

SANGHARAJ BHOGAPPA KAMBLE

v.

**STATE OF MAHARASHTRA
(Criminal Appeal No. 24 of 2006)**

OCTOBER 26, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

2010(13) SCR 376

The following order of the Court was delivered

ORDER

1. This appeal by way of special leave exemplifies the consequences of uncontrolled drinking and the dangers that go with it.

2. On 5th November, 1988, the deceased had gone to his duty at 8:00a.m. and returned at 7:30p.m. and after having dinner with his family members was sitting in the house conversing with them. At that moment, the accused accompanied by his friend, who was a neighbour and also a friend of the deceased, came to the house of the deceased and asked him to join him for a drink. The deceased, however, replied that as he had already had his dinner he was not inclined to take any liquor. The accused nevertheless insisted that the deceased should at least come out of the house and sit with them. The deceased agreed to this arrangement and went out of the house and the accused, his friend and the deceased sat outside the complainant's house where the accused and his friend then consumed liquor. It appears that after short time the accused started talking in an incoherent manner on which his father came out and seeing his condition got annoyed and asked the accused to leave the place and to stop drinking. This led to an exchange of hot words between the accused and his father following which the accused slapped his father and the father also slapped the accused. The deceased intervened at that stage and asked the accused as to why he was abusing his father and remonstrated with him on that account. The accused, however,

turned on the deceased and told him that he was nobody to interfere in a dispute between him and his father and a quarrel ensued between the two. The father of the deceased also intervened in the quarrel and tried to separate them but he was pushed aside. The accused then took out a knife from his pocket and stabbed the deceased in his chest causing him a serious injury leading to his death. While the quarrel was going on Leena, P.W.5, the sister of the deceased and several others also came to the spot. A case under Section 302 of the IPC was accordingly, registered against the accused and on completion of investigation he was put to trial. The trial court and the High Court have concurrently held that the case of the prosecution stood proved and that the accused was liable for the murder. He was, accordingly, awarded a life sentence.

3. When this matter came up before this Court by way of special leave on the 12th August, 2005, notice was issued limited to the nature of the offence as also on the question of bail. Leave was granted thereafter on the 5th January, 2006, and having regard to the facts of the case and the question as to whether the offence would fall under Section 302 or Section 304 Part I or Part II of the Indian Penal Code, bail was also granted to the accused on that day. The matter is before us for final disposal.

4. We have perused the office report and see that Mr. V.B. Joshi, Advocate, who had filed this appeal has since passed away. Notice was issued to the accused to make alternative arrangements but it appears that despite service being complete he has not chosen to appear. In normal circumstances, we would have appointed an Amicus Curiae but in the light of the fact that we intend to make an order in favour of the accused, we find that this would not be necessary.

5. In the light of what we have noticed above, the question that arises is as to the nature of the offence and whether the case of the accused would fall under Section 302 or 304 Part I or Part II thereof. A perusal of the facts

already recapitulated above would reveal that the incident herein would fall under Exception 4 to Section 300. Exception 4 reads as under;

Exception 4 _ 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 offender having taken undue advantage or acted in a cruel or unusual manner."

6. This exception postulates four conditions for its applicability (i) that it was a sudden fight; (2) that there was no pre-meditation; (3) the act was done in a heat of passion and (4) that the appellant had not taken any undue advantage or acted in an unusual or cruel manner.

7. A perusal of the facts above mentioned would indicate that the accused and deceased were neighbours and friends and in fact they appeared to have been drinking companions as well. The incident happened because the accused felt that the deceased should not come in the way of a quarrel that he had with his father, notwithstanding the fact that the father was only remonstrating with him as he was already drunk having taken excessive liquor. The only fault of the deceased was that when the accused slapped his father, he intervened and told the accused that he should behave which further annoyed him and led him to cause one injury to the deceased. We, therefore, see that the conditions for the applicability of Exception 4 are clearly satisfied.

8. We have also perused the medical evidence and find that there is effectively only one stab injury on the person of the deceased the others being abrasions which could have been caused during the intervention in the quarrel between the father and son. It cannot, therefore, be said with certainty that the accused intended to cause the very injury that he inflicted.

9. In this view of the matter, we feel that the conviction of the accused for the offence under Section 302 of IPC is not made out. He is, accordingly, acquitted of that offence. We, however, convict him for the offence punishable

under Section 304 Part I of the IPC and sentence him to undergo rigorous imprisonment for five years.

10. With this modification in the judgment of the courts below, the appeal is dismissed.

