

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPEAL NO. 470 OF 2001.

Santosh Parasram Rathod.
Age : 25 Years., Occ.: Service.
R/o.: M.S.E.B. Quarters,
Jangamwadi, Nanded.
District : Nanded.

}

Appellant.

Versus

The State of Maharashtra.
Through :
Police Station Officer,
Police Station, Bhagyanagar,
Nanded.

}

Respondent.

Appearance =>

Mr. S.S. Choudhari, Advocate for the Appellant.

Mr. PN. Muley, Assistant Public Prosecutor for the State of Maharashtra.

CORAM : M.T. Joshi, J.

DATE : 1st September, 2015.

ORAL JUDGMENT :-

Being aggrieved by Judgment and Order dated 1st November, 2001 passed by the learned Sessions Judge, Nanded, District - Nanded in Sessions Case No.167 Of 1997 thereby, convicting the Appellant-accused for the offence punishable under Section 304 Part - II of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for five years and to pay fine of Rs.5000/- and

in default of payment of fine amount, to suffer rigorous imprisonment for one year, present Criminal Appeal is preferred by the Appellant.

[2] Prosecution case, in short, is as under :-

That, deceased Murari @ Murli Jaysingh Jondhale was residing in the house of PW No.2 Ramabai Dattatraya Kamble as paramour. She has a old drunkard husband, who was unable to shoulder any household responsibility. One of the daughter of PW No.2 Ramabai namely Gangasagar had eloped with Sanjay Rathod, elder brother of the Appellant - accused. In these circumstances, the incident had occurred 28th March, 1997 at about 9.45 to 10.00 a.m. in the premises of the residential house of PW No.2 Ramabai.

According to the prosecution, present Appellant as well as his mother went to the house of PW No.2 Ramabai to question her regarding the missing of Sanjay for a period of more than two weeks, having fled away with Gangasagar, daughter of PW No.2 Ramabai. That time, quarrel ensued between the parties. Deceased Murari @ Murli tried to intervene in the dispute however, the present Appellant suddenly, during the altercation, flashed a knife and stabbed the deceased below his left chest. He was taken to the hospital but, there he was declared to be dead. In the circumstances, his brother PW No.1 Gendu Jaisingh Jondhale filed complaint at Exhibit – 16.

[3] Investigation was carried by PW No.7 Police Inspector of Bhagyoday Police Station, Nanded - Parshuram Ramchandra Chavan. He recorded the inquest panchnama, spot panchnama, seized blood stained clothes of the deceased. Bed sheet stained with blood was

recovered from the spot. Post mortem examination report was collected. Statements of witnesses and more particularly all the eye witnesses i.e. PW No.2 Ramabai Dattatraya Kamble and PW No.3 Imran Ali Khan Anwar Ali Khan were recorded. Seized property was sent to the chemical analyzer. Upon receipt of chemical analysis report, charge sheet came to be filed in the court of law.

[4] Before the learned Sessions Judge, in all seven witnesses were examined. PW No.1 Gendu Jaising Jondhale is the complainant and brother of the deceased. PW No.2 Ramabai Dattatraya Kamble and PW No.3 Imran Ali Khan Anwar Ali Khan are eye witnesses to the incident. PW No.5 Dr. Rajendra Nivrattirao Kagne is the Medical Officer. PW No.4 Govindrao Narayanrao Panpatte is Police Constable, who carried the articles to the Chemical Analyzer. The present Appellant allegedly made statement leading to recovery of knife used in the commission of offence. PW No.6 Ramesh Sambhaji Parghane is the panch witness to the recovery, while PW No.7 Parashuram Ramchandra Chavan, as detailed above is the Investigating Officer.

All the prosecution witnesses deposed on the line of the prosecution, except PW No.3 Imran Ali Khan Anwar Ali Khan, who was cited as eye witness by the prosecution.

[5] The learned Sessions Judge found that, prosecution has proved the guilt of accused beyond reasonable doubt. He however, did not agree with the prosecution that the present Appellant has committed culpable homicide amounting to murder an offence punishable under Section 302 of the Indian Penal Code for which he was charged. In the circumstances, the Appellant was convicted for

the offence punishable under Section 304 Part II of the the Indian Penal Code and was sentenced, as stated supra.

[6] Mr. S.S. Chaudhary, learned counsel for the Appellant submitted before me that the independent eye witness i.e. PW No.3 Imran Ali Khan Anwar Ali Khan claimed to be eye witness, has not supported the prosecution case. PW No.2 Ramabai was admittedly interested in the deceased and though she was not eye witness to the incident, she has falsely claimed to be so.

In the alternative, he submitted that, evidence on record would show that during the verbal dispute, suddenly the incident has occurred. Even deposition of PW No.5 Dr. Rajendra Nivrattirao Kagne would show that the injury is not externally placed on vital part of the body. In the circumstances, it is submitted that, it would not be even case of culpable homicide not amounting to murder. The learned counsel for the Appellant therefore, sought interference in the order of the learned Sessions Judge.

[7] The learned Assistant Public Prosecutor however, opposed the proposition. He submitted that, though one of the eye witness has turned hostile, statement of PW No.2 Ramabai can be relied upon. Entire evidence would show that, incident has occurred in the premises of her house and, therefore, she would be natural witness. He further submitted that, since the stab injury was caused on the chest of the deceased, it would be case of culpable homicide not amounting to murder as reasoned by the learned Sessions Judge. He therefore, submitted that Appeal be dismissed.

[8] On the basis of this material, following points arise for my determination :-

Points.

(1) Whether the prosecution has proved that on 28th March, 1997 at Jangamwadi area, Nanded, District – Nanded in the house of PW No.2 Ramabai Dattatraya Kamble, the present Appellant has committed culpable homicide not amounting to murder of Murari @ Murakli Jaisingrao Jondhale.?

(2) What Order.?

My finding to Point No.(1) is in the negative. However, in my view, offence punishable under Section 326 of the Indian Penal Code has been committed. In the result, Criminal Appeal is partly allowed for the reasons to follow:-

REASONS

[9] The immediate filing of the First Information Report Exhibit – 16 by Gendu Jaisingh Jondhale, brother of deceased would show that, PW No.2 Ramabai Dattatraya Kamble had narrated the incident to him. This version is corroborated by PW No.2 Ramabai Kamble, in the witness-box. Her evidence would show that, she is a straightforward lady. She admitted to have illicit relations with the deceased and that she allowed the deceased to reside in her house, out of love. She even deposed that her age old husband is drunkard. She further admitted that, her daughter Gangasagar, who was deserted by her husband, had eloped with brother of the present

Appellant and over that the present incident has occurred in her house.

In that view of the matter, in my view, testimony of PW No.2 Ramabai Kamble is reliable.

[10] Actual incident of stabbing had occurred in the court yard of house of PW No.2 Ramabai Kamble. During the cross-examination, it was tried to suggest that as verbal quarrel has arisen in the house, PW No.2 Ramabai had not gone to witness the incident. In the cross-examination however, she explained that she as well as mother of the complainant were present in the door frame when deceased Murari went out and he was stabbed by the appellant in her presence in the court yard. She even in clear terms agreed that, in the quarrel due to anger the incident had taken place.

[11] If all this evidence is taken into consideration, in my view, the testimony of sole eye witness is sufficient to come to the conclusion that the present Appellant is the author of the injury.

This takes me to find out, as to what is the nature of offence committed by the Appellant.

[12] PW No.5 Dr. Rajendra Nivrattirao Kagne deposed that, on the body of the deceased, he found stab wound over left side of chest in 7th intercostal space and 4 c.m. lateral to nipple (upper end 2 c.m. below nipple level), size 5.5 c.m. x 2 c.m x cavity deep.

Besides this injury, no external injury was found on the person of the deceased. During the cross-examination, Medical Officer Dr. Rajendra Kagne explained that, injury was not externally placed on vital part of the body.

[13] In view of these circumstances, it is necessary to advert to the provisions of Section 304 Part II of the the Indian Penal Code, which runs as under :-

Punishment for culpable homicide not amounting to murder: -Whoever commits culpable homicide not amounting to murder shall be punished with :-

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.

[14] At the same time, it is necessary to advert to the definition of grievous hurt as is found in Section 320 of the Indian Penal Code, which is required to be taken into consideration and more particularly, 8th description of the grievous hurt is required to be highlighted. Section 320 of the Indian Penal Code runs as under :-

Grievous hurt. — The following kinds of hurt only are designated as grievous

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Eighthly. - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

[15] Perusal of these provisions would clearly show that, intention or knowledge of causing death is necessary ingredients of the offence of culpable homicide not amounting to murder. Author of the injury should have intention or knowledge of causing death or at least intention or knowledge of causing such bodily injury, as is likely to cause the death.

[16] Here in the present case, the knife was not stabbed in externally vital part of the body of the deceased. It cannot, therefore, be said that, the Appellant had either intention or knowledge either to cause the death or to cause such bodily injury as is likely to cause death. It was however, hurt, which endangers life as covered by eighth description of the grievous hurt, as enumerated in Section 320 of the Indian Penal Code.

[17] Stab wound by knife lateral to the nipple necessarily is a hurt, which endangered life, therefore, in my considered opinion, the

Appellant has committed an offence punishable under Section 326 of the Indian Penal Code.

[18] It takes me to find out, as to what sentence would be appropriate in the present case.

[19] The prosecution case itself is that motive when the Appellant and his mother visited the house of PW No.2 Ramabai to challenge PW No.2 Ramabai as Sanjay was missing. Since the brother of the Appellant was not seen for a period of two weeks, as he had eloped with daughter of PW No.2 Ramabai, they had visited the house. Deceased was paramour of PW No.2 Ramabai. He tried to intervene in the dispute and lost his life.

[20] Finding that present Appellant is undergoing trial since July, 1997, in my view, award of rigorous imprisonment of one year with further direction to pay fine amount of Rs.1000/- would be just and proper. In the result, following order is passed :-

ORDER.

(i) Criminal Appeal is partly allowed.

(ii) Judgment and Order dated 1st November, 2001 passed by the learned Sessions Judge, Nanded, District - Nanded in Sessions Case No.167 Of 1997 thereby, convicting the Appellant-accused for the offence punishable under Section 304 Part - II of the Indian Penal

Code and consequent sentence of rigorous imprisonment for five years and to pay fine of Rs.5000/- is hereby set aside and; instead, the Appellant - accused is hereby convicted for the offence punishable under Section 326 of the Indian Penal Code and he is directed to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- (Rs. One Thousand only) and in default of payment of fine amount, to suffer further rigorous imprisonment for 15 days.

(iii) His bail bonds shall stand cancelled.

(iv) The learned Sessions Judge, Nanded to take action for bringing the Appellant in the court for serving the rest of sentence, as directed above.

(v) Disposal of the property on the line of directions already issued by the learned Sessions Judge, Nanded.

(M.T. JOSHI, J.)