
(1991) 12 BOM CK 0058

Bombay High Court

Case No: Criminal Appeal No. 175 of 1989

Shrirang Kisan Kurade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Dec. 17, 1991

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 324, 34, 99

Citation: (1992) CriLJ 1362

Hon'ble Judges: M.L. Dudhat, J

Bench: Single Bench

Advocate: Smt. A.A. Agarwal, for the Appellant; B.R. Patil, Asst. Public Prosecutor, for the Respondent

Judgement

1. This appeal is filed against the conviction and sentence dated 10th February 1989 passed by the Additional Sessions Judge, Satara, in Sessions Case No. 102 of 1988. By the aforesaid order the Sessions Court convicted the appellant, who was original accused No. 1, u/s 304 Part II of the Indian Penal Code and sentenced him of suffer rigorous imprisonment for five years.

2. The incident took place at 9.15 p.m. on 2nd February 1988 within the limits of village Kole on Karad-Dhebewadi road near Ganpati temple. At the relevant time there was a fair at village Kole and the deceased along with other five companions decided to attend that fair. The deceased and his companions were residents of KVumbhargaon which is a hamlet of Kole. All these persons left the village for Kole at 8.30 p.m. on bicycles. On the road the complainant Suresh Kalantre, PW 1 and his other three companions took a halt at S.T. stand at Talamavale for taking water. However, PW 2 Sandip Baile and Anandrao Kachare proceeded ahead towards Kole to attend the fair. While PW 2 Sandip was proceeding on bicycle, near Wanarwadi a bullockcart came across their bicycle. At the relevant time the said bicycle was driven by Ananda and PW 2 Sandip was sitting on the carrier of the said bicycle. Because of

the sudden crossing of the bullockcart Ananda lost balance of his bicycle and consequently suddenly fell down. At the relevant time accused Nos. 1 and 2 were also going by bicycle and as a result of a fall of the bicycle of Ananda they also lost the balance of their bicycle and had a fall. Due to this, accused No. 2 was annoyed and he gave on slap to PW 2 A Sandip.

3. In the meantime the deceased Dilip was following PW 2 Sandip and Ananda to whom he met at Wanarwadi. At that time both Sandip and Ananda narrated to the deceased the story about the bicycle accident and the incident of slap given by accused No. 2 on the cheek of Sandip. Thereafter all these three companions decided to go to the accused for making certain enquiry as to why accused No. 2 gave a slap on the cheek of Sandip. All the said three companions proceeded towards Kole in the direction where the accused persons proceeded earlier. While the accused persons were on Karad-Dhebewadi road near Ganpati temple, PW 2 Sandip, the deceased Dilip and Ananda intercepted them. PW 2 Sandip pointed out to Dilip accused No. 2 Subhash who slapped him. Thereafter the deceased and Anand parked their bicycles and went towards the accused person. The deceased made enquiries with the accused persons and questioned them as to why they slapped Sandip on earlier occasion. After hearing the aforesaid question the accused persons got annoyed and thereafter scuffle ensued between Ananda, PW 2 Sandip, the deceased and accused Nos. 1 and 2. Accused No. 1 Shrirang and the deceased Dilip were pushing each other at backward side. When this scuffle was going on, the other three companions who were left behind viz., Mubarak Mulla, Jayawant and Suresh also came near the spot where the scuffle was going on. As per the evidence led by the prosecution, in the said scuffle accused No. 1 whipped out a knife and inflicted a blow of the said knife on the chest of the deceased Dilip. The deceased Dilip sustained bleeding injury admeasuring about 3" x 1/2" above the left wrist at Anterior side and the other injury was caused on the left side on the chest. It is pertinent to note that both these piercing injuries were caused by one single blow. Thereafter the deceased collapsed by taking the name of his mother (Aye) and became unconscious. PW 1 Suresh Kalantre thereafter took the knife from the hands of accused No. 1 and with the help of one tempo passing by that road, the deceased was taken to the hospital where he was declared as dead. Thereafter PW 1 Suresh left Krishna Hospital and contacted Karad Taluka Police Station and lodged the complaint which is the First Information Report, at 0.35 hours on 3rd February 1988, which is Exh. 18. All the other companions and accused Nos. 1 and 2 were also present in the Police Station.

4. On the basis of the aforesaid facts, both the accused persons were charged for commission of offence of murder of the deceased Delip u/s 302 read with Section 34 of the Indian Penal Code before the Sessions Court at Satara.

5. It was contended on behalf of the defence that it is true that accused No. 2 slapped Sandip, PW 2. However, it was further contended on behalf of the defence

that the deceased Dilip, Sandip, PW 2 and Ananda in fact intercepted the accused persons near Ganpati temple in aggressive mood. Further, it was contended that there was a scuffle between the said three person on one hand and accused Nos. 1 and 2 on the other hand. In the said scuffle, according to the defence, accused No. 1 and the deceased Dilip had caught hold of each other and were trying to grip each other. When the said scuffle was going on, according to the defence, had taken out the knife. Thereafter accused No. 1 caught hold of the hand of Dilip in which he was holding the knife and in the scuffle accidentally the knife caused injury to the hand of the deceased and also penetrated through the chest of the deceased, resulting in his death by puncture injury caused to the heart of the deceased. In short it was contended on behalf of the defence that accused No. 1 had exercised right of self-defence to protect himself in apprehension of injury which was likely to be caused to him and in doing so, accidentally the deceased got injured and succumbed to death. It was, therefore, contended on behalf of the defence, that the accused were guilty of no offence for which they were charged.

6. The trial Court, after going through the whole evidence and after hearing both the parties, acquitted accused No. 2 of the charges framed against him, however, convicted accused No. 1 u/s 304 Part II of the Indian Penal Code and sentenced him to rigorous imprisonment for five years. It is against this conviction and sentence passed by the trial Court, the appellant-original accused No. 1 has preferred this appeal before this High Court.

7. In order to support its case, the prosecution has examined two eye-witnesses viz. PW 1 Suresh Kalantre and PW 2 Sandip Appa Baile. Thereafter the prosecution has also examined two Investigating Officers and since the injuries were admitted by the accused, the prosecution had not examined the doctor, however, relied upon the post mortem report, which is at Exh. 26. According to the said post mortem report, the doctor has given the cause of the death as "shock due to stab injury, puncturing the heard".

8. In this appeal it is PW 1 Suresh Kalantre who gave the first information and was examined by the prosecution as PW 1. But, this witness has come on the spot even as per his deposition little later when the actual incident took place and, therefore, it is desirable to scan the deposition of the other eye-witness PW 2 Sandip Appa Baile.

9. PW. 2 Sandip Appa Baile was the person who along with Ananda, instead of waiting for the other companions at Talamavale for drinking water, went sheer towards the place of festival. This particular witness was sitting on the carrier of the bicycle which was driven by Ananda. When the aforesaid bicycle came near Wanarwadi, a bullockcart came across this bicycle due to which Ananda lost his balance and both these persons fell down. At the relevant time accused Nos. 1 and 2 who were just following on the same road on bicycle also fell down because of Ananda losing balance of his bicycle. This witness further stated that thereafter accused No. 2 came near Sandip and gave him a slap on his cheek and after

threatening them, went ahead on the road towards the festival. In the meantime, the deceased Dilip came on the spot. Both Sandip and Ananda narrated the whole episode of bicycle accident and also the incident of slapping by accused No. 2 to Sandip and thereafter all these three persons proceeded further to enquire with both the accused as to why accused No. 2 had slapped Sandip. On their way to Kole, they intercepted both accused Nos. 1 and 2. Sandip pointed out to the deceased Dilip accused No. 2 who slapped him. The deceased started making enquiry with accused No. 2 Subhash as to why he assaulted Sandip. Suddenly there was a scuffle between both the accused on one hand and the deceased and Ananda on the other hand. In the meantime the complainant PW 1. Suresh, Mubarak and Jaywant came near the spot where this scuffle was going on. At that time, according to this witness, accused No. 2 Subhash pushed the deceased and accused No. 1 whipped out the knife and gave one blow to Dilip, due to which the deceased Dilip sustained puncture wound on the hand as well as on the chest. Due to this blow the deceased shouted "Aye" and fell down. The complainant and Jaywant Chavan accosted both the accused. The complainant removed the knife from the hand of accused No. 1 Shrirang. At that time one Dr. Chingale from Kole came on the spot. He immediately directed them to remove Dilip to Krishna Hospital and thereafter, according to this witness, Dilip was removed to Krishna Hospital by taking the help of a tempo which was passing by that road. This witness has further stated that both the accused, the complainant and the other witnesses went by that tempo to Krishna Hospital.

10. The evidence given by this witness is completely corroborated by the other eye-witness PW 1 Suresh Kalantre, examined by the prosecution, who came little later at the time of happening of stabbing incident. After taking into consideration the depositions of both these witnesses and after taking into consideration the injuries as shown in the post-mortem report, which is at Exh. 26, it is difficult to believe that the accused persons acted in self defence.

11. It is not the case of the defence that the deceased and his companions at the time of intercepting accused Nos. 1 and 2 came with any weapon, not even a stick was in their hands. It was a night time. All of them were on bicycles and it appears that the deceased wanted to ask mainly accused Nos. 2 as to why he slapped Sandip for no good reason. Further there is nothing on record to show that any of the circumstances mentioned u/s 99 of the Indian Penal Code were present when accused No. 1 stabbed the deceased Dilip. Further consistently it is the case even as suggested by the defence that fight was going on between the deceased Dilip and accused No. 1 and both were trying to push each other. Smt. Agarwal, learned Counsel appearing on behalf of the appellant, contended that in fact the accused persons were two in number while the deceased and his companions were six in number and, therefore, accused No. 1 is likely to have apprehension that his life was in danger of some grievous hurt was likely to be caused to him. According to me, there is no substance in the said arguments. As per the evidence on record, it appears that at the time of interception of accused Nos. 1 and 2, there were only

three persons present on the spot viz., the deceased Dilip, PW 2 Sandip and Ananda. Further it appears that Sandip had not taken any part in the scuffle and the scuffle was mainly going on between accused No. 1 on one hand and the deceased Dilip on the other hand. Therefore, at the relevant time when the knife blow was given, there was only three persons on the said of the complainant including himself, out of which one was non-participant and none had any weapon in their hands. It is true that at the subsequent stage their other three companions reached the spot of the incident but they came little subsequently and when they came, they saw accused No. 1, whipping out knife and giving blow on the body of the deceased. Therefore, merely because there were in all six persons on the side of the deceased including himself, in no ground for apprehending that there was likelihood of danger to the life of accused Nos. 1 and 2 or cause for apprehension of causing grievous hurt to them, as contemplated u/s 99 of the Indian Penal Code.

12. Smt. Agarwal laid some stress on the fact that the clothes of accused No. 2 were torn and taking the help of this admitted fact, she argued that in fact there must be some threat to their life or possibility of grievous injury to them. According to me, this argument is also of no consequence because even as per the suggestion of the defence it is PW 2 Sandip who tore the clothes of accused No. 2 while the fight was going on between accused No. 1 and the deceased independent of the suggestions given by the defence about the tearing of the clothes. Therefore, tearing of the clothes of accused No. 2 even presumably done by Sandip was not a circumstance before accused No. 1 who was fighting alone with the deceased with the knife in his hand.

13. Taking the view of the aforesaid facts, according to me, the trial Court was right in rejecting the defence story that the knife was in the hand of the deceased and in preventing the deceased from inflicting blow on the body of accused No. 1 accidentally injuries were caused on the body of the deceased and alternatively that the injuries if caused on the body of the deceased by accused No. 1 with his knife, the said act of accused No. 1 was in exercise of his right of self defence and, therefore, accused No. 1 is not guilty of any offence for which he was charged.

14. After discharging the defence version that the injuries on the body of the deceased were caused either accidentally or in exercise of right of private defence, the next question to be decided in this case is as to what offence accused No. 1 has committed. The trial Court, after taking into consideration certain facts and evidence on record, came to the conclusion that accused No. 1 has committed the offence of culpable homicide not amounting to murder and convicted him u/s 304 Part II of the Indian Penal Code. I have gone through the whole evidence including post mortem report, which is at Exh. 26, and after going through the said evidence, I am of this opinion that the trial Court was wrong in convicting accused No. 1 u/s 304 Part II of the Indian Penal Code and according to me, accused No. 1 is guilty of the offence u/s 324 of the Indian Penal Code. The reasons being as under :-

Accused No. 1 at the time of offence was a boy of about 18 years of age and his companion was also more or less of the same age. Accused No. 1 has no past history in any involvement in the crime. On the date of the incident both accused with accused No. 2 and the deceased accompanied by five persons were going to attend a festival at Kole. It appears that the said festival is at night and all the villagers residing around attend the said festival. Accused Nos. 1 and 2 were not known to the complainant and his companions. In fact the accused and the complainant along with his companions are residents of different villages. Even from the depositions of the prosecution witnesses, the scuffle took place suddenly on minor incident. From this it is clear that whatever has happened on that day, which resulted in the death of the deceased Dilip, happened spontaneously without premeditation.

15. It is true that accused No. 1 has used knife and assaulted the deceased Dilip by the said knife which resulted in the death of the deceased but still, according to me, after taking into consideration all the previous circumstances which I have described earlier and after taking into consideration certain other circumstances which I am going to discuss Now, it cannot be said that accused No. 1 at that time had an intention to cause death or even to cause grievous hurt to the deceased Dilip. From the evidence on record it appears that both the deceased and accused No. 1 were trying to push each other. From the evidence it also appears that the deceased was well built strong person. It is true that accused No. 1 had a knife with him but if one takes into consideration the size of the knife, the said knife is an ordinary knife used by ordinary persons having the blade of 3" not a Rampuri knife or six inches knife, which are generally used for commission of offence of murder or grievous hurt. I may further mention that by this I am not observing that 3" knife cannot cause death or grievous hurt but I am only taking into consideration the aforesaid circumstance as one of the circumstances along with other circumstances, only to show that the said knife was an ordinary knife used by ordinary persons for making the use of the said knife for cutting the fruits or for sharpening pencil etc. It is also the case of the prosecution that accused No. 1 gave only one blow causing puncture injury thereby to the deceased on his hand as well as at the heart. It is to be remembered that the incident took place at about 9-15 p.m. when there was darkness. Accused No. 1 gave the said knife blow at the time when both accused No. 1 and the deceased Dilip were pushing each other. Taking all these several circumstances into consideration, it is difficult to presume that accused No. 1 had intention to cause assault on the vital part of the body of the deceased. It appears that accused No. 1 gave one blow with knife which he happened to have in his pocket. It is unfortunate that the said blow launched right into the heart and, therefore, the deceased Dilip died on the spot. However, considering that the appellant had given one blow with ordinary knife which, because of the circumstances like night, pushing each other in the scuffle etc., might have contributed to the landing of the said blow on the chest where the heart was

situated and if these contributory factors would not have been there, the blow might have been inflicted on the other part of the body and, therefore, I am of the opinion that it cannot be said conclusively that at the time of the incident accused No. 1 had intention to cause murder or even to cause grievous injury to the deceased.

16. The aforesaid observations of mine, are further supported from the events which took place subsequent to the fall of the deceased by the knife injury. PW 1 Suresh Kalantre at that time arrived on the spot, took the knife from the hands of accused No. 1 and thereafter all the companions of the deceased five in number and accused Nos. 1 and 2 went to the hospital by a tempo along with the deceased. After the deceased Dilip was declared dead in the hospital, all these persons again went to the Police Station where PW 1 Suresh Kalantre lodged First Information Report. From the aforesaid events it is clear that after giving the first blow, accused No. 1 himself got flabbergasted and mutely allowed PW 1 Suresh Kalantre to take the knife from his hand and mutely went to the hospital along with the deceased and thereafter to the Police Station. This itself shows that accused No. 1 in fact wanted to cause some minor injury, might be to extricate himself as the deceased was a strong person. Taking into consideration all these events and the circumstances mentioned as earlier it cannot be said that accused No. 1 intended to cause death of the deceased or accused No. 1 intended to cause grievous hurt to the deceased. Therefore, after taking into consideration the aforesaid evidence, I am of the opinion that accused No. 1 is guilty of the offence u/s 324 of the Indian Penal Code.

17. With this I have to consider the arguments Smt. Agarwal from the point of view of sentence. In the earlier part of my Judgment I have already pointed out that prior to the date of the incident, the accused and the deceased were not known to each other. There was no ill-will spite or hatred. Accused No. 1 has no criminal history. The incident took place suddenly when they were in festive mood. Accused No. 1 only used an ordinary knife which is used for ordinary purposed in day to day life. The fight took place suddenly on the spur of moment and at the time of the offence accused No. 1 was about 18 years of age. Taking all these aspects into consideration, according to me, the punishment of rigorous imprisonment of one year is adequate in the facts and circumstances of this case.

18. However, there are certain other facts which I will have to take into consideration in the larger interest of justice. While this appeal was pending, an application was made on behalf of accused No. 1 for expediting the matter. In the said application, which is on oath, accused No. 1 has stated that he is a young man and he has obtained a diploma of civil draughtsman. With the help of that diploma he is serving with Shilpasagar firm of Architects and Engineers at Kolhapur. He has further stated that he was called for interview for the appointment of a Constable (J.D.) in C.R.P.F. and in fact he received the letter of appointment from the Presiding Officer of C.R.P.F. but because of the conviction given by the trial Court he is not

accepted. He has further stated that if he is not in a position to accept the said appointment he may become age-barred. These facts are brought on record in the civil application filed by accused No. 1 for expedition of the matter and the said contentions were not traversed by the State. From the aforesaid facts, according to me, it is a fit case wherein accused No. 1 should be given opportunity to lead a fresh honourable life and, therefore, according to me, this is a fit case wherein accused No. 1 should be given the benefit of Probation of Offenders" Act, 1958.

19. Hence I pass the following order :-

The conviction and sentence of the appellant-accused No. 1 given by the trial Court u/s 304 Part II of the Indian Penal Code is set aside. The appellant-accused No. 1 is convicted u/s 324 of the Indian Penal Code and is sentenced for one year's rigorous imprisonment with fine of Rs. 5000/-. The father of the appellant-accused No. 1 is present in the Court and agrees and undertakes to deposit the amount of Rs. 5000/-. However, he seeks some time to deposit the said amount. Accused No. 1 to deposit the amount of Rs. 5000/- in the trial Court on or before 31st January 1992. Along with the deposit of Rs. 5000/- accused No. 1 to make application to the trial Court stating in it that he has deposited the aforesaid amount and the same is to be paid to the mother of the deceased Dilip or any other heir or heirs of the deceased. Accused No. 1 should also given the name and the residential address of the mother of the deceased. After verification of the truthfulness of the said application, the trial Court to hand over the said amount to the mother of the deceased or any other heir or heirs of the deceased as expeditiously as possible.

Further having regard to the circumstances of the case and the nature of the offence, as also the character of the offender. I think it is expedient to release the appellant on probation of good conduct for a period of one year from today. His sentence of imprisonment shall remain suspended during this period. Since he is already on bail, he shall continue to be on the same bail, provided he executed a bond of Rs. 1000/- to the satisfaction of the Sessions Court at Satara within three weeks from today with or without sureties, as the Court may direct, to appear and received the sentence when called upon during the said period of one year. In the meantime the appellant-accused No. 1 must keep peace and be of good behaviour. The sentence of imprisonment shall stand remitted if he does so.

With the aforesaid directions, the appeal is partly allowed.

20. Appeal partly allowed.