

TUKARAM & ORS.

v.

STATE OF MAHARASHTRA
(Criminal Appeal No. 902 of 2007)

FEBRUARY 24, 2011

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

Penal Code, 1860 – s. 326/34 – Assault causing grievous injury – Victim admitted in hospital – Death of victim after eighteen days – Accused convicted u/s. 302/149 and sentenced to various terms of imprisonment – Conviction upheld by High Court, however, sentence modified to one u/s. 304 (I) rw s. 149 – On appeal held: Medical evidence reveals that at the very initial stage the doctors did not realize the gravity of the situation as they had seen only one external injury on the buttocks of the deceased and did not even look at the possibility that some internal injuries too could have been caused considering the manner of the attack – The doctors tried to cover their indifference and negligence by deposing that the death could be attributed to the injury caused to the abdominal organs – However, it cannot be ruled out that had the doctors been a little vigilant during the 20 days when the deceased was admitted to the hospital, the deceased could have been saved – Though the eye witnesses stated that injuries had been caused not only by the fist blows but by the beating with the iron rods as well but their depositions not supported by the medical reports which reflect only an injury on the buttocks – Thus, accused liable to be convicted u/s. 326/34 and not u/s. 304(I) read with s.149 – To meet the ends of justice, sentence of the accused reduced to the period already undergone by them.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 902 of 2007.

A From the Judgment & Order dated 19.10.2006 of the High Court of Judicature of Bombay, bench at Auangabad in Criminal Appeal No. 807, 817 of 2003 & 34 of 2004.

WITH

B CrI. Appeal Nos. 1195 of 2007 & 615 of 2011.

K.V. Viswanathan, Anant Bhushan Kahade, Sudhanshu S. Chaudhary, Sunil Upadhyay, Naresh Kumar, Sunil Kumar Verma, K.V. Sreekumar for the Appellants.

C Ravindra Keshavrao Adsure, Shankar Chillarge, Asha Gopalan Nair for the Respondent.

The following order of the Court was delivered

D O R D E R

E As per the prosecution story the appellants and the complainant party constituted two different groups in an organization called the Dalit Mukti Sena. It appears that both groups had been invited to the marriage of one Anil Janjale on the 22nd May, 1995 which was performed at the Shishu Mandir near the Railway Hospital. After the marriage the deceased Prakash was returning to his home along with his friends Pradeep, Nana Mahajan (PW.2) and others at about 11.00 p.m. As they came near the Hindi Church all the accused followed them. Bhagwan Salve, since deceased, and A.6 Jagan Sonawane were armed with iron rods. Bhagwan Salve caught hold of the shirt of the deceased whereupon the other accused assaulted him and hit him by giving fist blows whereas A.5 Raju Suryawanshi who was armed with a knife dealt a blow on the left buttock and Bhagwan Salve and A.6 Jagan Sonawane hit him with iron rods on the back and stomach. The deceased who was then grievously injured was taken to the Railway Hospital where PW.10 - Dr. Gangurde examined him and admitted him into the Surgical Ward. His statement was recorded by PW.12-

H

P.I. Panwar and a case under Sections 147, 148, 324, 504 and 506 r/w 149 of the IPC was registered. A

On the admission of the deceased, Dr. Gangurde summoned Dr. Dhakate (PW.11) a Surgeon, who found an injury on the buttocks which was stitched up the very same evening. On the 24th, however, the patient developed signs of internal bleeding and it was decided to perform an operation. On opening the stomach it was found at that stage that the intestines had been perforated at the jejunum, the spleen too was ruptured and there was an omental tear causing bleeding from the veins and about 100 c.c. foul smelling liquid was also found in the peritoneal cavity which was suctioned out. The Spleen was also removed and the bleeding areas were ligatured. On the 5th June, 1995 faecal matter was seen coming out from the stomach which led to the bursting of the abdomen and as a consequence thereof a second operation was performed on the 6th June, 1995 and it was at that stage noticed that the buttock injury was 8.5 cms. deep and that a finger inserted from the rectum could meet a finger inserted into the perforation on the buttocks. Consequent to this development the patient developed septicemia and pneumonia and died on the 9th June, 1995 at about 2.00 p.m. A case under Section 302 was registered against the accused. On the completion of the investigation they were brought to trial inter alia under Sections 147, 148 and 302/149 of the IPC. The Trial Court relying on the eye witnesses account and the medical evidence convicted the accused for offences punishable under Sections 302/149 etc. of the IPC and sentenced them to various terms of imprisonment. An appeal was, thereafter, taken to the High Court and the High Court, has, while confirming the conviction, modified the sentence to one under Section 304 (I) read with Section 149 of the IPC and maintained the sentences and conviction under the other provisions of the IPC. In doing so the High Court opined that there was no intention on the part of the accused to cause death and the injury that they had caused

A could be said to be likely to cause death. It is in this situation the matter is now before us.

B As already indicated above, a very limited relief can be granted to the accused in this matter. We find from the reading of the medical evidence that PW.11 Dr. Dhakate at the very initial stage did not realize the gravity of the situation as he had seen only one injury on the person of the deceased which was the external injury on the buttocks as he did not even look at the possibility that some internal injuries too could have been caused considering the manner of the attack.

C This comes out from the evidence of the doctors PWs.10 and 11. It is true that the Doctors have tried to cover up their indifference and negligence by deposing that the death could be attributed to the injury caused to the abdominal organs but D we are of the opinion that had the Doctors been a little vigilant during the 20 days that the deceased stood admitted to the hospital the possibility that he could have been saved cannot be ruled out. In this view of the matter we find that the accused are liable for conviction for an offence under Section 326/149 E of the IPC instead of Section 304(I) read with Section 149 of the I.P.C.

F The learned counsel for the State has however argued that it was clear from the medical evidence that the injuries had been caused not only by the fist blows but by the beating with the iron rods as well. It has admittedly been so stated by the eye witnesses but their depositions are not supported by the medical reports which reflect only an injury on the buttocks.

G We are also told that as of today accused Nos. 1-4 who had given fist blow have under gone one year and 10 months of the sentence whereas A.5 who is said to have caused the knife injury has undergone three years and 20 days of the sentence whereas A.6, one of those who had caused an injury with an iron rod has undergone 2 years 11 months. We H therefore feel that the ends of justice would be met if the

sentence of all the accused is reduced to the period already undergone. A

The accused are accordingly held to be liable under Section 326/34 of the I.P.C. Their sentence is reduced to that already undergone. The appeals are disposed of accordingly. B

N.J.

Appeals disposed of.