It is to be noted that the First Information Report was
lodged within a very short time. The alleged occurrence took
place around 2.45 p.m. and the FIR was lodged at 7.15 p.m.
at the Police Station which was situated at about 22 K.M. from
the place of incidence. The evidence of PWs 4, 5 and 6 clearly
established the complicity of the accused persons. Added to
F that, as rightly noted by the High Court the medical evidence
is not at total variance with the ocular evidence. It was observed
in *Solanki Chimarbhai Ukabhai v. State of Gujarat* (AIR 1983
SC 484 at para 12) as follows:

G "12. Ordinarily, the value of medical evidence is only
corroborative. It proves that the injuries could have been
caused in the manner alleged and nothing more. The use
which the defence can make of the medical evidence is
to prove that the injuries could not possibly have been
caused in the manner alleged and thereby discredit the
H eye-witnesses. Unless, however the medical evidence in

its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.” A

6. In the instant case as noted above the doctor has categorically stated that the cumulative effect of the injuries was the cause of death. That being so, the judgment of the High Court affirming that of the trial Court cannot be said to be in any way unsustainable. The appeal is without merit, deserves dismissal which we direct. The appellants who were released on bail in terms of the order dated 3.12.2001 shall surrender to custody forthwith to serve the remainder of sentence. B C

B.B.B.

Appeal dismissed.