

(1992) 01 BOM CK 0080

Bombay High Court

Case No: Criminal Appeal No. 45 of 1988

Parashram Bapu Gaikwad and
others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: Jan. 19, 1992

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 300, 302, 304, 34
- Probation of Offenders Act, 1958 - Section 4

Citation: (1992) 94 BOMLR 660 : (1992) CriLJ 2405

Hon'ble Judges: S.M. Daud, J; M.F. Saldanha, J

Bench: Division Bench

Advocate: A.S. Rao, R.M. Agarwal and R. T. Shinde, for the Appellant; C.M. Kothari, Public Prosecutor, for the Respondent

Judgement

Daud, J.

This appeal takes exception to the conviction and sentence recorded against the appellants for the commission of offences punishable u/Ss. 302 and 201 read with 34 of the Indian Penal Code.

2. Appellant No. 1 Parashram is the husband of P.W. 2 Changunabai and this couple had three sons - two being appellants Gulab and Datta and the third being the victim Daula alias Daulat. The family was residing in one house situated at Lokhandewadi, a village of Taluka Shrigonda in District Ahmednagar. Adjacent to the said house lives complainant P.W. 1 Dadaram with his four sons, a wife and other members of the said family. Gulab and Datta are married while Daula was of marriageable age. P.W. 5 Bapu Bhujbal has a daughter by the name of Changuna and some four months prior to 25-3-1987, a deputation had been despatched to the house of Bapu Bhujbal to negotiate the engagement of Daula to Changuna. The groom's side wanted a dowry of Rs. 15,000/- to Rs. 20,000/- and the farthest that

Bapu Bhujbal was prepared to go was a sum of Rs. 3,000/- plus the liability to bear the entire expenses connected with the marriage. This was not acceptable to the groom's side and those who had gone to negotiate the betrothal including appellant Gulab, returned back. Gulab informed his father Parashram, Daula and others of the break-down of the negotiations. Daula had taken a fancy for Bapu Bhujbal's daughter and he went on his own with P.W. 3 Raskar to Bapu Bhujbal's house. With Bapu Bhujbal, Daula entered into a commitment to have the marriage celebrated at his home in Lokhandewadi - the only liability of Bapu Bhujbal being to make over Rs. 10,000/- to Daulat which sum would take care of everything i.e. cash presents plus expenses to be incurred for the wedding ceremony. After settling this deed, Daula informed the appellants and his mother P.W. 2 Changunabai of what he had done. While his mother sympathized with the boy's feelings, the appellants were furious. They considered the commitment given by him over their heads an imprudent and also an impertinent act. Both sides i.e., the appellants and Daula expressed their feelings to each other in strong and intemperate language and the frequency of such exchanges increased.

3. On the night of 25-3-1987, the appellants and the other members of the family took dinner at the usual time and the members of the family went out to sit in their assigned places. Daula returned that night a bit late. His mother Changunabai when asked to serve him the dinner, pleaded laziness and asked Daula to take out the required dishes for himself. Daula did so and sat down to dinner somewhere near the place where his mother was lying down. The two conversed and after the meal was over, Daula went out to sleep in the court-yard of the home which court-yard has or is near a well. At that time, Dadaram was sleeping in his own court-yard and a light was burning near the well. At about 11 p.m., Dadaram was woken up by a heated exchange between the appellants on the one side and Daula on the other. The exchange was in relation to the alleged indiscretion of Daula in pruning down the dowry to the insignificant figure of Rupees 10,000/- which sum could not suffice for marriage in the caste to which the family belonged viz., the Mali caste. Daula made it clear that he would marry Bapu Bhujbal's daughter and none else. The appellants raised the bogey of the girl being possessed by evil spirits, but to no avail. The adamant attitude of Daula infuriated the appellants. Parashram by word directed Datta to teach Daula a lesson. Datta picked up a stone lying nearby and struck Daula on the face. Parashram contributed his mite by striking Daula on the head with the iron bar in his hand. Daula fell down and must have died instantaneously. The raised voices had attracted the attention of not only Dadaram and P.W. 2 Changunabai but also some others. These others came on the scene hearing the weeping and wailing of the mother. The appellants resented what they construed as the unwanted intrusion of outsiders in a realm which did not concern them. They gave expression to this feeling and that was enough to drive away Dadaram and the others assembled at the spot, except Changunabai who kept up the breast-beating - she having lost a favourite son. The appellants knowing the

Daula had passed away, wrapped up the corpse in the quilt used as a mattress or a coverlet by Daula when alive. The bundle was carried and dumped into a well located in the field of Dadaram. Dadaram was warned against disclosing the happenings to the police or anyone else. The threats deterred him till about evening of 26-3-1987. Dodging the appellants, Dadaram made his way to the Shrigonda Police Station and there lodged a report which is at Exhibit 12. An offence was registered and the investigation taken up by P.S.I. Jawale (P.W. 10). In the course of the investigation, Jawale recorded statements of various persons, had the corpse of Daula taken out from the well in which it had been thrown by the appellants, arranged to send the corpse for a post-mortem examination to the Primary Health Centre at Shrigonda and in pursuance of information given by the appellants, attached odds and ends. Investigation over, a charge-sheet was lodged in the court of the J.M.F.C. Shrigonda. That learned Magistrate, after the usual enquiry, committed the appellants to stand trial in the Sessions Court at Ahmednagar.

4. To the charge of having committed offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code, the appellants pleaded not guilty. They contended that Dadaram had concocted a conspiracy to see that the appellants were jailed for a long period so that taking advantage of their incarceration, he could usurp their lands. To substantiate the charge levelled against the appellants, the prosecution examined Dadaram, Changunabai, Rasar, Bapu Bhujbal, Dr. Andhale, P.S.I. Jawale and certain others. Their evidence carried conviction with the learned Additional Sessions Judge before whom the trial took place. The appellants were found guilty on both the counts and sentenced to life imprisonment u/s 302 read with 34 and 10 years" R.I. u/s 201 read with 34 of the Indian Penal Code. The sentences were to run concurrently. After the appeal was filed in this Court, appellants Nos. 1 and 2 were directed to be released on bail and they are presently at liberty. Bail sought on behalf of appellant No. 3 was not granted and he continues to be in detention at least since the verdict of the trial Court delivered on 14-12-1987.

5. Learned Counsel for the appellants M/s. Rao and Shinde (the first four appellants Nos. 1 and 2 the second for appellant No. 3) have been heard as has been the Public Prosecutor. The first contention advanced by counsel for the appellants is that no reliance can be placed upon the accounts given by Dadaram and Changunabai. What they say is incredible and has not been corroborated by the examination of any independent person. Pandurang who is P.W. 8 and has been examined to substantiate the version of the main witness is a son of Dadaram and cannot be treated as an independent witness. There would be some merit in this contention but for the fact that no taint attaches to Dadaram and Changuna. The mere fact that these two witnesses testified to the crime committed by the appellants does not make them unreliable witnesses. Dadaram is a full brother of Parashram and the uncle of Gulab and Datta. He has no reason to falsely ascribe the killing of Daula to these persons, the father and brothers merely saying that he has designs upon the

property of the appellants cannot be a reason for suspecting the veracity of Dadaram. Nothing has been brought out in the testimony of Dadaram to establish that he is covetous by nature or has any special designs on the property of the appellant. Dadaram does not appear to be less affluent as compared to the appellants. Three of his children are taking education and the eldest boy is married and is working along with Dadaram in the tilling of the agricultural lands the family owns. So far as P.W. 2 Changunabai is concerned, she is the wife of Parashram and the mother of Gulab and Datta. Daula is the youngest son may have been a favourite of hers but Gulab and Datta are no less. A mere suggestion that she has been instigated to falsely implicate the appellants is surely not a reason for believing the highly improbable, to wit, that hatred rather than a regard for the truth has inspired her testimony. Changunabai admits that she is presently residing with her brothers. But that only shows her revulsion at the crime perpetrated by the appellants. The separate residence would not mean a desire to get even with appellants and that too because of the suggested advice of her brothers. The said brothers may be landless labourers. That, however, would not justify believing the allegation that they have designs upon the property owned by the appellants and have been able to persuade their sister to make common cause with them so that they can obtain property and do so at the cost of their nephews and brother-in-law. The evidence of P.W. 8 Pandurang may reek of hearsay but there is no denying the fact that the heated exchange between the appellants and the deceased could have awakened Dadaram and Changunabai. Further, after the beating inflicted on Daula, Changunabai must have wept and wailed. The other neighbours who had come on the scene were told to mind their business as appears from the testimony of P.W. 4 Bapu Sinnarkar. It is said that Bapu Sinnarkar is a relation of Changuna from his parents' side and, therefore, cannot be relied upon. But as stated earlier, Changunabai herself has no reason to falsely implicate the appellants.

6. Relying upon the main witnesses viz., Dadaram and Changunabai, we come to the conclusion that the appellants Parashram struck Daula on the left temple with an iron bar and appellant Datta with a stone on the head. These two blows were forcefully inflicted and they led to the death of Daulat. The mere fact of Gulab being present with Parashram and Datta when the fatal blows were struck, would not render him liable for the killing. The question is as to whether the acts by appellants Parashram and Datta would amount to the offence of murder punishable u/s 302 read with 34 of the Indian Penal Code ? The background has to be repeated here.

7. The appellants were peeved at the imprudence of Daula in having settled his marriage to Bapu Bhujbal's daughter for a total sum of Rs. 10,000/-. They tried to dissuade Daula from going ahead with the marriage. Daula was unbending and this infuriated the appellants. On the night of the occurrence, the appellants were back to the berating of Daula and that boy was equally determined to go ahead with what he considered to be right thing. The heated exchange seems to have angered both the parties and Parashram had enough of what he considered to be the

impertinence of Daula, directed Datta to deal with the disobedient youngest son. Datta as an elder of Daula was equally angry. Not only that Daula had disobeyed him, but what was worse, had answered back their father Parashram. Parashram fuming with anger, struck Daula on the head with the iron bar in his hand even after Datta had carried out his command and inflicted a stone blow on the head of Daula. A person is said to intend the natural consequences of his act. True as this may be, sometimes, the consequence may be far more serious than the intent of the doer. In the instant case, the appellants could not have meant to murder Daula, however, disobedient and perverse may have been the boy's attitude, according to their way of thinking. What they possibly wanted to do was to chastise him for his impertinence and disobedience. The act so done, if resulting in death would be covered by Exception 4 to Section 300. The said exception reads as follows :

"Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation - It is immaterial in such cases which party offers the provocation or commits the first assault."

The heated exchange between the appellants and Daula was not the result of premeditation. The heated exchange developed into violence suddenly and in the heat of passion. The passion was generated by what all the appellants believed to be the improper and intemperate attitude and remarks of Daula. True, Daula was not armed and had not given any indication that he would take recourse to violence. But it is not as if appellants had come armed with an iron bar or a stone to bash Daula. The heated exchange suddenly developed into a fight and maddened by fury, Parashram and Datta struck Daula with the first thing that came to their hands. An act of this nature can be said to be done with the knowledge that it was likely to cause death; but without an intention to cause death, Part II of Section 304 of the Indian Penal Code is attracted and the appellants Parashram and Datta would be guilty under that Section, rather than Section 302 read with 34, I.P.C. As stated earlier, appellant Gulab had neither by word nor deed taken a part in striking Daula. He would not, therefore, be guilty of the main offence.

8. The culpability of the appellants u/s 201 read with S. 34, I.P.C. has been proved by the depositions of Dadaram and P.W. 2 Changunabai. Both testified to the carrying away of the corpse by the appellants. The fact that the corpse was found in a well leads to the clear inference that that was the place where the corpse had been flung by the appellants after they had become aware of the passing away of Daula. The removal of the corpse from the scene of the murder and throwing it into the well, were acts done with the intent to screen the offenders Parashram and Datta from legal punishment. This would attract the IIInd part of Section 201 which prescribed a sentence of imprisonment not exceeding three years.

9. Counsel for the appellants pleaded for giving to their clients the benefit of Section 4 of the Probation of Offenders Act, 1958 (Act). They pointed out that the appellants are first offenders and that they acted out of the impulse generated by false notions of the right to chastise juniors which resulted in the tragedy. This submission is opposed by the Public Prosecutor who contends that a young life has been lost on account of the cupidity of the appellants. Now, it is true that the witnesses have used the word dowry quite often in the course of their testimony. But it would be unsafe to take this expression literally. The money which was demanded from Bapu Bhujbal was not dowry as a condition for the performance of the marriage. It was to get reimbursed for the expenses to be incurred in connection with the marriage. Marriage amongst Hindus entails several items of expenditure viz., presents, feasting and travel from place to place. It is to cover up these expenses that the bride's father was asked to pay certain sums to the groom's side. Therefore, the killing of Daula cannot be considered a sacrifice at the altar of dowry in the real sense of that word. However tragic the happening may have been, the appellants are not hardened criminals. Section 4 of the Act is meant to alleviate distress and finding appellants not guilty of any offence punishable with death or imprisonment for life, we decide to give them the benefit of Section 4 of the Act. Therefore, instead of imposing a sentence, we direct their release on each of them entering into a bond without sureties in the sum of Rs. 5,000/-. The bonds shall be in force for a period of three years as reckoned from the date of the execution thereof. Appellants Parashram and Gulab to execute the bonds in the Sessions Court at Ahmednagar within six weeks from today and Datta to execute it in whichever prison he might be. Datta be released immediately after the execution of the bond unless otherwise required to be detained.

10. Appeal allowed partly by setting aside the conviction of the appellants u/s 302 read with 34, I.P.C. Appellants Nos. 1 and 2 are convicted u/s 304, Part II read with 34, I.P.C. The conviction of the appellants u/s 201 read with 34, I.P.C. is hereby affirmed. Instead of sentencing the appellants, we direct that bonds be taken as above and that they be of a good behaviour and do maintain the peace.

Order accordingly.