

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).4832/2010

(From the judgement and order dated 20/11/2009 in of The HIGH COURT OF BOMBAY AT NAGPUR)

CRLA No. 246/2004

SITARAM Petitioner(s)

VERSUS

STATE OF MAHARASHTRA Respondent(s)

(With applns for exemption from filing O.T.,bail and office report)
(for final disposal)

Date: 19/10/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s) Mr. Md. Farman,Adv. (SCLSC)

For Respondent(s) Mr. Shankar Chillarge, Adv.
For Ms. Asha Gopalan Nair,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard counsel for the petitioner.
The petitioner stands convicted under
Section 302 of the Indian Penal Code and
sentenced to life imprisonment and a fine of
Rs.1,000/-; in default of payment of fine he is
directed to undergo simple imprisonment for three

1
months. In addition, he is also convicted under
Section 324 of the Penal Code and sentenced to
rigorous imprisonment for six months and a fine
of Rs.200/-; in default of payment of fine, to
simple imprisonment for fifteen days.

In this case notice was issued limited to
the question of the nature of offence.

The petitioner and the deceased Parasram
Shivram Mokalkar were full brothers, the
petitioner being the elder one.

According to the prosecution, a family
partition that had taken place earlier had caused
bad blood between the two sides. A few days
before the date of occurrence, a quarrel had also
taken place between the petitioner and the
members of the prosecution party on the issue of
tethering the bullocks at a particular spot. On
April 24, 2003 at about 6 O' clock in the
morning, while the deceased Parasram Shivram
Mokalkar was sleeping on a cot near the cattle
shed at his house, the petitioner came there

armed with a spear and gave him a blow at the supra clavicular region. The spear pierced the lungs resulting in the death of the victim. When the victim's son and other family members tried to come to his rescue, the petitioner assaulted them too with the spear causing injuries on the waist of the informant.

Both the Trial Court and the High Court on the basis of the evidence adduced on behalf of the prosecution accepted and upheld the prosecution case.

2

In the above facts, learned counsel for the petitioner tried to contend that the case would not come within the definition of murder, but may fall under any of the two parts of Section 304 of the Indian Penal Code.

We are unable to accept the submission. The petitioner came to the house of the victim, his younger brother armed with a spear and while he was sleeping struck him with the spear. He made the fatal assault while the victim caused no physical threat or gave any provocation to him. When other family members tried to intervene he assaulted them as well. In those facts, we are unable to hold that it is not a case of premeditated attack with the intent to kill but only culpable homicide.

Counsel for the petitioner submitted that the petitioner is now over 75 years of age and the Court should take into consideration the old age of the petitioner. The age of the convicted petitioner in an appropriate case may be of relevant consideration but in a case of murder, where the law provides only two sentences, the Court is helpless in modifying or reducing the sentence of the convicted accused.

We find no merit in this special leave petition. It is, accordingly, dismissed.

(Neetu Khajuria)  
Sr. P.A.

(S.S.R. Krishna)  
Court Master

3