
(2022) 11 BOM CK 0068

In the Bombay High Court

Case No : Criminal Appeal No. 580 Of 2015, 145 Of 2019

Anand Apparao Mane And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 235(2)

Indian Penal Code, 1860 — Section 300(4), 302, 307, 304, 304II, 427, 449

Citation : (2022) 11 BOM CK 0068

Hon'ble Judges : A.S. Gadkari, J;Milind N. Jadhav, J

Bench : Division Bench

Advocate : Akshay A. Patil, Devika Madekar, S.S. Hulke

Final Decision : Allowed

Judgement

Milind N. Jadhav, J

1. The present Judgment shall dispose both the Criminal Appeals. For the sake of convenience hereinafter, Appellant - Anand Apparao Mane in Criminal Appeal No. 580 of 2015 will be referred as "Anand" and Appellant - Ravi Narayan Mane in Criminal Appeal No. 145 of 2019 will be referred as "Ravi". Both Appellants are original Accused Nos. 1 and 2 in the crime.

2. Both Criminal Appeals question the legality of Judgment and Order dated 04.03.2015 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.301 of 2012 (for short "Trial Court") convicting Appellants under Section 235(2) of Code of Criminal Procedure, 1973 (for short "Cr.P.C."), for offences punishable under:

(i) Section 302 of the Indian Penal Code, 1860 (for short "IPC") and sentencing them to suffer imprisonment for life and pay fine of Rs. 2,000/-, in default, to suffer further rigorous imprisonment for 2 months;

(ii) Section 307 IPC and sentencing them to suffer rigorous imprisonment for 7

years along with fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for 1 month;

(iii) Section 449 IPC and sentencing them to suffer rigorous imprisonment for 5 years along with fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for 1 month;

(iv) Section 427 IPC and sentencing them to suffer rigorous imprisonment for 1 year along with fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for 1 month; all the aforesaid sentences to run concurrently.

3. Prosecution case is based on ocular evidence. Appellants have been convicted for murder of Amit Madhukar Kaurvar (for short "Amit") and for attempt to murder Suresh Radhakrishna Darveshwar (for short "Suresh") i.e. PW-3.

4. We have heard Mr. Akshay Patil, learned Advocate for Appellant at length and Mr. Hulke, learned APP for the State and with their able assistance perused the entire record.

5. Prosecution case in brief is thus:-

5.1. The date of incident is 07.01.2012. The spot of incident is a room situated at Rajiv Gandhi Nagar Vasahat, Khadki, Pune belonging to PW-4 Vishal G. Darveshwar. At the time of incident, Vishal was at his native place. However, his two friends namely Amit and cousin brother Suresh were in his room. They had dinner over there and were watching television. At about 11:00 p.m., Anand and Ravi barged into Vishal's room looking for him. Amit and Suresh informed them that Vishal had gone to his native place. Anand and Ravi got angry and alleged that Amit and Suresh were helping Vishal in his alliance and love affair with Anand's younger sister Sarika. Both Appellants, therefore, had a sudden quarrel with Amit and Suresh pursuant to which they started inflicting kicks and fist blows on them.

During the fight, both Appellants were enraged and they ransacked the articles in the room like the LCD television set, refrigerator and all utensils. During the scuffle, Anand with the help of a kitchen knife (16 c.m. long) inflicted blows on the back, both legs and thighs of Amit. He also inflicted blows on Suresh's (PW-3) leg, left hand, chest, back and stomach. Both Amit and Suresh in order to save themselves ran outside the room. Appellants ran away from the spot of incident.

5.2. Both injured were taken by their friends initially to Cantonment Hospital and thereafter shifted to Sassoon Hospital, Pune on medical advise for further treatment.

5.3. PW-1 PSI Dattusaheb Londhe received message of the happening of the incident and rushed to the spot of incident. After inquiry with neighbours, he came to know that two persons had sustained injuries and were taken to the hospital. He reached Cantonment Hospital from where the injured were taken to

Sassoon Hospital by ambulance. While travelling in the ambulance from Cantonment Hospital to Sassoon Hospital, Amit was repeatedly saying "Anand ne marle" (Anand had beaten / inflicted knife blows on him). On admission to Sassoon Hospital, Amit was declared dead whereas Suresh was in an unconscious state until the next morning.

5.4. PW-1 lodged FIR (Exh. 32) of the incident. PSI More prepared the Inquest panchnama (Exh. 79) dated 08.01.2012 and sent Amit's body for postmortem. PW-9 Dr. Amol Shinde conducted the autopsy and prepared postmortem report (Exh. 86) and notified the following injuries on Amit's body in the postmortem report:-

A. External Injuries:-

(i) Stab wound present over left supraclavicular region 2 x 1.5 cm x cavity deep, 3cm from midline, vertical, reddish, margins cleancut.

(ii) Abrasion present over chest in midline 0.5 cm x 0.5 cm irregular reddish.

(iii) Multiple abrasions present over right forearm laterally, 0.5 x 0.5 cm to 0.2 x 0.2 cm, irregular reddish.

(iv) Abrasion present over right thigh upper third anteromedially 0.5 x 0.5 cm, irregular, reddish.

(v) Abrasion present over right thigh medially upper third, 1 x 0.52 cm irregular reddish.

(vi) Abrasion present over left thigh medially upper third, 1 x 0.5 cm, irregular reddish.

(vii) Incised wound present over right thigh posteriorly, middle third 4 x 1.5 cm x muscle deep. Oblique medial inferior, reddish.

(viii) Incised wound present over left thigh posteromedially, upper third 3 x 1.5 cm x muscle deep, oblique inferior medially, reddish.

(ix) Abrasion present over left leg middle third 2.5 x 1cm horizontal, reddish.

B. Internal Injuries:-

Plura corresponding to injury no.1 under col. no.17, stab wound present over left supraclavicular region 2 x 1.5 cm reddish. About 1000 cc blood and blood clots present in plural cavity.

Left Lung - stab wound present over left lung upper lobe anteromedially 2 x 1.5 cm, reddish corresponding to injury no.1 under col, no.17.

5.5. PW-9 opined that cause of death of Amit was a result of traumatic and hemorrhagic shock due to stab injuries. He opined that the injuries mentioned in Col. No. 17 of PM Notes were ante-mortem in nature and the stab wound with corresponding internal injuries were sufficient to cause death.

5.6. API Kadu drew the spot panchanama (Exh-53) at about 2:10 a.m.; while preparing spot panchanama he seized the stained towel and collected the blood spilled on the spot of incident; Vishal Mehtre (PW-7) Assistant photographer snapped the photographs of the scene of crime and photographs of Amit; PI Bhujbal seized the blood stained clothes of Amit as well as injured Suresh (Exh. 80).

5.7. On 11.1.2012, Ravi was arrested by the police and he voluntarily disclosed the place where he had concealed clothes of Appellants (Exh. 94); on the same day Anand also voluntarily disclosed (Exh. 96) the place where he had concealed the weapon i.e. knife used by him in the offence. On 21.02.2012, PI Bhujbal sent the seized articles to the Chemical Analyzer and after the completion of investigation Chargesheet was submitted in the court of Judicial Magistrate First Class, Khadki. Since the offence punishable under Section 302 IPC is exclusively triable by the Court of Sessions, learned JMFC committed the case for trial to the Sessions Court.

6. Charge (Exh. 19) was framed against Appellants for offence punishable under Section 302 IPC. It was read out and explained to both Appellants in vernacular; they denied the charge, pleaded not guilty and claimed to be tried.

7. In order to bring home the guilt of Appellants, prosecution examined 14 witnesses; PW-1 Dattusaheb R. Londhe PSI lodged the complaint and is the informant; PW-2 Ashok K. Dhaitadke is the neighbour who called and informed the police about the incident; PW-3 Suresh R. Darveshwar witnessed the incident and sustained grievous injuries; PW-4 Vishal G. Darveshwar is the cousin of injured Suresh and owner of the room in which the incident took place; PW-5 Balasaheb B. Baravkar is the pancha witness to the Spot Panchnama (Exh. 53). PW-9 Dr. Amol B. Shinde conducted the postmortem of Amit.

8. Mr. Akshay Patil, learned Advocate appearing for Appellants has taken us through the deposition of the prosecution witnesses and assailed the dissenting view expressed by the Trial Court and submitted that there is no evidence to prove that the Appellants have committed the crime; that the eye witness i.e. PW-3 is an interested witness and his testimony is therefore untrustworthy and after the incident he was unconscious. That prosecution failed to establish the motive behind the crime. That there is material discrepancy in the entire prosecution case as evidence given by the witnesses casts a reasonable doubt on recovery evidence against Appellants. Hence he has prayed for quashing of the impugned Judgment and Order.

9. PER-CONTRA, Mr. S.S. Hulke, learned APP has supported the impugned Judgment and Order and contended that in view of the ocular evidence of PW-3, who is an eye witness to the incident, the Trial Court has considered the same and passed a correct Judgment convicting the Appellant. That the evidence of the eye witness is reliable and trustworthy and is corroborated by the Medical evidence and recovery evidence. Hence, he submitted that since prosecution had

proved its case beyond all reasonable doubt, the present Appeal be dismissed.

10. In the present case, it is seen that the prosecution case is reliant on the ocular evidence of PW-3 – Suresh R. Darveshwar i.e. the injured witness. He has deposed that on the date of incident Vishal and Mahendra had gone to their native place since marriage of Vishal was fixed. PW-3 and Amit went to Vishal's room after taking dinner. That he knew the Appellants Anand and Ravi since they resided in the vicinity of Rajiv Gandhi Nagar. That he also knew Sarika, sister of Anand. He has deposed that at about 11:00 p.m. Appellants i.e. Anand and Ravi came to Vishal's room searching for him. After they were told that Vishal was gone to his native place, Anand in a fit of rage stated that Vishal was sending SMS to his sister Sarika and loved her and PW-3 and Amit were both helping him. There was an altercation between them and Anand and Ravi assaulted PW-3 and Amit with kicks and fist blows. Due to their enragement and anger they damaged the LCD, fridge and household utensils in Vishal's room. PW-3 has categorically deposed that Anand assaulted him with the knife on his leg, left hand, chest, back and stomach whereas Ravi assaulted him with kicks and fist blows. He has further categorically deposed that Anand assaulted Amit with knife and at the time of assault he ran out of the house, called the police control room and disclosed the incident to the police. That thereafter he saw Amit rushing out of the room in an injured condition. He has next deposed that, since he and Amit were both injured, they were taken to Cantonment Hospital and thereafter to Sassoon Hospital by ambulance. That while on their way to the hospital, Amit was saying "Anand ne marle, Anand ne marley". That while on their way to Sassoon Hospital by ambulance, police had accompanied them. He has identified the weapon i.e. knife used in the assault (Article No. 16).

10.1. In his cross-examination, he has stated that initially when Anand and Ravi entered the room it was only Anand who had inquired about Vishal's whereabouts. From the above deposition, it is seen that the ocular evidence of PW-3 in respect of assault and the incident is clear. However, it needs to be noted that Anand had come to Vishal's room in search of him in view of the reason that Vishal was continuing his love affair with his sister Sarika and was sending SMS to her. It was therefore but natural for Anand to be enraged and angry with Vishal due to the said love affair. Hence, Anand alongwith Ravi came over to Vishal's room in search of him to question him about the same.

The spot of incident is Vishal's room and not any spot related to PW-3 or Amit. It was a mere coincidence that on the fateful day of the incident, Vishal was visiting his native place alongwith his brother Mahendra and PW-3 and Amit were found by Anand and Ravi in the room. Assault on PW-3 and Amit was followed by damaging the movable goods in Vishal's room by Appellants. It was thus the anger of the Appellants which was exhibited on the spur of the moment and their frustration against Vishal having not been found on the spot of incident. It is pertinent to note that it is not the case of the prosecution that Appellants had carried the weapon i.e. knife alongwith them in order to assault Vishal. PW-3 has

deposed that after assaulting them with kicks and and fist blows it was Anand who thereafter took a knife which was a kitchen knife and assaulted both of them. Hence, this shows that there was no premeditation on the part of Anand and Ravi nor there was any intention to murder Amit and assault PW-3. As seen, both of them had a serious grudge against Vishal and when they entered his room they did not find him and vented their anger on PW-3 and Amit. Further cross-examination of PW-3 is relevant in this context. He has deposed that though it was true that Vishal's marriage had been fixed with some other girl at the time of the incident, Vishal and Sarika are now both married to each other and living a happy matrimonial life. He has deposed that initially both families of Vishal and Sarika were against their love affair since they hailed from different castes. On that account, both families had filed criminal complaints agasint each other. Appellant Anand is the real brother of Sarika whereas Ravi is the cousin brother of Sarika. Due to acrimonious relations between the two families in view of the alliance and love affair of Vishal with Sarika, which was the prelude to the incident, it is natural to presume that Anand committed the said act alongwith Ravi in a heat of passion. The evidence on record clearly supports this theory.

10.2. It is pertinent to note that it has come on record in the evidence of prosecution witnesses that Appellants had no grudge whatsoever against PW-3 and Amit. However, since both of them were close to Vishal (PW-4) and Vishal was not found in his room on the fateful date of incident, both PW-3 and Amit had to bear the brunt of Appellants' anger against Vishal. It may also be seen that Vishal had visited his native place during the incident since his marriage was fixed and this may have been the trigger point for the Appellants who had came to question him since it was an admitted fact that Vishal and Anand's sister Sarika were in a love affair with each other.

11. The above evidence is material enough for us to conclude that the incident as it has unfolded had taken place in a heat of passion without the Appellants having any intention whatsoever to assault PW-3 and Amit. That there was clearly no premeditation and planning as also arrangement of the weapon i.e. knife by the Appellants. It is further seen from the record that it was only Appellant Anand who had in a fit of rage used the knife to assault PW-3 and Amit. In so far as Appellant Ravi is concerned, his role though in common with Anand, was restricted to assault both PW-3 and Amit with kicks and fist blows. The above evidence if seen minutely clearly falls under the purview and ambit of Exception 4 to Section 300 IPC.

12. Though the evidence of PW-3 i.e. the injured eye witness and PW-1 the independent witness to whom Amit had repeatedly stated in a semiconscious state that "Anand ne Marley" is against the Appellants, it needs to be ascertained from perusal of evidence of PW-3 as to whether Amit was conscious or otherwise. PW-3 has in his cross-examination admitted that after the incident of assault on him, he felt giddy and that both he as well as Amit were taken to the hospital by somebody. This deposition clearly shows that both PW-3 and Anand may not

have been conscious after the incident. It is seen that before the incident had actual unfolded there was a sudden quarrel between the Appellants and PW-3 and Amit. The weapon i.e. knife used in the assault is admittedly found to have been a kitchen knife and it was not carried with the intention of committing the act by Appellants. In this respect the evidence of DW-1 needs to be considered. DW-1 is a friend of PW-3 and deceased Amit. He has deposed that he was also present with PW-3 and Amit in the room at the spot of incident and is an eye witness to the incident. That after the assault both PW-3 and Amit went out of the room, fell down and became unconscious. He has deposed that he himself thereafter took them to the hospital by rickshaw with the help of 3 other boys in the locality. That he was with them in Cantonment Hospital and thereafter he took them to Sassoon Hospital by ambulance. He has categorically deposed that when he took them to the hospital they were unconscious. That Amit was declared dead before admission to Sassoon Hospital, whereas until the next morning PW-3 was unconscious and he remained in the hospital with him. The evidence given by DW-1 is highly reliable and establishes the presence of DW-1, PW-3 and deceased Amit at the spot of incident.

13. In view of the aforesaid discussion and findings, it is apparent that Appellants did not have the intention to murder Amit and also injure PW-3. That Appellants in the heat of passion and on the sudden spur of moment followed by the sudden quarrel with PW-3 and Amit assaulted them and ransacked Vishal's room and articles in his room. That is clear that Appellants did not plan or premeditated the crime to murder Amit and injure PW-3.

14. In the present case, the learned Trial Court has convicted and sentenced Appellants for offence punishable under Section 302 IPC and other offences. However, in view of the aforesaid discussion and findings, in our considered opinion, based on the facts and circumstances of the present case, the conviction and sentence passed by the learned Trial Court calls for reconsideration due to the following reasons:-

14.1. Exception 4 to Section 300 IPC outlines a situation where culpable homicide does not amount to murder. There are three requirements for this exception to apply:

- (i) the act of killing is committed without premeditation;
- (ii) the act of killing is committed in a sudden fight in the heat of passion upon a sudden quarrel; and
- (ii) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

14.2. In the present case the aforesaid three requirements of Exception 4 to Section 300 IPC in our considered opinion stand satisfied as under:-

- (i) From appreciation of the evidence as a whole it is clearly discernible and seen that the act of killing / murder of Amit was not planned or premeditated by the

Appellants nor there was any preparation and / or intention harboured by Appellants to murder Amit;

(ii) that the evidence on record shows that the incident occurred as a result of the sudden quarrel between Appellants and PW-3 and Amit when Appellants did not find Vishal present in his room. That there was clear motive for the Appellants to approach Vishal in view of his affinity, love affair with Anand's sister Sarika and the fact that his marriage was fixed by his family at his native place. That the sudden quarrel escalated as Appellants alleged that PW-3 and Amit were helping Vishal in his love affair with Anand's sister and therefore they were enraged against them. That in the heat moment the assault took place which was followed by the assault and ransacking of Vishal's room;

(iii) that there was no premeditation or plan on the part of Appellants to commit the act and that they did not take undue advantage and acted in any cruel or unusual manner thereafter.

15. On the basis of the above analysis and re-appreciation of evidence, we conclude that Appellants had knowledge that their act would be likely to cause death, but it is gathered that they had no intention to do so. Hence, the act of Appellants does not travel beyond the offence of culpable homicide not amounting to murder.

16. Punishment for culpable homicide not amounting to murder where the act is committed without intention but with knowledge has been prescribed under Part II of Section 304 IPC. The above discussion of facts and evidence alluded thereto along with our observations in the present case clearly fall within the ambit of Part II of Section 304 IPC. As such, the learned Trial Court has erred in convicting and sentencing the Appellants for the offence of murder under Section 302 IPC.

17. In view of the above discussion and findings, we are of the firm opinion that Appellants acted in a sudden spur of the moment and heat of passion. By such act and because of the strong motive they acted in a manner that, they knew it was likely to cause death of Amit and PW-3 but without the intention to kill them.

18. It is seen that in so far as the role of Appellant Ravi is concerned it is much lesser in comparison to Anand.

19. Appellants were arrested on 08.01.2012. Appellant Ravi was enlarged on bail subsequently on 07.11.2012. However after passing of the impugned Judgment dated 04.03.2015, he was taken into custody and has been in jail since March, 2015. It is seen that he has already undergone more than 7 years of imprisonment.

20. Hence, the following Order:

(i) The impugned Judgment and Order dated 04.03.2015 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 301 of 2012 is quashed

and set aside;

(ii) The conviction of Appellant Anand in Criminal Appeal No. 580 of 2015 under Section 302 IPC is set aside; instead he is convicted under Section 304 Part II Indian Penal Code, 1860 — Section and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1.5 lacs, in default, to suffer further rigorous imprisonment for 1 year;

(iii) The conviction of Appellant Ravi in Criminal Appeal No. 145 of 2019 under Section 302 IPC is set aside; instead he is convicted under Section 307 IPC and sentenced to suffer rigorous imprisonment for 7 years and fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for 1 month. However since he has already undergone the entire sentence awarded to him as above, he shall be set free forthwith unless required in any other case/s.

21. Both the Appeals are allowed in the aforesaid terms.

22. Before parting with the Judgment, we would wish to place on record appreciation for the efforts put in by Mr. Akshay A. Patil, learned Advocate appointed by High Court Legal Services Committee, Mumbai for espousing the cause of the Appellant; he was thoroughly prepared in the matter and rendered proper and able assistance to this Court.

23. All the concerned to act on an authenticated copy of this Judgment.