

A SANGHARAJ BHOGAPPA KAMBLE

v.

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

OCTOBER 26, 2010

B

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

Penal Code, 1860:

C

ss. 300 – Exception 4 and 304 (part 1) – Culpable homicide not amounting to murder – Punishment – Altercation between father and the drunken son – Son slapped the father whereupon son's friend intervened and was stabbed to death by the son – Conviction of accused u/s 302 affirmed by High Court – HELD: A perusal of the facts would reveal that the incident would fall under Exception 4 to s.300 – 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 – When the accused slapped his father, the deceased intervened which annoyed the accused and led him to cause one injury to the deceased – Therefore, the conditions for the applicability of Exception 4 are clearly satisfied – It cannot be said with certainty that the accused intended to cause the very injury that he inflicted – In this view of the matter, conviction of the accused for the offence punishable u/s 302 is not made out – He is, accordingly, acquitted of that offence – However, he is convicted of the offence punishable u/s 304 (part I) and sentenced to undergo five years RI.

D

E

F

G

H

SANGHARAJ BHOGAPPA KAMBLE v. STATE OF 377
MAHARASHTRA

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 24 of 2006.

From the Judgment & Order dated 10.02.2005 of the High
Court of Judicature at Bombay in Criminal Appeal No. 384 of
1989.

Aparajit Singh, Sanjay V. Kharde, Asha Gopalan Nair for
the Respondent. B

The following order of the Court was delivered

ORDER C

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 D
E
F
G
H

A 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
B 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
C 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.
D 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,
E 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.

F 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
G 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
H that arises is as to the nature of the offence and whether the

SANGHARAJ BHOGAPPA KAMBLE v. STATE OF 379
MAHARASHTRA

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.

- A 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.
- B

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

R.P.

Appeal dismissed.