

(2022) 09 BOM CK 0039
In the Bombay High Court
Case No : Criminal Appeal No. 669 Of 2017

Ramu @ Ramdas Rupaji Bhavar

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 13-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 300, 302, 304, 304(II), 506(2)

Citation : (2022) 09 BOM CK 0039

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

Bench : Division Bench

Advocate : Sayaji Dadu Nangre, H. J. Dedhia

Final Decision : Disposed Of

Judgement

Milind N. Jadhav, J

1. This Criminal Appeal is filed to question legality of Judgment and Order dated 04.11.2016 passed by the Additional Sessions Judge-3, Nashik in Sessions Case No. 131 of 2016, convicting Appellant for the offence punishable under Section 302 of Indian Penal Code, 1860 (for short "IPC") and sentencing him to rigorous imprisonment for life and payment of fine of Rs. 1,000/- and in default thereof to suffer rigorous imprisonment for three months. In addition, Appellant is convicted for offence punishable under Section 506(2) IPC and sentenced to suffer rigorous imprisonment for one year and pay fine of Rs. 500/- and in default thereof to suffer rigorous imprisonment for one month; both sentences to run concurrently.

2. The prosecution case relates to an incident which took place on 24.02.2016 resulting in the death of one Shivram Pawar at the hands of Appellant (accused).

3. On 24.02.2016 at about 7.00 p.m. Mangalabai, wife of Appellant approached PW-1 – Yashwant son of Shivram Pawar and informed him that a fight was going on between Appellant and Shivram in front of their house. Appellant and Shivram are neighbours; PW-1 rushed to the spot of incident and saw his father lying

injured in a pool of blood with injuries on his head, ear and cheek; PW-1 raised a shout for help, hearing which his uncle Hiranman Pawar, aunt Mirabai, cousin Dattu Pawar, Ashok Palve (neighbour) and Prakash More rushed to the spot of incident and witnessed injured Shivram and Appellant moving around carrying a bloodstained axe in his hand and threatening them. Injured Shivram was taken to Vakratunda hospital by Hiranman, Ashok Palve and Prakash More and thereafter to Civil hospital where he was declared dead on admission.

4. According to prosecution, cousin brother of PW-1, Balu Hiranman Pawar and Sangita, daughter of Appellant had eloped one year ago and subsequently got married; Appellant suspected that Shivram and his family members supported and helped Balu Pawar and therefore had a grudge against them; hence due to the quarrel Appellant assaulted Shivram on his head with the weapon (axe). It has also come on record that after their marriage, Balu Pawar and Sangita were residing in the neighbourhood of Appellant.

5. C.R. No. 157 of 2016 was lodged by PW-1 in Indiranagar Police Station, Nashik and criminal law was set into motion and Appellant was arrested on 24.02.2016.

6. According to Prosecution, PW-1 and PW-6 are eyewitnesses to the incident having seen Appellant assaulting Shivram with axe and were present at the spot of incident. PW-2 conducted spot panchanama vide Exhibit-15 and recovery and seizure panchanama of bloodstained axe from the spot of incident vide Exhibit-16. Inquest panchanama was conducted by PW-5 pancha witness vide Exh-24. PW-11 photographer was summoned by the Investigating Officer (for short "I.O.") and he took pictures of the spot of incident. Bloodstained clothes of Appellant were recovered and seized in the presence of PW-4, pancha witness vide Exhibit-22. Prosecution also examined two engineers working with the Electricity department, viz; PW-13 and PW-14 who deposed that at about 7.00 p.m. in the evening on the date of incident there were lights on the lamp posts in the vicinity of the spot of incident. PW-7 is the doctor who conducted post mortem on the dead body of Shivram; he was examined and postmortem report was marked in evidence as Exhibit-21.

7. After completing investigation charge-sheet was filed. Charge was framed below Exhibit-5 under Sections 302 and 506(2) IPC against Appellant. It was read out and explained to him in vernacular; Appellant pleaded not guilty and claimed to be tried; his defence being that of total denial and false implication.

8. To bring home the guilt of Appellant, prosecution examined 16 witnesses. Inquest panchanama vide Exhibit-24 was proved by PW-5 and postmortem report vide Exhibit-27 was proved by PW-7, Dr. Anand Vilas Pawar. PM report shows that deceased Shivram had 4 chop wounds and 3 incised wounds on his head, ear and cheek. Spot panchanama was proved by PW-2 vide Exhibit-15 and it showed that blood was present at the spot of incident and in the auto rickshaw in which Shivram was taken to hospital.

9. Mr. Sayaji Nangre, Advocate appearing on behalf of Appellant, submitted that the act of assaulting Shivram was a result of a grave and sudden provocation on the spur of the moment which happened during a quarrel with him; that depositions of PW-1 and PW-6 show that there was an imminent reason for him to be enraged with Shivram and his family members because his daughter Sangita had eloped and married Shivram's nephew one year prior to the incident; that only 3 months prior to the incident they both returned and were staying with Hiranman Pawar in the neighbourhood; that Appellant suspected that Shivram and his family members actively helped them to elope and get married; that Appellant was unhappy with the alliance of Sangita and Balu Pawar and was tormented on seeing Sangita residing in his neighbourhood with the Pawar family. He submitted that, in this background the incident occurred after the quarrel between Appellant and Shivram at about 7.00 p.m. on 24.02.2016; that there was no premeditation and intention on the part of Appellant to commit murder of Shivram; that in a heat of passion because of the quarrel, Appellant attacked Shivram with the axe which is a common weapon found in all rural households. He has fairly submitted that in view of the depositions of PW-1, PW-6, PW-8 and PW-9, presence of Appellant at the scene of crime cannot be doubted. He therefore submitted that in view of a strong motive which is an important circumstance, Appellant's act and sentence deserves the benefit of been considered under Exception 1 of Section 300 IPC and not under Section 302 IPC.

10. PER CONTRA, Mr. H. J. Dedhia, learned APP appearing on behalf of State has supported the impugned judgement and contended that testimony of PW-1 stands corroborated by the evidence given by PW-6, PW-8 and PW-9. He submitted that PW-9, Appellant's own daughter Sangita has deposed that he used to abuse Shivram. He has also drawn our attention to the deposition of PW-10, Ashok Palve, an independent witness present at the scene of crime; PW-10 has deposed that on being informed by PW-6, Mirabai that Appellant had assaulted Shivram with axe and he had also chased her, PW-10 along with Prakash More went to the spot of incident and witnessed Shivram lying injured in the lap of PW-1 and Appellant standing next to him and threatening those present having guts to come forward. He submitted that Medical evidence in the present case is proved through PW-7, Doctor, who in his deposition has opined that injuries on Shivram can be caused by the axe (weapon) which was shown to him in cross-examination. He has therefore, prayed that the present appeal be dismissed.

11. We have heard both the learned advocates appearing for the respective parties and with their able assistance perused the record of the case.

12. It is seen that prosecution has based its case on strong circumstantial evidence to indict the Appellant. It is the testimony of PW-1, that when he rushed to the spot of incident being alarmed by PW-6, along with his wife PW-8, he saw Shivram lying in a pool of blood; at that time PW-6, PW-10 (Ashok Palve,

an independent witness), Hiranman Govind Pawar, Dattu Hiranman Pawar, Mirabai Govind Pawar and Prakash More also came to the scene of crime and witnessed Shivram lying injured in a pool of blood and Appellant standing next to him with the weapon (axe) held in his hand. This testimony of PW-1 is corroborated by the evidence given by PW-6, PW- 8 and PW-10, hence it cannot be overlooked or discarded. This is a strong circumstance in the chain of circumstances which proves presence of Appellant at scene of crime. Prosecution has recovered and seized the weapon i.e., axe from the spot of incident which is marked as Article-4 in evidence and proved through PW-2 vide seizure panchanama Exhibit-16. Further, Chemical Analyser (for short "C.A.") report collected by the I.O. and marked in evidence as Exh.-53 specifically deciphers that the axe was found stained with blood of group 'O'. The aforesaid factual evidence stands further supported and corroborated by the Medical evidence deposed by PW-7 Dr. Anand Vilas Pawar. In PM report he has notified the external and internal injuries on the body of Shivram.

13. It is to be noted that none of the prosecution witnesses have deposed that they saw Appellant assaulting Shivram, however prosecution witnesses present at the scene of crime have deposed that Appellant was standing near injured Shivram with blood stained axe in his hand; the axe and blood stains clothes of Appellant have been seized and both were found to have stains of blood group 'O', which is the blood group of deceased Shivram as per C.A. report. C.A. report at Exhibit-56 shows that blood group of Appellant is 'B' whereas blood group of Shivram is 'O'. This further circumstance clearly shows the involvement of Appellant in the crime.

14. However, we would like to delve upon the theory of motive which has been vehemently argued before us. PW-1 has deposed that Appellant's daughter Sangita had eloped with Balu Pawar one year before the incident and they both got married. According to PW-1, Appellant suspected that Shivram was helping Balu Pawar. PW-6, Mirabai, mother of Balu has deposed that Balu had kidnapped Sangita one year prior to the incident and had come to reside in their house along with her one month prior to the incident; that Appellant was their neighbour and he was annoyed with Hiranman's family and Shivram. PW-9, Sangita Balu Pawar, daughter of Appellant in her deposition has stated that she had eloped with Balu and performed marriage with him; that she had twice earlier eloped with Balu and therefore her father was unhappy; that Balu belonged to a different caste; hence Appellant was against their marriage due to this reason; that Appellant used to abuse Shivram and her in-laws and threaten them; that she had delivered a male child after coming to stay in Balu's House and that the annoyance of Appellant was over with the passage of time. Considering the above deposition it is clear that Appellant harboured a grudge against Shivram and Hiranman's family.

15. In view of the above it is clear that there is no direct eye witness to the actual incident but the circumstances discussed above clearly show presence and

involvement of Appellant in having committed the crime. The theory of motive propounded by prosecution needs to be accepted in view of the consistent evidence given by PW-1, PW-6 and PW-9 and motive cannot be ruled out. From the evidence on record it is deducible that Appellant was annoyed with Shivram and Hiranman's family due to multiple reasons. The fact that he attacked and assaulted Shivram and remained standing near his body despite the presence of PW-1, his wife PW-9, PW-6, PW-10 and three others, shows that he was deprived of the power of his self control which was caused by grave and sudden provocation due to the fight which took place between him and Shivram. From perusal of evidence, it is seen that there was no premeditation on the part of Appellant, that he was indeed disturbed and annoyed with having to see his daughter residing along with Balu Pawar in his neighbourhood and therefore this was a prelude to the fight with Shivram and resulting in the ultimate offence.

16. Learned Advocate for Appellant has argued that the present case falls under Exception 1 to Section 300; however we do not agree with the same for the following reasons. On marshalling of the evidence on record we are of the considered opinion that on the basis of the evidence on record, the present case falls within the ambit of Exception 4 to Section 300 IPC. In the present case it is seen that there was no premeditation whatsoever on the part of Appellant, that there was a fight between Appellant and Shivram as deposed by PW-1, that prosecution witnesses have specifically deposed that Appellant was annoyed with; (i) Sangita's alliance with Balu; (ii) her elopement with Balu; (iii) her marriage with Balu; and (iv) the fact that one month before the incident she having come to reside with Balu in his neighbourhood. That apart, Appellant was also opposed to their alliance due to they belonging to different castes and suspected Shivram to have supported Balu in all the above acts. It is further seen that, Appellant has not acted in a cruel and in an unusual manner or has taken any advantage after committing the crime by trying to harm others. Though PW-6 in her evidence has stated that Appellant had chased her with axe in his hand, there is no corroboration of this deposition by any other witness. All prosecution witnesses have deposed that after assaulting Shivram, Appellant stood ground near him, though PW-1 had reached the spot along with PW-9 and others and had taken Shivram in his lap.

17. Mr. Nangre has relied upon the unreported decision dated 02.08.2022 of the Apex court in the case of Dauvaram Nirmalkar Vs. State of Chhattisgarh reported in Criminal Appeal No. 1124 of 2022 (Arising out of Special Leave Petition (Criminal) No. 2481 of 2022) and contended that while examining the issue of grave and sudden provocation, the gravity of the provocation can be assessed by taking into account the history of abuse and it need not be confined to the gravity of the final provocative act and it shall be reasonable to take into account all such circumstances, such as prior animosity between the parties arising as a result of the incidents in the past and subsequently resulting in sudden and grave provocation for consideration. In the facts of the present case, Appellant had harboured serious animosity against Shivram Pawar and his family members

because of the alliance of his daughter Sangita with Balu; that Appellant was unhappy with the alliance for several reasons alluded to hereinabove and strongly suspected Shivram to have supported Balu in his endeavours and therefore the offence committed on the date of incident was a result thereof. However after analysing the evidence, we do not concur with the submission of Mr. Nangre that the Appellant committed the act by mistake or accidentally. Hence, bringing the act of Appellant within the ambit of Exception 1 of Section 300 IPC stands ruled out.

18. In this context before we adjudicate and give our findings on the above, it will be apposite to refer to the relevant provisions of IPC. Section 300 IPC defines murder reads thus:

"300. Murder.--Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or— 4thly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.--When culpable homicide is not murder.--Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-- First.--That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.--That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.--That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.--Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

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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's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.--It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.--Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

19. Section 304 IPC prescribes punishment for the offence of culpable homicide not amounting to murder and read thus:

"304. Punishment for culpable homicide not amounting to murder.--Whoever commits culpable homicide not amounting to murder, shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death." [emphasis supplied]"

20. The Trial Court has convicted and sentenced the Appellant for the offence of murder under Section 302 IPC. In view of the above discussion, in our considered opinion the conviction and sentence passed by the Trial Court calls for reconsideration.

20.1. 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
- (iii) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

20.2. In the present case, the all aforesaid three requirements of Exception 4 to Section 300 IPC have been satisfied as under:

- (i) From appreciation of evidence of prosecution witnesses as a whole it is clearly discernible that there was no premeditation, preparation and/or intention harboured by Appellant to commit the act of killing Shivram;

(ii) evidence given by PW-1, PW-8 proves that a fight took place between Appellant and Shivram and in the said fight he assaulted Shivram with the axe and stood next to him; and hence it cannot be said that he acted cruelly or in an unusual manner;

(iii) that axe i.e. weapon used by Appellant is commonly available and present in practically all houses in the villages.

21. On the basis of the above discussion and findings, we conclude that, though Appellant had knowledge that his act of assaulting Shivram would be likely to cause his death, but he had no intention to do so as it was a result of the fight between the two. Such an act falls within the purview of culpable homicide not amounting to murder. As it was not with intention to cause death – Section 304(II) would attract. Punishment for culpable homicide not amounting to murder has been prescribed under Part II of Section 304 IPC. Facts and evidence alluded to hereinabove alongwith our observations come within the ambit of Part II of Section 304 IPC. As such, according to us the Trial Court erred in convicting and sentencing Appellant for the offence of murder under Section 302 IPC.

22. In view of the above, we are of the firm opinion that Appellant in a heat of passion and the fight with Shivram acted in a manner that he knew is likely to cause death of Shivram but without the intention to kill him. According to us, act of Appellant falls within the purview of Exception 4 of Section 300 IPC. Appeal is accordingly partly allowed and the impugned Judgment and Order dated 04.11.2016 passed in Sessions Case No. 131 of 2016 is hereby modified and Appellant is held guilty under Section 304 (Part II) Indian Penal Code, 1860 — Section and is sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 25,000/-, in default of payment of fine to suffer further rigorous imprisonment for one year.

23. Hence the following order:-

(i) Appellant is convicted under Section 304 (Part II) of IPC and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 25,000/-, in default of payment of fine to suffer further rigorous imprisonment for one year;

(ii) Appellant is entitled for set off of the period already undergone in jail;

(iii) Appellant shall be released on completion of sentence as directed unless required in any other case/cases;

(iv) Appeal is partly allowed in the aforesaid terms.

24. Criminal Appeal No. 669 of 2017 is disposed of in the above terms.