

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 212 OF 2008

NIVRUTTI & ORS. .. APPELLANT(S)

vs.

STATE OF MAHARASHTRA

.. RESPONDENT(S)

ORDER



This appeal arises out of the following facts:

On 9th May, 2004, the marriage of the daughter of one Bhausahab, the brother of Ashok PW.1, was to be solemnized in village Janephal, District Aurangabad. Ashok PW.1, arranged a water tanker on the 6th May, 2004. As the tanker was being taken towards Ashok's house the accused appellants, obstructed the way by putting stones and thorny bushes. The accused also abused PW.12 Dada Saheb and the deceased Nana Saheb.

Ashok reached the village at about 9.30 a.m. and was told by the deceased not to take the tanker to his well, as planned as, the appellants had obstructed the passage in that direction. The tanker was accordingly brought to its destination by some other route by Nana Saheb. Nana Saheb and Ashok, thereafter, went to police station Shioor for lodging a complaint with respect to the behaviour of the appellants and while they were returning from the police station they were waylaid by the appellants, Nivrutti armed



with an iron rod and all the others with sticks. They also attacked

Nanasaheb with their weapons on which he became unconscious and fell to the ground. He was, thereafter, removed to the hospital by some of the witnesses and an FIR was lodged at Police Station Shoor. On the completion of the investigation the appellants were brought to trial for offences punishable under Section 302 and 323 read with Section 34 of the IPC and were sentenced to undergo life imprisonment for the main offence and for three months for the offence under Section 323/34 of the IPC.

This judgment has been confirmed by the High court in appeal.



This appeal by way of special leave is before us today.

The learned counsel for the appellants has raised only one argument during the course of hearing. He has submitted that from the evidence on record it was clear that a case under Sec.302/34 IPC was not spelt out as there was no intention whatsoever to murder Nana Saheb, as the intention was only to cause him hurt as he was a busy body and creating difficulties for all and sundry. He has submitted that as per the Doctor's evidence all seven injuries were prima facie simple in nature

on non-vital parts of the body and it was only injury No.6 to the lung detected during the post mortem examination which was the

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cause of the death. He has also submitted that from a reading of the



ocular evidence it was apparent that no intention to cause death was made out and that the only purpose of the appellant was to teach the deceased a lesson for the purpose of correcting his behaviour. The learned counsel has also relied upon (1973) 3 SCC 466 (Ram Lal vs. Delhi Admn.) and (2002) 7 SCC 33 (Bhima @ Bhimrao Sida Kamble and Others vs. State of Maharashtra) in support of his case.

The learned counsel for the respondent-State has, however, submitted that the evidence of five eye witnesses had uniformly made out

a case of murder and as the appellants had tried to restrain and obstruct the removal of Nanasaheb to the hospital or to the police station to lodge a report after he had been injured, the intention on the part of the accused was writ large. He has also submitted that the animosity between the parties stood proved from the criminal and other litigation that had ensued between them and which was the motive for the incident that happened on the crucial day. He has also submitted that the nature of the injury was a *sine qua non* for determining the nature of offence and the intention on



the part of the accused was a secondary consideration. The learned counsel has relied on Virsa Singh vs. State of Punjab 1958 SCR 1495 for this assertion.

the record. We find from the evidence that the appellant Nivrutti alone was armed with an iron rod and the others were armed with sticks. We have also gone through the post- mortem report and observe the following injuries on the dead body:

“1. Contused abrasion over right lateral aspect of neck inferior to right angle of Mandible, size $\frac{1}{2}$ cm, $\frac{1}{2}$ cm blackish discolouration, contused abrasion over left side of chin of the size $\frac{1}{2}$ cm. Floor was brownish, scap present.

2 Imprint type of contusion over right thigh anteriorly, two in number, blackish discolouration, size 10 x 2-1/2 cm. Each.



2 Type of contusion over left leg, posterior laterally, three in number, size 55 x 2-1/2cms., 8 x 2-1/2 cm., 11x2 1/2cm. Respectively blackish discolouration:

4 Contusion over left knee, size 12x4 $\frac{1}{2}$ cm. With blackish discolouration:

4 Imprint type of contusion over left thigh, size 6 x 2-1/2 cm.

6 Imprint type of contusion over right scapular region of back, blackish size 7x1-1/2 cm.

7 Imprint type of contusion over back, oblique with blackish discolouration, size 23 cm x 2-01/2 cm.

7 Imprint type of contusion over left scapular region extending to left arm, blackish discolouration, size 17 x 2-1/2 cms.”



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Doctor Salunke PW.8, in his deposition stated that injuries Nos.1-5 were simple and 6-8 would also be simple in normal circumstances, but injury No.6 which was on the Scapular region, had apparently caused an internal injury on the lung which was the cause of death. He clarified that except the internal injury below injury No.6 which was the cause of death, all the injuries were simple and on non-vital parts of the body. It is also

significant that there is no evidence on record to indicate as to who was the author of this injury as omnibus allegations have been made against all the appellants.

Some argument was raised by the learned counsel for the respondent State that the intention on the part of the appellants was something much more than a mere intention to cause hurt as (after the injuries had been caused), they had obstructed the removal of the injured to the hospital and the evidence of Ashok and other PWs was clear and



explicit on this aspect. We find this assertion to be of no merit. We see from a reading of the judgment of the High Court that the story with regard to the alleged restraint and obstruction has been disbelieved, as this story had not been given in the police statements and was a glaring improvement during the trial.

The learned counsel for the respondent has, however, brought to our notice the evidence of PW.2 Zumberbai and PW.3 Rajender Kashinath Jaagdale and submittd that these two witnesses had categorically and at every stage and without any contradiction supported the story with regard to the obstruction. We have gone through the evidence of these two



witnesses very carefully with the help of learned counsel and find that these two witnesses also had not made any mention with regard to this matter in their statements under Sec.161 of the Cr.P.C. and the evidence in Court on this aspect was also (as in the case of the other witnesses mentioned by the High Court), a glaring improvement. The evidence of PW.2 and PW.3 also, therefore, does not advance the case of the prosecution.

We have also gone through the judgment cited by the learned

counsel. In Ram Lal vs. Delhi Admn. (Supra) a Bench of this Court laid down the broad principle that where several accused armed with non-lethal weapons with the common intention of causing grievous hurt caused the death of an individual, the matter would fall within Sec.325 of the IPC and not under Sec.302. In Bhima @ Bhimrao Sida's case (supra) this is what this Court had to say in para 9:



“When a large number of persons were armed only with sticks or pelted stones which they could find anywhere either near the fields on or their way and it was not established as to who specifically attacked whom, it is not clear as to whether the

intention was to cause death. It is more probable that the intention was to give a hard beating only. Even if we accept the case that the deceased Vithal was pursued right up to the wada, the object of the mob was to teach him a stern lesson who is said to be a bully in the village. In the circumstances and in the light of evidence, we must hold that the reasonable inference to be drawn is that the common object was to commit offences under Section 323 and Section 325 read with Sections 147/149 IPC and not under Section 302 read with Section 149 IPC. The trial Court as well as the High Court appear to have lost sight of crucial aspects.”

We find that the facts of the case before us today are largely akin



to the facts in Bhima's case. In fact the present case is somewhat on a better footing as the evidence in the cited case was that after causing the initial injuries on the person of the deceased, the accused had pursued the deceased right up to the Wada. We also find that in both the afore cited cases some of the injuries had been caused on vital parts of the body such as the head. In the present matter we observe that there is no injury on any vital part of the body, there is no evidence as to who had caused injury No.6 and that the story with regard to the obstruction put in the way

of Nanasaheb's removal from the site is not borne out by the prosecution evidence and in any case has been disbelieved even by the High Court.

We,

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however, feel that as one of the appellants Nivrutti, had been armed with



an iron rod, the present matter would fall within the ambit of Section 326/34 of the IPC. We have also considered the judgment cited by the learned counsel for the respondent i.e. Virsa Singh's case (supra) where the question posed was as to whether one injury inflicted in the abdomen would make the matter fall within Sec.302 or 304 Part-I. It is in this connection that the observation was made that the nature of the injury alone should be looked at and not the intention. In any case Virsa Singh's judgment has been reconsidered and explained in several other judgments

and the effect thereof has been watered down substantially.

We, accordingly, partly allow this appeal, set aside the conviction of the appellants under Sec.302/34 IPC and alter it to one under Sec.326/34 IPC and reduce the sentence to 5 years R.I.; the default clause and the conviction under Section 323/34 of the IPC to remain as it is.

.....J.
(HARJIT SINGH BEDI)



(J.M. PANCHAL)

.....J.

New Delhi,
July 29, 2009.