REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1643 OF 2005

Laxmichand @ Balbutya .... Appellant(s)

Versus

State of Maharashtra .... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

1) This appeal is filed by the appellant-accused, who is in Jail, through Superintendent, Nagpur Central Prison, Nagpur under Section 2 of the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act against the final order and judgment dated 15.10.2004 passed by the High Court of Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 48 of 1990 whereby the High Court allowed the appeal filed by the State and set

aside the order of acquittal passed by the Additional Sessions Judge, Gondia.

2) The prosecution case is as follows:

(a) On 10.08.1986, at about 3.00 p.m., there was a quarrel between Laxmichand @ Balbutya - the accused and Gyaniram Mahajan – the deceased, who was in drunken state, at the house of the accused. The appellant-accused asked Gyaniram to go home but he was not acceding to his request. The accused brought Gyaniram from his house on the road by lifting him but he fell down. The accused struck him with a spade on his head. As a result, Gyaniram sustained injury on his head and had become unconscious. The accused proceeded towards the house of one Police Patel. While going there, he made disclosure to some persons that he had killed Gyaniram Mahajan. One Ghanshyam, who was in the employment of Fulchand and who had heard the utterances of the accused to the above effect, informed Tejram (PW-2) who was sitting in

the house of Fulchand that the appellant-accused was telling that he had killed Gyaniram. Tejram went towards the Gram Panchayat. The accused was coming from the side of the house of Police Patel. He again made similar utterances and informed Tejram that he had killed Gyaniram and further asked him to scribe a report. Tejram advised him to go to the police station.

(b) Tejram went to the police station and lodged an oral report that he was informed by the accused that he had killed Gyaniram. The oral report was reduced into writing by P.S.I. Narkhede (PW-12) under Section 302 of the Indian Penal Code. By the time, the accused reached there alongwith spade, P.S.I. Narkhede (PW-12) arrested him and seized the spade. Thereafter, he went to the spot and noticed that Gyaniram was lying unconsciously. Spot panchnama was prepared and the samples of blood stained earth and plain earth were collected.

(c) Gyaniram was sent to the hospital in the cart of Primary Health Centre, Tirora. The doctor examined him at 9.45 p.m. and found a lacerated wound on his fore head with underlying bony fractures into pieces. As Gyaniram was unconsciousness, P.S.I. could not take his statement. On 17.08.1986, A.S.I. Sahare received a message from Dr. Jaiswal of K.T.S. Hospital, Gondia that Gyaniram had expired. On the same day itself the post mortem was conducted.

(d) After the investigation, the charge sheet was sent to the Court of J.M.F.C. Gondia. The J.M.F.C. committed the case under Section 209(a) of the Code of Criminal Procedure to the Court of Sessions for trial of the accused. The charge for the offence under Section 302 I.P.C. was framed against the accused. The Sessions Judge, Gondia, vide his judgment dated 29.07.1989, acquitted the accused of the charges framed against him.

(e) Against the said judgment of acquittal, the State filed an appeal before the High Court of Bombay, Nagpur

Bench. The High Court, vide its judgment dated 15.10.2004, set aside the order of acquittal and convicted the appellant-accused for offence punishable under Section 302 I.P.C.

(f) Aggrieved by the judgment of the High Court, the appellant-accused has filed this appeal from Jail through the Superintendent, Nagpur Central Prison, Nagpur before this Court.

3) Heard Mr. Sushil Karanjakar, learned *amicus curiae* for the appellant and Mr. Shankar Chillarge, learned counsel for the State.

4) As far as the incident and the involvement of the appellant-accused is concerned, the prosecution has mainly relied on the evidence of Fattu Madavi (PW-3) and Mahadeo (PW-4) who are the two eye-witnesses. Apart from these two eye-witnesses, the prosecution has also

relied on extra-judicial confession said to have been made by the accused to some of the witnesses.

5) It is seen from the evidence of Fattu (PW-3) that the accused gave a call to him and said that Gyaniram – the deceased was under the influence of liquor and he was not willing to leave his house. There was a quarrel between the accused and the deceased at the house of the accused. At the time of quarrel, Mahadeo (PW-4), who was present in the nearby house of Bhaurao Neware was witnessing the same. It is also seen from the evidence of Fattu (PW-3) and Mahadeo (PW-4) that in the course of quarrel, the accused dragged Gyaniram outside of his house and gave a stroke of spade on his head. From the evidence of PWs 3 & 4, the prosecution has established that the quarrel was going on between the accused and the deceased and the deceased was under the influence of liquor and he was adamant and refused to leave the house of the accused which forced the accused to drag him outside his house and also inflicted injuries with the spade. As rightly

observed by the High Court, there is no reason to disbelieve the version of eye-witnesses, PWs 3 & 4, in this regard. On perusal of their evidence, we found no material omission or contradiction to disbelieve their version. On the other hand, we agree with the conclusion arrived at by the High Court as regard to the reliability of two eye-witnesses.

6) Apart from two eye-witnesses, the prosecution has examined one Tejram as PW-2 who made a complaint to the police. The accused has made an extra-judicial confession to him. Tejram (PW-2) is the person who lodged the report (Ex.21). The perusal of the above report strengthened the evidence of Tejram (PW-2) about the statement said to have been made to him by the accused.

7) It is also seen from the evidence of Narkhede, P.S.I. (PW-12) that when he was scribing the report, the accused arrived at the police station with a spade and immediately he arrested him and seized the spade. Though no much importance needs to be given to the statement of Tejram

(PW-2) but if we consider the same along with other materials, there is no reason to reject his version. Another person before whom the accused has made a confessional statement is Govardhan (PW-7). The accused had gone to his place and informed him about the incident. In the same way, one Udelal, who was examined as PW-8, also apprised the Court about the admission of guilt by the accused. Though their is no need to attach importance to the statements of PWs 7 & 8, as observed earlier, if we consider all the materials together, it prove the case of the prosecution that it was the accused who was responsible for the death of Gyaniram-the deceased.

8) It was submitted that though the injured was alive for seven days but no attempt was made to record his statement about the incident. It is seen from the evidence of Narkhede, PSI (PW-12) that he was not allowed to record his statement by the Doctors as the victim was not in a position to give the statement. It is relevant to note that an attempt was made to record his statement by the

Special Executive Magistrate, that also could not be done. The evidence of Dr. Arvind Manwatkar (PW-1), Medical Officer attached to Primary Health Centre, Tirora also supports the version of the prosecution. He also issued a certificate (Ex.19) that the injured person was not able to give any statement. When Dr. Arvind Manwatkar (PW-1) was shown spade at the time of examination in Court, he opined that it would be possible that such injury could be caused with spade. As observed by the High Court, the medical report, evidence of Doctor and the statement of eye-witnesses support the case of the prosecution. Dr. Pradip Kumar Gujar (PW-9) who conducted the post-mortem on the dead body of Gyaniram also found that the cause of death was head injury, laceration of the brain matter, resulting into neurogenic shock and peripheral circulatory failure. All the above materials including oral and documentary evidence clearly prove the case of the prosecution and we agree with the conclusion arrived at by the High Court.

9) Coming to the argument that instead of convicting the accused for culpable homicide amounting to murder, his case would fall in the category of culpable homicide not amounting to murder as even according to the prosecution one blow alone was caused by the accused that too in a quarrel, we have already pointed out and it is clear from the evidence of PWs 3 & 4 – eye-witnesses that prior to the incident, there was a quarrel between the accused and the deceased inside the house of the accused and the deceased consumed liquor and adamant to leave the house of the accused which necessitated the accused to drag him out of his house and inasmuch as the deceased still refused to accede to the request of the accused, he inflicted blow on the head with the spade. As pointed out by the appellant-accused, he had no pre-plan or intention to kill the deceased and his main worry was to get the deceased out of his house, who consumed excessive liquor. Considering all these aspects, particularly, the conduct of the deceased in not leaving the

house of the accused, he dragged him out of his house, put him on the road and assaulted him with a spade, we are of the view that the accused has no intention to kill the deceased. It is true that blow given by the accused on the deceased was at the vital part because of which he was unconscious for seven days and ultimately succumbed to his injuries. However, as discussed earlier, the accused had no intention to commit the offence.

10) Considering all the materials and reasons, we feel that the commission of offence attributed to the accused-appellant would come under Section 304 Part II Indian Penal Code. Taking note of the fact that the incident had occurred in the year 1986 and the accused had no intention to kill the deceased but due to the reasons and circumstances stated above, we feel that the ends of justice would be met by awarding sentence of rigorous imprisonment for five years. The accused is entitled to have the benefit of deduction of the period already undergone.

11) With the above modification, the appeal is allowed in part.

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

.....
.....J.
(P. SATHASIVAM)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;
JANUARY 6, 2011.

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