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(1978) 03 BOM CK 0045

Bombay High Court

Case No: None

Abdul Karim	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision: March 8, 1978

Acts Referred:

- Penal Code, 1860 (IPC) - Section 300, 302, 304

Citation: (1978) CriLJ 1485

Hon'ble Judges: Naik, J

Bench: Single Bench

Judgement

Naik, J.
The appellant has been convicted by the learned Additional Sessions Judge, Aurangabad, for an offence u/s 325 of the I.P.C. and has been sentenced to suffer R.I. for two years.

2. The appellant was tried for an offence u/s 302 of the I.P.C. The allegations on which the charge was founded are briefly these : One Sk. Farid, aged about 40 years, the victim of this incident was a labourer residing with his wife and children in a hutment in Jalna. On 23rd March 1975, at about 4 p.m. the deceased was sitting on the Ota of Maharashtra Tea House. At that time he asked his 9 year old son Sk. Sharif to fetch water but the child would not oblige. The deceased thereupon picked up a pebble and hurled it at his child Sk. Sharif. But unfortunately the pebble missed the aim and struck a stranger viz. the accused who was washing his hands in front of the Maharashtra Tea House. Evidently annoyed by the unexpected assault, the accused rushed towards the deceased and in that very excitement he gave 2-3 blows to the deceased. The deceased also slapped the accused in his turn and fell down. The deceased was then taken in a tonga to the Cottage Hospital, Jalna. Dr. Siddiqi (P. W. 4) treated the deceased. The deceased told him that he was given fist blows by an unknown person. The deceased succumbed to his injuries on

that very day. The post-mortem on his body which was held by Dr. Siddiqi showed that the death of the deceased was dub to shock and haemorrhage as a result of traumatic rupture of the spleen. He also noticed on internal examination a fracture of the left 9th rib mid axillary line and that the spleen was found ruptured at haulm resulting in the collection of about 1000 ml. of blood in the abdominal cavity. On these facts, the accused was prosecuted.

3. The accused pleaded not guilty and claimed to be tried.

4. The learned Sessions Judge acquitted the accused of the offence u/s 302, with which he was charged and also of the lesser offence u/s 304 Part I or Part II of the I.P.C. by observing as under in para 23 of his judgment:

The next question to be considered is what offence has been committed by the accused. Undisputedly there was no motive for the accused to commit murder of the deceased. There is no evidence that the accused and the deceased were even known to each other before the occurrence. The accused gave only 2 or 3 fist blows and that too in a moment of excitement of sudden impulse when a pebble hurled by the deceased struck him. It is in the evidence of Kashinath that the deceased also slapped the accused. In the circumstances, it cannot be held that the accused had the requisite intention contemplated by Section 300 of the I.P.C. or he had the knowledge that by the fist blows he could cause rupture of the spleen and consequently the death of the deceased. In my opinion, therefore, the accused cannot be | held guilty for the offence punishable u/s 302 or 304 Part I or Part II of the I.P.C.

5. The learned Sessions Judge, however, Convicted the accused for the offence u/s 325 of the I.P.C. and not u/s 323 of the I.P.C. as was submitted | on behalf of the accused by observing as under in para 24 of the judgment:

However, that may be. The deceased was a thin built man. The accused is undoubtedly a strong and stout man as compared with the deceased. The fact that the rib was fractured is the clear indication that the accused gave fist blows with force. The accused would have given a few blows more had constable Haribhau not held his hand and taken him away. In the circumstances, I think that the accused intended to cause grievous hurt to the deceased or he could certainly be posted with the knowledge that by inflicting fist blows, he would cause grievous hurt to the deceased. In my view the accused is clearly guilty of the offence u/s 325 of the Penal Code.

6. He accordingly acquitted the accused of the major offence u/s 302 with which he was charged but convicted him for the offence u/s 325 of the I.P.C, and sentenced him to suffer R.I. for two years without giving an opportunity to the prosecution or the defence of being heard on the question of sentence.

7. It is the correctness of that order of conviction and sentence which is challenged by this appeal.

8. Mr. Agarwal, learned advocate for the appellant submitted at the outset of his address that as there is ample evidence to show that the deceased has unfortunately died because of the fist blows given by the accused in the heat of the moment and in the excitement, he is not interested in challenging the fact that as a result of the incident concerning the accused and the deceased, the deceased has died for the reasons stated by the Medical Officer, Dr. Siddiqi. But what is very strongly submitted by Mr. Agarwal is that having regard to the reasons given by the learned Sessions Judge in para 23 of his judgment for holding that the accused has not committed an offence even u/s 304 Part I or Part II, the learned Sessions Judge was in error in convicting the accused for an offence u/s 325 and he, therefore. submits that for the very reasons advanced by the learned Sessions Judge in para. 23 of his judgment for holding that the accused has not committed the offence even under Part I or Part II of Section 304 of the I.P.C., the only offence for which the accused could be convicted in the circumstances of the case is one u/s 323 of the T. P. C. He also submits that if that submission of his is not to find favour with me then having regard to the fact that the accused was not heard on the question of sentence under the provisions u/s 248 of the Cr. P.C., this Court may please take into consideration the affidavit of the accused filed in this Court and also the affidavit of his dependent aunt NiyazuBi and reduce the sentence to the period of detention already undergone pending the trial which is nearly six months short of only a week, Mr. Barday was unable to support the reasoning of the learned Sessions Judge for convicting the accused u/s 325 of the I.P.C.

9. Now Section 325, I.P.C. lays down punishment for voluntarily causing grievous hurt. Section 322 provides that whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt." There is also an explanation to this section which reads as under:

A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

10. It is, therefore, clear that both according to Section 322 and the Explanation in order that a person may be guilty of an offence of causing grievous hurt, it must be proved that he either intended to cause or knew himself to be likely to cause grievous hurt and not otherwise. The learned Sessions Judge has observed rightly in para. 23 of his judgment that in the circumstances of the case, it cannot be held that the accused had the requisite intention contemplated by Section 300 of the I.P.C. or he had the knowledge that by the fist blows he would cause rupture of the spleen. If that is so it should follow that having regard to the provisions of Section 322 and the Explanation to it, it could not have been held that the accused has committed an offence of grievous hurt.

11. In the result, it is not necessary to consider the alternative submission of Mr. Agarwal as the period of detention of six months short of a week, would be adequate to meet the ends of justice for the conviction of the offence u/s 323 of the I.P.C.

12. The appeal is partly allowed. The conviction for an offence u/s 325 is set aside and instead the accused is convicted for the offence u/s 323 of the I.P.C. and the sentence is altered to R.I. for 5 1/2 months and since the accused has already undergone detention for a period exceeding that period, he is forthwith set at liberty. His bail bond is cancelled.