
(2018) 03 MP CK 0161
In the Madhya Pradesh High Court
Case No : CRIMINAL APPEAL NO.50 OF 2011

Kamribai W/O Kanya

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304I, 304II

Citation : (2018) 03 MP CK 0161

Hon'ble Judges : S.C. SHARMA, J;VIRENDER SINGH, J

Bench : Division Bench

Advocate : Gopal Hardia, K.K. Tiwari

Final Decision : Disposed Of

Judgement

1. Being aggrieved by judgment and order dated 04/12/2010 passed in S.T. No.94/2010 by Additional Sessions Judge to II ASJ (FTC), Jabat, District-

Alirajpur, whereby she has been held guilty for the offence punishable under Section 302 of IPC for causing death of Kanya and sentenced for life

imprisonment with fine of Rs.500/-, in default of payment of fine further to undergo imprisonment for one month, the appellant has preferred the

present appeal.

2. This is an admitted fact that the deceased was husband of the present appellant.

3. Facts in brief are that in the intervening night on 14-15 February, 2010 at about 12-12:30 in the night, son of the appellant came screaming to his

grand-mother Sahlibai and informed her that his mother has killed his father by axe. She rushed towards the house of the appellant and found that the

deceased was lying on a cot and appellant was sitting on her with axe in hand. She noticed injury with bleeding on the neck of the deceased and he

was died. Sahlibai approached the Police Station-Bakhadgarh in the morning and lodged report at 10:45 AM stating that her grandson Dipla also

informed that his mother (appellant â?" Kamlibai) drunk liquor in the night for which his father objected and furious by the objection, she assaulted him

by axe on the neck when he was sleeping.

4. The police registered crime No.20/2010 under Section 302 of IPC by scribing FIR Ex.P/1. The police visited the spot, prepared spot map Ex.P/6,

collected blood stained, soil & blanket and plain soil from the spot ide seizure memo Ex.P/3, issued notice Ex.P/7 to the witnesses, prepared memo of

corpse Ex.P/2, sent the dead-body for postmortem with requisition Ex.P/8. Dr. S.N. Gehlot (PW/10) performed autopsy and prepared report Ex.P/13.

He opined that death was due to injury caused on the neck of the deceased. The police took the appellant in custody and interrogated him and on her

disclosure recovered axe (Ex.P/4 & P/5) from his possession. Received and seized blood stained clothes of the deceased (Ex.P/1) and sent all articles

viz. clothes, soil and axe for chemical examination to FSL and received report confirming presence of blood.

5. The appellant was charged, tried and convicted as stated in para 1 above.

6. This appeal is preferred on several grounds but learned counsel for the appellant submitted that he does not want to press the merits of the case and

only wants to argue on the conviction and sentence awarded to the appellant.

7. Learned counsel submits that deceased was husband of the appellant. They were leading a happy life and blessed with a 7-8 year old son. There

was no dispute between both of them. They were living separately and independently. They both belongs to Bhil community, who are used to drunk

both male & female. On the fateful night also nothing serious was there. The appellant consumed liquor as usual for which her husband objected, she

became furious and in that state of mind suddenlyÂ assaulted her husband without thinking about consequences. She used axe in the assault, which is

an ordinary tool which Bhil always keep with them for their day-today use. Unfortunately, that blow hit on the neck, which proved fatal to the life of

the deceased. Incident happened all of a sudden in a heated spur of moment on a petty issue. She gave only a case of single blow, which was caused

without any preparation, intention or premeditation. Blow was not repeated even when having opportunity. She did not try to flee but stayed there. She

did not cause harm to any one, who had come there. No motive of causing death was there. Therefore, the act of the appellant falls within the

purview of Section 304II of IPC for which she may be awarded punishment for imprisonment already undergone as she has completed more than 8

years in jail.

8. Learned Public Prosecutor has opposed the prayer, however, he fairly admitted that nothing wrong in the facts as stated by the learned counsel for

the appellant.

9. In view of the submissions of the learned counsel, first we would like to consider the law laid down in this regard. In Annamalai Vs. State reported

in 2016 CRI.L.J. 2727 the Division Bench of Madras High Court has considered the mitigating circumstances and has held in para-13 of the

judgement as under:-

â??Now turning to the punishment, the accused is the sole bread winner of the family. He has got three brothers. He has got a big family to take

care. He has no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Further, there are lot of

chances for reformation. So far as the aggravating circumstances are concerned, there was no premeditation for the accused to commit the murder of

the deceased. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo

rigorous imprisonment for five years and to pay a fine of Rs.1,000/- would meet the ends of justice.â??

10. In Chand Khan Vs. State of M.P. reported in 2006(3) M.P.L.J. 549, the Division Bench of this Court has also converted the conviction of the

appellant in attaining facts and circumstances of the case. Para -10 & 11 of the judgment are relevant which reads thus:-

â??10. If the present case is considered in the light of the aforesaid decisions of the Supreme Court, it would show that the appellants caused single

injury on the head of the deceased by farsa, which is a sharp edged weapon, but unfortunately Aziz Khan (PW-11) and Ishaq Khan (PW-13) have

stated that he gave lathi blow on the head of the deceased. Even after considering this contradictory evidence it has to be taken into consideration that

it is a case of single farsa blow inflicted by only appellant Chandkhan and appellant Naseem inflicted only lathi blow on the non vital part of the body

and in the absence of this evidence that the injury no.(i) was sufficient to cause death in the ordinary course of nature and also looking to the various

other circumstances like that the accused as well as the deceased are close relatives and the deceased was a person of criminal background and the

incident started because of the abuses made first by the deceased himself, we find that the case will not fall within the purview of section 300, Indian

Penal Code but it will fall under section 304 Part II, culpable homicide not amounting to murder.

11. consequently, appeal is partly allowed. Conviction of appellants under section 302/34 Indian Penal Code, is set aside and instead they are convicted

under section 304 part II, Indian Penal Code, â??

11. The Hon'ble Supreme Court has held in Gurpal Singh v. State of Punjab, AIR 2017 SC 471. Para 10 of the judgement reads thus:

â??10. However, in the singular facts of the case and noticing in particular, the progression of events culminating in the tragic incident, we are

inclined to reduce the sentence awarded to him.

Incidentally, the occurrence is of the year 2004 and meanwhile twelve years have elapsed. Further, having regard to the root cause of the incident and

the events that sequentially unfolded thereafter, we are of the comprehension that the appellant was overpowered by an uncontrollable fit of anger so

much so that he was deprived of his power of self-control and being drawn in a web of action reflexes, fired at the deceased and the injured, who

were within his sight. The facts do not commend to conclude that the appellant had the intention of eliminating any one of those fired at, though he had

the knowledge of the likely fatal consequences thereof. Be that as it may, on an overall consideration of the fact situation and also the time lag in

between, we are of the view that the conviction of the appellant ought to be moderated to one under Sections 304 Part 1 IPC and 307 IPC. Further,

considering the facts of the case in particular, according to us, it would meet the ends of justice, if the sentence for the offences is reduced to the

period already undergone. We order accordingly.â??

12. The Hon'ble Supreme Court held in Arjun and Anr. Vs.State of Chhattisgarh, AIR 2017 SC 1150 that:

â??19. The point falling for consideration is whether the conviction of the appellants under Section 302 IPC is sustainable. As discussed earlier, the

evidence clearly establishes that while Ayodhya Prasad and other witnesses were cutting the trees, there was exchange of words which resulted in

altercation and during the said altercation, the appellants attacked the deceased. Thus, the incident occurred due to a sudden fight which, in our view,

falls under exception (4) of Section 300 IPC.

20. To invoke this exception (4), the requirements that are to be fulfilled have been laid down by this Court in *Surinder Kumar v. Union Territory of*

Chandigarh (1989) 2 SCC 217 : (AIR 1989 SC 1094, Para 6), it has been explained as under:

7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was

done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not

relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive

factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of

course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the

moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided

he has not acted cruelly.....

20. Further in the case of *Arumugam v. State, Represented by Inspector of Police, Tamil Nadu*, (2008) 15 SCC 590 : (AIR 2009 SC 331, Para 15), in

support of the proposition of law that under what circumstances exception (4) to Section 300 IPC can be invoked if death is caused, it has been

explained as under:

9.

18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken

undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all

the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the Penal

Code, 1860. It takes two to make a fight. Heat of passion requires that there

must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

13. The Hon'ble Supreme Court has laid down in *Prabhakar Vithal Gholve v. State of Maharashtra*, AIR 2016 SC 2292 that if assault on deceased

could be said to be on account of sudden fight without pre-meditation, in heat of passion and upon a sudden quarrel, Conviction of the appellant cannot

be sustained under S. 302 and altered to one under Section 304 part-I of IPC. Relevant para 7 of the judgement reads thus:

“7. In the facts and circumstances noted above, there appears merit in the submission advanced by learned counsel for the appellant that in view of

Exception 1 or Exception 4 in Section 300 of the IPC the case made out against the appellant is that of culpable homicide not amounting to murder. It

would be natural for the family members of juvenile offender Balu on hearing his cries, to rush for his help and when injury on the appellant has also

been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation. The assault on the deceased, in absence

of intention to cause death could be on account of sudden fight without pre-meditation, in the heat of passion and upon a sudden quarrel. We therefore

feel persuaded to and do set aside the conviction of the appellant under Section 302 IPC and substitute the same with conviction under Section 304

Part I of the IPC. The certificate of imprisonment available on record discloses that the appellant has by now undergone more than 12 years of actual

imprisonment. The aforesaid period, in our estimate is sufficient to meet the ends of justice. Hence the sentence of imprisonment for life is reduced to

imprisonment for the period already undergone by the appellant. In view of such modification in the sentence, the appellant is directed to be released

from custody forthwith if not required to be kept in custody in connection with any other criminal case. The appeal stands allowed to the aforesaid extent.â??

14. In *Sikandar Ali Vs. State of Maharashtra*, AIR 2017 SC 2614, the Court altered the conviction u/s 302 IPC to one u/s 304 part-2 IPC in the following circumstances:

â??7. We have no doubt about the complicity of all the accused in the homicide of Sarfraj. A-1 attacked the deceased with the knife and caused injury on his neck which resulted in his death. The other accused assisted him in committing the crime by holding the hands of the deceased. However, the only question that falls for our consideration is whether the accused are liable to be punished for an offence under Section 302 IPC. After considering the submissions made by the counsel for the Appellants and scrutinising the material on record, we are of the opinion that the accused are not liable to be convicted under Section 302 IPC.

We are convinced that there was neither prior concert nor common intention to commit a murder. During the course of their business activity the accused reached the dhaba where the deceased was present. An altercation took place during the discussion they were having behind the dhaba. That led to a sudden fight during which A-1 attacked the deceased with a knife. Exception 4 to Section 300 is applicable to the facts of this case. As we are convinced that the accused are responsible for the death of Sarfraj, we are of the opinion that they are liable for conviction under Section 304 part II of the IPC. We are informed that A-1 has undergone a sentence of seven years and that A-2 to A-4 have undergone four years of imprisonment.

We modify the judgment of the High Court converting the conviction of the accused from Section 302 to Section 304 part II of the IPC sentencing them to the period already undergone. They shall be released forthwith.â??

15. The Hon'ble Apex Court laid down in *Madhavan and Ors. Vs. State of Tamil Nadu*, AIR 2017 SC 3847 that:

â??8. Notably, the High Court has not considered the issue of quantum of sentence at all, but mechanically proceeded to affirm the sentence awarded by the Trial Court. From the factual position, which has emerged from the record, it is noticed that there was a preexisting property dispute between the two families. The incident in question happened all of a sudden without any

premeditation after PW1 questioned the appellants about their behaviour. It was a free fight between the two family members. Both sides suffered injuries during the altercation. The fatal injury caused to Periyasamy was by the use of thadi (wooden log) which was easily available on the spot. The appellants, on their own, immediately reported the matter to the local police alleging that the complainant party was the aggressor. No antecedent or involvement in any other criminal case has been reported against the appellants. Taking oral view of the matter, therefore, we find force in the argument of the appellants that the quantum of sentence is excessive.

9. We may usefully refer to the decision of this Court (one of us, Justice Dipak Misra speaking for the Court) in the case of *Gopal Singh v. State of Uttarakhand* (2013) 7 SCC 545 : (AIR 2013 SC 3048) enunciated the necessity to adhere to the principle of proportionality in sentencing policy. In paragraphs 18 and 19 of the said decision, the Court observed thus:

18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasize, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalized judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor

hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated here-inbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.

19. A Court, while imposing sentence, has to keep in view the various complex matters in mind. To structure a methodology relating to sentencing is difficult to conceive of. The legislature in its wisdom has conferred discretion on the Judge who is guided by certain rational parameters, regard been had to the factual scenario of the case. In certain spheres the legislature has not conferred that discretion and in such circumstances, the discretion is conditional. In respect of certain offences, sentence can be reduced by giving adequate special reasons. The special reasons have to rest on real special circumstances. Hence, the duty of Court in such situations becomes a complex one. The same has to be performed with due reverence for Rule of the collective conscience on one hand and the doctrine of proportionality, principle of reformation and other concomitant factors on the other. The task may be onerous but the same has to be done with total empirical rationality sans any kind of personal philosophy or individual experience or any apriori notion.

10. Considering the above and keeping in mind the facts of the present case, the nature of the crime, subsequent conduct of the appellants, the nature of weapon used and all other attending circumstances and the relevant facts including that no subsequent untoward incident has been reported against the appellants and the mitigating circumstances, we are inclined to modify the sentence period in the following terms :-â??

16. Coming back to the case in hand, the case of the prosecution is that at the time of the incident, the appellant was consuming liquor, her husband objected for that and in that heated moment she assaulted with axe, which hit on the neck of the deceased and proved fatal to his life. Nothing is there in the statements of the witnesses that the appellant aimed on the neck of the

deceased or she intentionally caused injury on the neck of the deceased.

Only single injury was found in the postmortem. No evidence that the appellant repeated the blow. Though their son â?" Deepla (PW/2) has stated

that after giving blow, the appellant sat on the body of the deceased but this is an improvement and no such fact is mentioned in his police statement.

No evidence of intention, pre-meditation or preparation is there. Even after the incident she did not try to escape and remained there. Nanji (PW/3)

has stated that even at the time, when they reached on the spot, she was under effect intoxication and she was behaving like insane.

12. We have also to consider the fact that parties belongs to Bhil community. Even women of this community are use to consume intoxicating

substances. Bhils are also use to keep axe in their houses and use them for their day-to-day work. There is no evidence of any earlier dispute or any

serious scuffle at the time of incident. The incident happened suddenly in a heated and passionate moment. No brutality appears in the act of the

appellant. No motive appears for causing death. She has no criminal history. There are lot of chances for reformation. In all these circumstances, in

our considered opinion, the case of the appellant satisfies the four requirements necessary to invoke the powers namely, (i) it was a sudden fight; (ii)

there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel

manner and therefore, it falls under Section 304-II of IPC. Therefore, we partly allow the appeal. The conviction and sentence of the appellant under

Section 302 IPC is hereby set aside. We modify the judgment passed by the learned trial Court to the extent that appellant is held guilty for the

offence punishable under Section 304-II of IPC instead of Section 302 of IPC and having regard to the background facts and all relevant

circumstances, we impose sentence of 10 years R.I. with fine of Rs.500/- and in default of payment of fine, further to go RI of one month.

13. The order of the learned trial Court regarding disposal of the case property is hereby confirmed.

14. With the aforesaid modification, the appeal is partly allowed and disposed off accordingly.