

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.670 OF 2005

Sandip Ramchandra Panmalekar	]	
Age : 30 Years, Occ.: Driver,	]	
R/o. Survey No.17/4,	]	
Mangalawar Wakad Road,	]	
Thergaon, Pune	]	
[At present lodged in Yerwada	]	
Central Prison, Pune]	]	 Appellant

Versus

State of Maharashtra,	]	
Thru' Wakad Police Chowky	]	
of Poud Police Station.	]	 Respondent

ALONG WITH
CRIMINAL APPEAL NO.206 OF 2007

The State of Maharashtra	]	 Appellant
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Versus

Sandip Ramchandra Panmalekar	]	
Age : 30 Years, Occ.: Driver,	]	
R/o. Survey No.17/4,	]	
Mangalawar Wakad Road,	]	
Thergaon, Pune	]	 Respondent

Mr. Abhaykumar Apte for the Appellant
in Cr. Appeal No.670 of 2005.

Mrs. S.D. Shinde, A.P.P., for the Respondent-State
in Cr. Appeal No.670 of 2005 and for the Appellant
in Cr. Appeal No.206 of 2007.

**CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 7TH JANUARY, 2015.

ORAL JUDGMENT [Per P.V.Hardas, J.] :

1. Criminal Appeal No.670 of 2005 has been filed by the Appellant, who stands convicted for offence punishable under Section 304, Part-I, of the IPC and sentenced to suffer R.I. for seven years and to pay fine of Rs.1,000/-, in default of which to undergo further R.I. for six months, by the Sessions Judge, Pune, by Judgment dated 1st April, 2005 in Sessions Case No.69 of 2004. Criminal Appeal No.206 of 2007 has been filed by the State challenging the acquittal of the Respondent/Accused for offence punishable under Section 302 of the IPC. Since both these Appeals arise from the same Judgment of the Trial Court, these Appeals are being decided by this common Judgment.

2. Facts, as are necessary, for the decision of these Appeals may briefly be stated thus :-

PW-6 API Anil Raghunath Galinde, who was attached to the Hinjawadi Police Station, Pune, was on duty on 30th October, 2003 at the

Wakad Police Chowki. At about 4 or 4:30 p.m., the Appellant came to the Police Chowki carrying his injured wife and his young child. The Appellant had brought his wife on a two-wheeler known as "M-80". The Appellant confessed to have committed murder of his wife and PW-6 API Anil Galinde, therefore, immediately called a rickshaw and instructed ASI Makhar, the Police Officer, to take the injured to the YCM Hospital for treatment. The report of the Appellant was recorded and the report is at Exhibit-35. The inculpatory portion of the report was not read in evidence and only the exculpatory portion of the report was read in evidence. On the basis of the report of the Appellant, an offence vide Crime No.31 of 2003 was registered under Section 302 of the IPC.

Upon registration of the offence, the investigation of the said crime was entrusted to PW-6 API Anil Galinde. On being entrusted with the investigation of the said crime, he arrested the Appellant/Accused under Arrest Panchnama at Exhibit-18 in the presence of the Panch Witnesses. His blood stained clothes were also seized under the same Panchnama. The two-wheeler was also seized under the said Panchnama. Sample of the blood stains on the seat cover of the two-wheeler of the Appellant were collected. The injured, i.e. Mangala, wife of the Appellant, succumbed to her injuries and, therefore, an Inquest Panchnama on the dead body of deceased Mangala was drawn by ASI Makhar at Exhibit-30.

The dead body was referred for post-mortem examination. The clothes of deceased Mangala were accordingly seized under Seizure Memo at Exhibit-31. The Appellant was referred to the YCM Hospital for drawing blood sample of the Appellant. Statements of witnesses were recorded. A Panchnama of the scene of the incident was drawn in the presence of PW-5 Digambar Vitthal Bhangre at Exhibit-33. From the scene of the incident, a purse, a knife which was broken, broken pieces of bangles were seized. A ladies foot-wear of the left foot was also seized.

During investigation, a complaint filed against the Appellant by deceased Mangala with the Paud Police Chowki on 17th July, 2002 was also seized. On 4th November, 2003, the seized property was forwarded to the Chemical Analyzer under requisition at Exhibit-38. The Viscera was referred to the Chemical Analyzer. On 3rd December, 2003, statement of PW-3 Dagdu Usman Shaikh was recorded. The Tahasildar was requested to prepare the sketch of the scene of the incident. Further to the complaint and the investigation, a Charge-Sheet against the Appellant was filed.

Post-mortem on the dead body of deceased Mangala was performed by PW-2 Dr. Sanjay K. Joshi, who had noticed the following external injuries :-

- “ (VIII) Incised wound at ant side chest left side at 4 cm above and medial to left nipple, horizontal, 5 cm x ½ cm x skin deep, elliptical. No corresponding internal injury.
- (XII) Incised wound on right ring finger over 3rd phalanx palmer surface ½ cm. x ½ cm. x skin deep, elliptical. No corresponding internal injury.
- (XIII) Incised penetrating wound on right thigh medial size of M/3, right thigh, Horizontal, 19 cm above right knee, 2 ½ cm. x 1 cm. x 5 cm. deep, elliptical. No corresponding internal injury.
- (XVIII) Incised penetrating wound on abdomen anteriorly, anteriorly 3 cm. lat to umbilicus on left side, loop of small intestine protruding out of the abdominal wall through above wound, 61 cm. length of protruded small intestine with near total cut of intestinal loop only 2 cm. intact at posterior lateral side, after putting the intestine inside, 3 cm x 1 cm x open in abdominal cavity skin and muscle depth is 4 cm, shape elliptical, Corresponding internal injury is –

- a) Perforation through peritoneum
- b) Intestinal loop cut at distance of 29 cm. distal to pyloric end of stomach
- c) Mesentery is perforated 4 cm. x 1 cm. duodenal mesentery
- d) Incised penetrating injury to left lobe of liver inferior surface below the gall bladder oblique indirection 3 cm. x ½ cm. x 3 ½ cm. deep, abdominal cavity is full of blood.

All the above injuries were antemortem.”

PW-2 Dr. Sanjay Joshi opined that all the injuries were antemortem and during examination hematoma under the scalp over fronto parietal region was noticed. An incised penetrating wound over left shoulder in antero medial direction penetrating wall with fracture of third rib left side into the plural cavity with weapon inside was noticed. The blade of the weapon was found inside the wound and had been removed during the post-mortem. The plural cavity was full of blood and there was penetration of pleura with weapon on the left side. The left lung was collapsed with penetrating injuries on middle lobe at two places. In the light of the external and internal injuries, PW-2 Dr. Sanjay Joshi, therefore, opined that deceased Mangala had died due to *“hemorrhagic shock due to*

multiple incised penetrating injuries to vital organs. The Post-Mortem Report is at Exhibit-20”.

3. On the case being committed to the Court of Sessions, the Trial Court vide Exhibit-2 framed charge against the Appellant for the offence punishable under Section 302 of the IPC. The Appellant denied his guilt and claimed to be tried. Prosecution, in support of its case, examined six witnesses. The Trial Court, principally, relied upon the evidence of PW-3 Dagdu Usman Shaikh and PW-4 Ganpat Krishna Raut, to whom Appellant had made extra judicial confession as well as the circumstantial evidence relating to the blood stains being found on the clothes of the Appellant as well as the evidence of PW-3 Dagdu Usman Shaikh, who had seen the Appellant stabbing the deceased. The Trial Court, however, convicted the Appellant for offence punishable under Section 304 Part I of IPC on the ground that the Appellant on account of grave and sudden provocation had stabbed his wife-deceased Mangala and did not have the requisite intention of committing murder of deceased Mangala. The State, being aggrieved by the acquittal of the Appellant, has filed the present Appeal. We are informed by Mr. Apte, the learned Counsel for the Appellant, that the Appellant has already undergone his sentence imposed by the Trial Court for offence punishable under Section 304 Part I of the IPC.

4. As pointed out by us, PW-3 Dagdu deposed about seeing the Appellant, deceased Mangala and their small child going towards the quarry. PW-3 Dagdu further deposed that he heard the cries of a lady and, therefore, rushed towards that place. On reaching the place, he had noticed the lady lying on the ground in a pool of blood. The Appellant had confessed to him that he had killed his wife as she had betrayed him. PW-3 Dagdu, therefore, told the Appellant to wait at the scene of the incident while he summoned the Police. The Appellant, however, volunteered to take his injured wife to the Police Station and, therefore, with the assistance of PW-3 Dagdu, the Appellant sat on the motorcycle while PW-3 Dagdu tied a scarf to the Appellant and his wife. The Appellant then placed his small child on the two-wheeler and went to the Police Station. In cross-examination, PW-3 Dagdu has admitted that the Appellant appeared to be enraged and was uncontrollable and was shivering due to rage. He has also admitted that the anger of the Appellant was uncontrollable. He has also admitted that the Appellant has used filthy words to indicate that his wife had betrayed him. He has also admitted as correct that till the Appellant left for the Police Station, the Appellant was proclaiming that his wife has betrayed him. PW-3 Dagdu has also admitted that his statement was recorded after about two months of the incident.

5. Prosecution has examined PW-4 Ganpat Krishna Raut, who deposed that he had seen the Appellant going towards the Police Station and the Appellant had asked him the directions for going to the Police Station. PW-4 Ganpat also deposed that the Appellant had confessed that he had committed murder of his wife.

6. The Spot Panchnama at Exhibit-33 indicates that the knife, which was found at the scene of the incident, was broken as the blade of the knife was embedded in the body of the deceased. The knife was barely about six inches in length. The Appellant had suggested to the Investigating Officer that the said knife was used by motor cycle owners as a tool for cleaning the spark-plug and was invariably kept beneath the seat of the motor cycle.

7. Be that as it may, the Appellant has submitted his written statement and in his defence he had stated that his wife deceased Mangala was not happy in residing with him. He has further stated that he and his wife had been offered job in the Infosys Company and, therefore, he had decided to go to a temple. Mangala had declined to accompany him for going to the temple. The Appellant had followed deceased Mangala and had

requested her to go to the temple. Mangala, it appeared, was dissatisfied and was angry and in order to pacify her, the Appellant had stopped the two-wheeler at the stone quarry. The Appellant tried to be amorous with his wife but the wife repelled his advances and it appears from the statement of the Appellant that deceased Mangala referred to the Appellant as an impotent person and also referred to him as a “monkey”. According to the Appellant, his wife had stated that she was in love with someone else with whom she had illicit relations. The Appellant claims that the words used by his wife in conveying the illicit relations were explicit. On hearing this, the Appellant was enraged and in that heat of rage, the Appellant stabbed deceased Mangala. It appears that the rage of the Appellant, on being referred to as a monkey and as an impotent person, was uncontrollable and in that rage, the Appellant had stabbed Mangala. The Trial Court has accepted the defence of the Appellant and accordingly acquitted the Appellant for offence punishable under Section 302 of the IPC and, instead, convicted him for offence punishable under Section 304 Part I of the IPC and sentenced him to R.I. for seven years. Mr. Apte, the learned Counsel for the Appellant, has informed us that the Appellant has served out his sentence and had been released from Jail.

8. PW-3 Dagdu, in the cross-examination, has admitted that he had not over-heard the conversation between the Appellant and deceased

Mangala. The Appellant has taken a bold defence that Mangala was harassing him by filing complaint in the Police Station. One such complaint has been seized by the Police during investigation. The explanation given by the Appellant in his statement under Section 313 of the Cr.P.C. as well as the written statement submitted by the Appellant certainly appears to be probable. The number of injuries certainly speaks about the uncontrollable rage due to which the Appellant had stabbed Mangala. Even PW-3 Dagdu has admitted that the Appellant appeared to be enraged when PW-3 Dagdu had gone to the scene of the incident. The Appellant was repeatedly saying that his wife had betrayed him. Thus, the Trial Court came to the conclusion that the Appellant had committed an offence of culpable homicide not amounting to murder and, accordingly, had convicted him under Section 304 Part I of the IPC.

9. With the assistance of the learned Counsel for the parties, we have perused the evidence as well as the findings recorded by the Trial Court. There is overwhelming evidence in respect of the Appellant, being the assailant and causing the death of deceased Mangala. The reasons given by the Trial Court for acquitting the Appellant for the offence punishable under Section 302 of the IPC appeared to us to be reasonable. The view taken by the Trial Court for acquittal of the Appellant for the offence

punishable under Section 302 of the IPC is a reasonable view and we do not notice any perversity in the reasoning. In such circumstances, therefore, in our opinion, the overwhelming evidence points to the Appellant being the assailant and the view taken by the Trial Court for convicting the Appellant for the offence punishable under Section 304 Part I of the IPC appears to be a reasonable view and, therefore, no interference is called for in both the Appeals.

10. Consequently, Criminal Appeal No.670 of 2005 is dismissed confirming the conviction and sentence of the Appellant for the offence punishable under Section 304 Part I of the IPC. Criminal Appeal No.206 of 2007 is, accordingly, dismissed confirming the acquittal of the Appellant for the offence punishable under Section 302 of the IPC.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]