

(2022) 08 BOM CK 0086

In the Bombay High Court

Case No : Criminal Appeal No.119 Of 2015

Sanjay Sahebrao Parkhe

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 18-08-2022

Acts Referred:

Indian Penal Code, 1860 — Section 300, 300(4), 302, 304I, 304II
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 08 BOM CK 0086

Hon'ble Judges : Vibha Kankanwadi, J;Rajesh S. Patil, J

Bench : Division Bench

Advocate : R.A. Jaiswal, M.M. Nerlikar

Final Decision : Dismissed

Judgement

Vibha Kankanwadi, J

1] Appellant is the original accused who has been sentenced to imprisonment for life in Sessions Case No. 141 of 2021 by the learned Additional Sessions Judge, Newasa, Dist. Ahmednagar on 1.1.2015, after holding him guilty of committing offence punishable under Section 302 of IPC.

2] The prosecution case, in short, is that present appellant got married to deceased Mangal about 10 years prior to the date of incident i.e. 25.6.2014. The appellant and Mangal used to reside at Shrirampur and they had daughters by name, Radhika and Anjali. However, some years later, the appellant started assaulting and ill-treating Mangal by raising suspicion over her character. Informant -Pavlas Dagdu Satdive, who is the father of deceased Mangal, used to give advice to the appellant that he should not raise unnecessary suspicion over the character of Mangal and should not ill-treat her. However, because of the said ill-treatment two months prior to 24.6.2014, Mangal went to her father's house alongwith daughters . Four days thereafter, the appellant went to the house of the informant and told that Mangal should be allowed to accompany him. But,

when it was expressed that Mangal is not ready to cohabit in view of the fear in her mind, the appellant started residing with the informant and Mangal as well as the daughters. Still, he continued to raise suspicion over the character of Mangal.

3] It is further prosecution story that Mangal, appellant, informant and his daughter-in-law – Archana were at the house around 8.00 a.m. on 24.6.2014. At that time, the appellant had given assault by means of an axe on the head of Mangal. The assault was so forceful that the axe literally got embedded in the head of Mangal causing heavy bleeding injury to her. Though the informant Pavlas had tried to take out the axe, but he was pushed by the appellant causing injury to Pavlas also. He then cried for help. Other persons as well as son of the informant gathered and they caught hold of the appellant. Mangal was taken to Vadala-Bahiroba for treatment. However, the Doctor declared her dead.

Informant Pavlas had then lodged report about the incident on the same day, which came to be registered vide Crime No. 129 of 2014 under Section 302 of IPC.

4] During the course of investigation, Inquest Panchanama was prepared and the dead body was sent for postmortem. After postmortem was carried out, the clothes on the person of the deceased came to be seized by drawing Panchanama. The accused came to be arrested and the clothes on the person of the accused were also seized by drawing panchanama. Informant was sent for medical examination and later on, his Medical Certificate has been collected. Statement of witnesses were recorded and after the conclusion of investigation, charge sheet was filed.

5] After committal of the case, the learned Additional Sessions Judge framed charge at Exh.2 for the offence punishable under Section 302 of IPC. The contents of the charge sheet were read over and explained to the accused. In view of his plea, trial was conducted. The prosecution had examined in all 7 witnesses to bring home the guilt of the accused. After considering the evidence on record, the learned Additional Sessions Judge, held the offence proved by the prosecution beyond reasonable doubt and sentenced him as aforesaid. Hence, this appeal.

6] Heard Mr. Jaiswal, for the appellant.

7] It has been vehemently submitted on behalf of the appellant that the prosecution has examined in all 7 witnesses. PW-1 Pavlas, PW-4 Sonali, are the eye witnesses. Though both of them have stated that the accused inflicted single blow to the deceased by means of an axe, in his cross-examination, PW-1 Pavlas had admitted that before the incident, quarrel had taken place between Mangal and the accused. Mangal was saying that accused had relations with other woman. This fact was never considered by the learned Additional Sessions Judge as a provocation by deceased to accused. Further, though at one place, it was tried to be stated that the accused had gone for bringing firewood, that fact has been later on denied by both the witnesses. The question would be, as to from

where the axe was procured by the accused. It can not be stated that accused had any pre-meditation about causing murder of his wife. Another fact also that is required to be considered is, that PW-1 Pavlas as well as PW-4 Sonali have made improvements and tried to save somebody. Though a suggestion has been given that a person by name, Rambhau Harkal was there and the appellant had suspicion that there was some affair between the deceased and Rambhau Harkal and after seeing him in the house, the appellant was angry. Those improvements in the testimony of the eye witnesses ought to have been considered though both of them are the relatives of the deceased. The testimony of the Medical Officer, who conducted autopsy would show that cause of death was due to acute cardio-respiratory arrest due to head injury with intro-cranial hemorrhage. In his cross also he has stated that if injury is caused by sharp weapon like axe, it will cause linear edges and if blow is given by hard and blunt object, it will cause crush injury. He also admitted that every death is not essentially by cardio-respiratory arrest. Even if we consider that the death was homicidal in nature, yet, it would fall within the fourth exception to Section 300 of IPC, as there was sudden quarrel between the accused and the deceased.

8] Learned Advocate for the appellant has relied on the decision in the matter of Khokan @ Khokhan Vishwas Versus State of Chhattisgarh, (2021) CJ (SC) 54, wherein, it has been observed as under :-

"Section 300 of the IPC is in two parts. The first part is when culpable homicide can be said to be the murder and the second part is the exceptions when the culpable homicide is not murder. The relevant part of Section 300 IPC for our purpose would be clause 4 to Section 300 and exception 4 to Section 300 and exception 4 to Section 300 IPC. As per clause 4 to Section 300 IPC, 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 from incurring the risk of causing death or such injury, such culpable homicide can be said to be the murder. However, as per exception 4 to Section 300, 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 having taken undue advantage or acted in a cruel or unusual manner. As per explanation to exception 4 to Section 300 IPC, it is immaterial in such cases which party offers the provocation or commits the first assault."

9] He further relied on the decision in State of Madhya Pradesh Versus Kalicharan and others (Criminal Appeal No. 1441 of 2013, decided by the Apex Court on 31.5.2019), wherein in case of single blow it was held that the case would fall under Section 304 part I and not under Section 302 of IPC.

10] Further reliance has been placed on Stalin vs. State represented by the Inspector of Police, (Criminal Appeal No. 577 of 2020, decided on 9.9.2020) by the 3 Judges Bench of the Honourable Apex Court, wherein, taking into consideration the earlier decisions, it was tried to be laid down, as to what the

Court should consider while deciding, whether a case falls under Section 302 or 304 Part I or 304 Part II of IPC, and it has been observed in para. 7.2 as under :-

"From the above stated decisions, it emerges that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case, more particularly, under the circumstances narrated herein above, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence."

11] Further reliance has been placed on the decision in *Pardeshiram Versus State of M.P. (Now Chhattisgarh)*, 2021 CJ (SC) 46, wherein also, the Honourable Supreme Court considered the case as falling under exception 4 of Section 300 of IPC. Thereafter, the decision in *Ramesh Nandu Surun Versus The State of Maharashtra*, 2019 ALL MR (Cri) 2327, the Division Bench of this Court at Principal seat has been relied, wherein, it has been observed that, since the incident had occurred in consequence of a sudden quarrel and there was no time lag between the altercation and attack by accused, hence, the accused had not acted in cruel and or unusual manner. Act of the accused would fall under exception 4 of section 300, the conviction of the accused under Section 302 was altered to conviction under section 304 Part I of IPC. Similar decision was taken in *Suresh Wadnur Versus State of Goa*, 2012 All Mah. Crim. 3980.

12] Relying upon all these decisions, the learned Advocate for the appellant prayed for conversion of the conviction under Section 302 of IPC to Section 304 Part I of IPC. The appellant is in jail since 24.6.2014 and, therefore, by granting set off, he be released.

13] Per contra, learned APP strongly opposed the appeal and submitted that the conclusion drawn by the learned Additional District Judge is perfectly legal and correct. The testimony of PW-5 Dr. Chandrakant Yadav, Medical Officer, would show that in column No.17, giving description of surface wound and injuries. he has noted CLW 14 x 2 cm on vortex region of scalp, horizontal in coronal plane. Further column No.18 describe transverse fracture on both parital bones. It shows, as to how much of force was applied while inflicting the said blow by axe, which had a sharp edge. The Medical Officer has stated that the injuries noted by him on the dead body are possible by axe, Article A, which was shown to him. It shows that the death was homicidal in nature. The testimony of PW-1 Pavlas would clearly indicate, as to what was the reason for Mangal to come to his house. The appellant was raising suspicion over her character and was ill treating

her by assaulting her. Even after she came to her parental home, the accused had not left raising such suspicion. That was the motive for him and it appears that since the date he had gone to reside with the informant and deceased, he had in his back of the mind what has been admitted in cross by PW-1 Pavlas was that, a quarrel had taken place between Mangal and accused. Mangal was saying that accused had relations with other woman. exception IV of Section 300 of IPC makes an exception in view of the fact that was a sudden quarrel or provocation. Therefore, the difference is between provocation and quarrel will have to be considered and every quarrel will not result in provocation. When the axe was used with force, there was an intention to commit murder and the said incident has been witnessed by PW-1 Pavlas as well as PW-4 Sonali, who was 14 year niece of deceased Mangal.

14] No disadvantage of discrepancies in their testimonies can be given to the accused as there are bound to be discrepancies. Only material discrepancies are required to be considered and we cannot say that, there are any material discrepancies in their testimonies. Even the neighbouring witness has also been examined, who had arrived at the place may be a fraction later, but then, he has stated that accused was required to be tied at a distance otherwise, he would have escaped. The weapon of murder was seized from the spot. When the accused was arrested, there were blood stains on his clothes and there was no injury on his body though it appears that, blood group of deceased Mangal as well as accused is same. The accused has not disputed the injuries which were caused to PW-1 Pavlas. Though there was no charge for the injuries caused to Pavlas, but, that fact also is required to be taken into consideration, since he says that, he had tried to save his daughter. The conclusion that has been drawn by the learned Additional Sessions Judge, is perfectly correct and the case would fall under section 302 of IPC.

15] Learned APP has relied on the decision in State of Rajasthan Versus Leela Ram, (2019) 13 SCC 131, wherein it has been held by the Honourable Supreme Court that merely because altercation took place much earlier and not immediately prior to the commission of offence, it cannot be inferred that there was no intention on the part of the accused to cause death. Though in the said case deceased had died by axe blow caused on head, it was held that the High Court committed error in converting conviction under section 302 of IPC to section 304 Part I of IPC. Further reliance has been placed on the decision in Singapagu Anjayya Vs. State of Andhra Pradesh, (2010) 9 SCC 799 wherein, a single blow inflicted by accused on head of deceased of crow-bar causing fracture of skull it was held that accused is guilty of offence under Section 302 of IPC.

16] At the outset, most of the part of the testimony of PW-5 Dr. Chandrakant Yadav, who conducted autopsy has been referred and, therefore, it has not been reproduced. From the injuries those were noted by him in Column No.17, 18 and 19 of post-mortem Report Exh. 19, as well as cause of death that has been

given, would clearly lead to the conclusion that death of Mangal is homicidal in nature. Further it could also be seen from the testimony of PW-1 and PW-4 Sonali, who are eye witnesses, that death was due to assault by an axe is almost not disputed by the accused. But, then, he wanted to say that he is not author of the said injury when it was before the trial court and now, it appears that he wants to convert punishment under Section 302 of IPC to Section 304 Part I of IPC. The learned Advocate appearing for the appellant has not even pressed for the other evidence which has been adduced by the prosecution to be taken into consideration and it appears that, he has now limiting the said prayer.

17] As an appellate Court, we will have to consider the other evidence also, before we consider the prayer of the appellant. PW-2 Sudhakar is the Panch witnesses to the Inquest Panchanama. Inquest Panchanama Exh. 12 shows the same injury over the head of Mangal. PW-3 Vijay Gaikwad is the Panch of the Spot Panchanama and that is also not much disputed. In his testimony, he has stated that the axe was recovered from the spot. Corroboration to his testimony could be found with the testimony of the Investigating Officer. PW-6 Rajehdra Bhakad is the neighbour of PW-1 Pavlas and he has stated that after he heard the shouts, he went there. He saw Mangal had fallen and had sustained serious injuries. Accused was also present and there was an axe. In his cross-examination, he has admitted that he had seen accused tied at a walking distance of one minute from the house of the informant. This act might have been done by the people who had gathered on the spot, so that the accused should not flee away.

Now, turning to the testimony of the main witnesses PW-1 Pavlas and PW-4 Sonali, we can see that both of them have been saying that accused had come to reside with Pavlas and Mangal in the house of Pavlas, prior to the date of the incident. This aspect also appears to be not seriously challenged though some questions have been asked. Since when he was residing there, would be immaterial, but since prior to the date of the incident, he had definitely come down to the house of Pavlas. PW-1 Pavlas was the appropriate witnesses to state, as to why his daughter had come to stay with him alongwith her daughters. He stated that accused was harassing Mangal by raising doubt over her character.

He was beating her and, therefore, he had given advice to him not to do so, but since there was no progress, Mangal had come to his house two months prior to the incident. It has been further stated by Pavlas that at about 8.00 a.m, when he was in his house and daughter in law was cooking food in side the house, accused as well as Mangal were present. He has stated that when Mangal was standing in the door, accused entered the house and returned with axe. He gave a blow of axe on head of Mangal. Though he tried to snatch the axe, accused pulled him. Witness had tried to remove axe from the head of Mangal, he had also sustained injury on his right hand and right knee. After he had shouted , people gathered and caught hold of the accused. In his cross-examination, he

has stated that Sonali was near her house door at that time and before the incident, quarrel had taken place between Mangal and accused. Mangal was saying that accused had relations with other woman. Whether this admission can be taken as a sudden provocation that is falling within exception 4 to Section 300 of IPC is a question.

18] At this stage itself, it is to be noted that the same question was put to PW-4 Sonali in her cross examination. But, she has denied that there was any quarrel in between the deceased and the accused. We would not take the said admission given by PW-1 Pavlas in isolation because in the next line, he has stated that he had no idea for what purpose they were quarreling. Therefore, it appears that earlier two questions were in fact fishing questions, to which the old man had given such answers. At that time, his age was 65 years. It was not put to him nor such statement has been made by the accused in his statement under Section 313 of Cr.P.C. since prior to that incident Mangal had also started raising suspicion over the accused and levelling allegations that accused had relations with other woman. If all of a sudden, even if we consider it as a true fact for a moment, will not in absence of its details, would amount to provocation or it was quarrel of such magnitude that the accused will lose his self control.

19] In Stalin (supra) discussion and conclusion drawn in Dhirajbhai Gorakhbhai Nayak Versus State of Gujarat, (2003) 9 SCC 322, essentially para. No.11 have been considered. It has been observed in para. 11 as under :-

"The fourth exception to Section 300 of IPC at least with a case of provocation not covered by the first exception, while in case of exception (1) there is total deprivation of self control. In case of Exception 4 it is only with heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in exception 4, but injury done is not direct consequence of that provocation. It has been further observed that the help of exception can be invoked if death is caused (a) with pre-meditation (b) in a sudden fight (c) when the offenders have taken undue advantage or acted in cruel or unusual manner and (d) fight must have been with person killed. The word "fight" occurring in exception 4 to Section 300 is not defined in IPC. 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."

Here, in this case, the present appellant's act is not covered in (a) to (d) aforesaid. Further, in Stalin (supra) itself, note was also taken in respect of the decision in Pulicherla Nagaraju Vs. State of A.P., (2006) 11 SCC 444, which can be taken as the factors to decide whether the case falls under Section 302 of 304 Part I or Part II of IPC. In para. 29, the Apex Court observed thus :-

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters –

plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, many lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:

(I) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether it was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

20] No doubt, there is some discrepancy in the testimony of PW-1 Pavlas and PW-4 Sonali, but we cannot consider that discrepancy or improvement going to the root of the case and thereby negativating the charges against the accused. Therefore, after scanning the entire evidence, it can be said that the appellant was the author of the homicidal death of his wife Mangal and the motive was suspicion over her character, which he was taking since much prior to the date of incident. The case, therefore, falls under Section 302 of IPC and not under Section 304 Part I of IPC. No case is made out to convert the conviction awarded by the learned Additional Sessions Judge. Accordingly, conclusion and the conviction awarded by the learned Additional District Judge is perfectly legal and correct. It requires no interference and hence, the appeal stands dismissed.