

CASE NO.:
Appeal (crl.) 971 of 2000

PETITIONER:
RAMA MANGARUJI CHACHERKAR

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 04/12/2001

BENCH:
U.C. Banerjee & K.G. Balakrishnan

JUDGMENT:

K.G. Balakrishnan, J.

The appellant was convicted for the offence under Section 302 I.P.C. by the Additional Court of Sessions, Nagpur and it was confirmed by the Nagpur Bench of the Bombay High Court. The appellant Rama Mangaruji Chacherkar and his brother Dama Mangaru Chacherkar (deceased) were residing in their common ancestral house. The portion occupied by each of them was separated by bamboo mat. On the date of the incident, i.e., 30.7.1992, Dama had gone to the weekly bazaar and returned home at about 8.00 p.m. After some time, their ensued a quarrel between Rama and Dama and according to prosecution, Rama threw a crude bomb at Dama and it hit his head and exploded. Dama sustained severe injuries and he died on the spot. By the explosion of the bomb, appellant Rama also sustained injuries and the paternal uncle of the deceased, Mangaru Kaka, who was present at the time of the incident, sustained some burn injuries. Hearing the sound of the explosion, people of the locality came there and Smt. Kantabai, the wife of the deceased Dama told her husbands brother, Goma Chacherker, that her husband Dama had been killed by Rama.

The place of incident is about 10 kms. away from the Veltur Police Station. Goma Chacherker went to the police station on the next day and lodged a complaint. PW9, the Sub-Inspector of Police recorded the statement of the informant and registered the crime. He visited the place of incident and prepared the Inquest Report. He collected some remnants of the bomb, blood-stained soil, and some of the particles of flesh, which were found lying scattered at the scene, and recorded the statements of the wife of the deceased Dama, Mangaru Kaka, Goma Chacherkar and others. The dead body of Dama was sent for post-mortem examination. The blood-stained clothes worn by the deceased Dama at the time of the incident were also taken into custody during the course of the investigation.

On the prosecution side, 10 witnesses were examined. Before the commencement of the trial, Mangaru Kaka died and he could not be examined as a witness. The learned Sessions Judge relied on the evidence of PW2 Smt. Kantabai, the wife of the deceased Dama and found the appellant guilty of the offence charged against him. Ms. Aparna Bhat, learned counsel, who appeared on behalf of the appellant strongly contended before us that the evidence adduced by the prosecution is highly unsatisfactory and there is no direct evidence to prove the guilt of the appellant. It was pointed out that Smt. Kantabai admitted in her cross-examination that at the time of the incident she was sleeping on a cot in the adjacent room and that she had not seen the

appellant throwing the bomb at the deceased Dama. It is also pointed out that there is no direct evidence to prove that there was a quarrel between the appellant and the deceased Dama as the differences between them regarding the sharing of the agricultural produce and the house had been settled before this incident. It was also argued that there could have been an accident and the crude bomb must have exploded and the deceased and the appellant might have sustained injuries in that incident.

It is true that the evidence of PW2 Kantabai is not clear and specific. She refused to accept the prosecution case that she had seen the appellant throwing the bomb at the deceased Dama. In the cross-examination, she gave a statement to the effect that she had been sleeping at the time of the incident. The Sessions Judge as well as the High Court did not believe this part of the evidence. It may be noted that PW2 Kantabai, in her evidence, stated that her husband had gone to purchase the goods from the weekly bazaar and had returned at 8.00 p.m. and thereafter there was a quarrel between the appellant and the deceased. She also deposed that the quarrel was regarding the share of the agricultural produce and deceased Dama agreed to give a share in the house as well as the agricultural produce. She also deposed that the appellant hurled one ball, used for killing boar and it hit on the head of her husband. There was fire when the ball hit on the head of the deceased and caused plenty of smoke. It may also be noticed that PW2 Kantabai is a tribal woman. The evidence given by her in the examination-in-chief clearly shows as to how the incident started and culminated in the death of the deceased Dama. In the cross-examination, she deposed that she was sleeping in the adjacent room. Probably, she must be sleeping in the evening but at the time when the quarrel took place, she must certainly have been present. Otherwise, she would not have been in a position to give the evidence which she had given in her examination-in-chief.

It may be noted that the appellant also sustained injuries and the Mangaru Kaka who was present at that time had also sustained some minor injuries. The injuries found on the appellant were on his right hand palm where the skin was found burnt. There were burning dots on his left eyebrow and forehead. His lips and nose also had slight burning injuries. This would indicate that the appellant had handled a crude bomb and the injuries on his body must have been caused during the course of the incident. We are of the view that the learned Sessions Judge had correctly appreciated the evidence and held that the appellant was guilty of the offence and the High Court rightly confirmed that finding.

The learned Counsel for the appellant lastly contended before us that the entire incident had happened on a sudden quarrel and there was no pre-meditation or serious intention on the part of the appellant to cause death of the deceased Dama, and, therefore, the offence, if any, committed by the appellant, would only come within the purview of Section 304 Part I, I.P.C. It was also pointed out that the appellant has been undergoing imprisonment since 1992. Of course, the incident must have happened on a sudden quarrel but the weapon used for causing injury is a crude-bomb and in all probability, the appellant being a person residing in the village must be aware of the serious consequences of explosion of a bomb. Moreover, the bomb was thrown on the head of the deceased and it caused extensive injuries to the deceased. The head of the deceased was completely smashed and his brain part came out and it resulted in the instant death of the deceased. The bomb was thrown from a close range and the fact that appellant too sustained injuries is indicative of that fact. This being the factual scenario, we do not think that the gravity of the offence committed by the appellant is in any way lessened so as to come under Section 304 Part I, I.P.C. Though the learned Counsel for the appellant very ably presented the case before us, we do not find any reason to interfere with the finding of the High Court. The appeal stands dismissed accordingly.

J.
(U.C. BANERJEE)

J.
(K.G. BALAKRISHNAN)

December 4, 2001.

JUDIS