

(2017) 02 BOM CK 0180
In the Bombay High Court
Case No : 335 of 2015

Parmeshwar s/o. Mahadeo Fulkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Indian Penal Code, 1860, Section 302,
Section 304 - Punishment for murder - Punishment for
culpable homicide not amounting to murder

Citation : (2017) 02 BOM CK 0180

Hon'ble Judges : B.R. Gavai, Kum.Indira Jain

Bench : DIVISON BENCH

Advocate : Rahul D. Hajare, M.J.Khan

Judgement

1. Being aggrieved by the Judgment and Order dt.2.12.2013 passed by the learned Sessions Judge, Wardha in Sessions Case No.141 of 2011 thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.1,000/and in default, to suffer rigorous imprisonment for one month, the appellant has approached this Court.

2. The prosecution story, in short, is as under : Deceased Ayub Pathan Ansari and the accused were neighbours of each other. The deceased was residing along with his wife Tahira Pathan (PW3) and children. The accused was also residing with his wife and children. On 1.7.2011, at about 7.30 p.m., the deceased and Tahira were sitting in the Courtyard of their house. The deceased was taking his meals. He was scolding his wife. The accused came out of house and asked the deceased as to why the deceased was abusing the lady. There was a quarrel between them. The accused told the accused that he will kill him. The accused went inside the house, brought an axe and gave a blow with the said axe on the neck of the deceased. On hearing the shouts, other neighbours namely Bebibai Wankhede and Babulal Jawade came out of their houses. The deceased, on

account of assault, fell down. He was taken to the Rural hospital at Samudrapur. The Medical Officer advised the deceased to be taken to Civil Hospital, Wardha. He was brought to Wardha. But he was declared dead.

3. On the basis of the information given by Tahira (PW3), the First Information Report came to be lodged in Police Station, Samudrapur. On the basis of the First Information Report, investigation was set into motion. At the conclusion of investigation, charge sheet came to be filed in the Court of the Judicial Magistrate, First Class, Samudrapur. Since the case was exclusively triable by the Sessions Judge, it came to be committed to the Court of learned Sessions Judge, Wardha. The learned trial Judge framed the charge for the offence punishable under Section 302 of the Indian Penal Code. At the conclusion of the trial, the trial Judge has passed the order of conviction and sentence, as aforesaid.

4. Mr. Rahul Hajare, learned Counsel for the appellant submits that though, according to the prosecution, there are various eye witnesses, they have turned hostile. The only eye witness who remains is Tahira (PW3) - the wife of deceased. The learned Counsel states that she being an interested witness, conviction on the basis of her uncorroborated testimony would not be permissible. The learned Counsel submits that, in any case, the case would not fall u/s. 302 of the Indian Penal Code. At the most, it may fall under Part II of Section 304 of the Indian Penal Code.

5. Mr. M. J. Khan, learned A.P.P. submits that the learned trial Judge, on the basis of evidence placed on record, has rightly passed the order of conviction. He submits that no interference is warranted.

6. Nodoubt that the present case rests wholly on the evidence of Tahira (PW3), the wife of deceased. The other eye witnesses have turned hostile. By now, it is a settled position of law that merely because the witnesses are interested, cannot be a ground to discard their testimonies. The only requirement would be to scrutinize the evidence of such a witness with greater caution and conviction could be based only if the evidence of such a witness is found to be cogent, trustworthy and reliable.

7. Tahira (PW3) in her evidence states that, on the day of incident, her husband was taking meals and she was serving meals to him. Her husband was scolding and abusing her as to why she could not bring the vegetables from the market. The accused came out of house and asked her husband as to why he was abusing the lady. The deceased said to the accused that it is his family affair and that the accused should not interfere in it. Thereafter, an altercation took place between the accused and her husband. The accused asked her husband to wait and said that he will kill her husband. Then the accused gave an axe blow on the neck of her husband. She got frightened and shouted. In the meanwhile, when the accused was likely to give second blow, Tahira (PW3) and the wife of accused caught hold of the axe. There was a scuffle between this witness and the accused and in the said scuffle, she fell down and her bangles broke down. On hearing

her shouts, Babulal Jawade and Bebibai Wankhede came out of their houses.

8. Babulal Jawade and Bebibai Wankhede though examined, they have turned hostile. Tahira (PW3) has been thoroughly crossexamined. Nodoubt that there are certain contradictions and omissions in her evidence. However, insofar as the main incident of assault is concerned, her testimony has remained unshaken. Apart from that, evidence of this witness is duly corroborated by the First Information Report below Exh.36 which is lodged immediately after the incident. The F.I.R. clearly implicates the appellant.

9. In that view of the matter, we find that prosecution has proved beyond reasonable doubt that it is the present appellant who is author of the crime in question. That leaves us with the question as to whether the case would come under Section 302 of the Indian Penal Code or would come under a lesser offence.

10. Perusal of the evidence of the first informant would reveal that there was an altercation between the deceased and the appellant on account of the deceased giving abuses to the first informant. It could thus clearly be seen that there was no premeditation on the part of the appellant. The incident appears to have taken place in a heat of passion, on account of sudden quarrel that took place between the appellant and the deceased. It could further be seen that the case is of a single blow. It is not as if that the appellant has taken undue advantage or acted in a cruel or unusual manner. We, therefore, find that the case would not come u/s.302 of the Indian Penal Code, but it would be covered by Exception 4 of Section 300 of the Indian Penal Code. We find that, in the facts and circumstances of the present case, the accused deserves to be convicted for the offence punishable under Part I of Section 304 of the Indian Penal Code. Hence, the order. // ORDER //

The appeal is partly allowed.

The order of conviction for the offence punishable under Section 302 of the Indian Penal Code is altered to one under Part I of Section 304 of the Indian Penal Code. For the said offence, the appellant/accused is sentenced to suffer rigorous imprisonment for a period of seven years. The rest of the order including fine etc. is maintained.

Fees of the learned Counsel appointed on behalf of the appellant are quantified at Rs.5,000/.