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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 967 OF 2008**

Jamaluddin @ Munna Israr Khan	]
Age 23 years, resident of Mithpada	]
Shelar Tal. Bhiwandi,	]
(At present in Jail Nashik)	].. Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
(Through Bhiwandi Taluka Vashi	]
Police Station)	]..Respondent

....

Mr. Firoz A. Ansari Advocate for the Appellant
Mrs. A.S. Pai A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI,JJ.**

DATED : JULY 03, 2015

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 22.7.2008 passed by the learned Ad-hoc Additional Sessions Judge, Thane in Sessions Case No. 78 of 2007. By the said judgment and order, the learned Sessions Judge convicted the appellant

under Section 302 of IPC and sentenced to suffer R.I. for life and fine of Rs.5000/- in default R.I. for one month.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Ramesh was residing in Bhiwandi with his wife P.W. 10 Koushalya and son P.W. 9 Abhishek. Abhishek was 9 years old at the time of the incident. Deceased Ramesh was running a mess at Med Pada Naka Bhiwandi. The appellant was working as a cook with deceased Ramesh. The appellant worked with Ramesh till 25.7.2006 as cook. On 25.7.2006 the appellant stopped working with Ramesh as a cook as Ramesh did not give him his salary. On the next day i.e. on 26.7.2006 the appellant joined as a cook in the mess of P.W. 3 Krishnanand Tiwari. Krishnanand knew deceased Ramesh as Ramesh was residing along with his family near the residence of Krishnanand. Ramesh owed Rs.2100/- to the appellant, however, though the appellant from time to time asked Ramesh for his salary, Ramesh did not give him the money. The appellant went on requesting Ramesh to pay his salary. Ultimately Ramesh promised to pay the appellant his remaining salary on 16.8.2006. On 16.8.2006 at about 10-00

p.m. the appellant went to Ramesh to collect his salary, however, Ramesh did not pay his salary.

(ii) The incident took place the next day i.e. on 17.8.2006 at about 12.50 p.m. At that time, P.W. 3 Krishnanand was going to the market to purchase vegetables. At that time, he saw deceased Ramesh and his son Pintu (P.W.9) were coming on bicycle. On seeing them, Ramesh got down from the bicycle. Ramesh and Krishnanand were chit-chatting while they were walking ahead. At that time, the appellant came there and he asked Ramesh about his salary. On that count, a quarrel took place between the appellant and deceased Ramesh. The appellant took out a knife from his pant and gave a blow with knife on the chest of Ramesh. Thereafter the appellant ran away from the spot. P.W. 3 Krishnanand lodged F.I.R. Thereafter investigation commenced. After completion of investigation, charge sheet came to be filed. In due course, case was committed to the Court of Sessions.

3 Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to

the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant assaulted Ramesh with a knife and caused his death.

5 The actual incident was witnessed by four witnesses i.e. P.W. 3 Krishnanand, P.W. 7 Hansraj, P.W. 8 Santosh and P.W.9 Abhishek. P.W. 3 Krishnanand has stated that deceased Ramesh was running a mess at Med Pada Naka Bhiwandi. The appellant was working in the mess of Ramesh as a cook upto 26.7.2006. Krishnanand was also running a mess. On

26.7.2006, the appellant came to Krishnanand and asked for a job of a cook. The appellant told him that Ramesh was not giving him his salary, therefore, he left the job of Ramesh. Krishnanand gave the appellant job of a cook on monthly salary of Rs.2000/-. Krishnanand has further stated that the appellant used to visit the mess of Ramesh and ask for his salary of Rs.2100/-. Eventually Ramesh promised the appellant that he would pay him his remaining salary on 16.8.2006. On 16.8.2006 at about 10.00 p.m., the appellant told Krishnanand that he was going to Ramesh to bring his salary. Within half an hour, the appellant came back. He told Krishnanand that Ramesh did not pay his salary. In relation to the incident, Krishnanand has stated that on 17.8.2006 at about 12.50 p.m. he was going to purchase vegetables. At that time, he saw Ramesh and his son Pintu (P.W. 9) proceeding on bicycle. Ramesh was going to the school of P.W.9 Pintu. On seeing Krishnanand, Ramesh got down from the bicycle. Then he started walking with Krishnanand. Both of them were chitchatting. When they reached near Gupta Kirana shop, Mirch Pada, Parol Phata, the appellant came there. He asked Ramesh about his salary. On that count a quarrel took place

between the appellant and Ramesh. The appellant then took out a knife from his pant and gave a blow with the knife on the chest of Ramesh. Thereafter the appellant ran away.

6 P.W. 9 Abhishek was the son of Ramesh. Abhishek has stated that Ramesh was his father. On the day of the incident, he was studying in third standard. At about 12 O'clock when he and his father were going to school on bicycle, one Tiwari (P.W.3 Krishnanand) met his father on the way. His father then got down from the bicycle and he was walking along with Tiwari holding the bicycle with his hand. His father and Krishnanand were talking to each other. The appellant then came near his father. The appellant took out knife from his pocket and stabbed his father on the chest and ran away. Abhishek has stated that he knew the appellant as the appellant used to cook food in their mess.

7 The third witness is P.W. 8 Santosh. Santosh has stated that on 17.8.2006 at about 12.30 p.m. he saw deceased Ramesh and the appellant were quarreling with each other. The appellant took out a knife and stabbed Ramesh. The

appellant then ran away from the spot. Santosh has stated that he knew Munna (the appellant) since before the incident as he was working in the mess of Tiwari as a cook.

8 The last eye witness is P.W. 7 Hansraj. Hansraj has stated that on 17.8.2006 at about 12.30 p.m. he heard shouts of people and when he looked towards that direction, he noticed that one person was assaulting another person. Thereafter the person ran away. As the appellant was not known to P.W. 7 Hansraj prior to the incident, a test identification parade was held which was conducted by P.W. 11 Shri. Bhoir. Hansraj has stated that on 10.10.2006 he was called to Adharwadi jail for test identification parade. In the said parade, he identified the appellant. P.W. 8 Santosh was also called for test identification parade which was held in Adharwadi jail on 10.10.2006. He has also stated that he identified the appellant in the parade. The evidence of Shri. Bhoir also shows that P.W. 7 Hansraj and P.W.8 Santosh identified the appellant in the parade held by him on 10.10.2006.

9 It is the prosecution case that the appellant assaulted
Ramesh with a knife on the chest which led to the death of
Ramesh. This is also borne out by the medical evidence. P.W.
2 Dr. Sontakke conducted the post-mortem on the dead body
of Ramesh. During the post-mortem, on external examination,
he found the following injuries:

- "(1) Stab injury (L) anterior chest, 1½" above
 nipple, size 1½" cavity deep bleeding;
- (2) Incised wound on the right hand dorsal
 aspect size 1" x ¼" x skin deep.

In the opinion of Dr. Sontakke, the cause of death was
due to "cardio respiratory failure due to hemorrhagic shock due
to injury to heart due to sharp object". According to Dr.
Sontakke, the injury on the chest was sufficient in ordinary
course of nature, to cause death. From the evidence of P.W. 2
Dr. Sontakke, P.W. No. 3 Krishnanand, P.W. 7 Hansraj, P.W. 8
Santosh and P.W. 9 Abhishek, we are of the opinion that the
prosecution has proved that it is a case of homicidal death.

10 Mr. Ansari, the learned advocate for the appellant

submitted that even if it is accepted that the act of the appellant of assaulting Ramesh with a knife resulted in his death, the case would not fall under Section 302 of IPC but it would fall under Section 304 Part-II of IPC or at the most, Section 304 Part-I of IPC. Mr. Ansari pointed out that the evidence on record shows that a quarrel was going on between the appellant and the deceased which has been deposed about by P.W. 3 Krishnanand and P.W. 8 Santosh. Mr. Ansari drew our attention to the evidence of both these witnesses. The evidence of P.W. 3 Krishnanand shows that the appellant was earlier working with deceased Ramesh. Some amount by way of salary, was due from Ramesh to the appellant, however, Ramesh was not giving that amount to the appellant. The appellant had on many occasions asked Ramesh for his salary but Ramesh did not pay him any amount. Thereafter, Ramesh told the appellant that he would pay him the amount on 16.8.2006. On 16.8.2006 also Ramesh did not pay the appellant the amount due to the appellant. Krishnanand has stated that on 17.8.2006 when Krishnanand was talking to deceased Ramesh who was taking his son to school, the appellant came there and asked him about his salary. On that

count, a quarrel took place between the appellant and the deceased. The appellant then took out a knife from his pant and gave one blow with knife on the chest of Ramesh. The evidence of P.W. 8 Santosh also shows that the appellant assaulted the deceased during a sudden quarrel. Santosh has stated that on 17.8.2006 at about 12.50 p.m. he saw the appellant and deceased were quarreling. Then the appellant took out a knife and stabbed Ramesh with the knife. The fact that the deceased owed the appellant money has also been brought on record through the evidence of P.W. 10 Koushalya who was the wife of Ramesh. Koushalya has stated that appellant Munna was working in their mess as a cook, hence, she knew the appellant. She stated that on the day prior to the incident, the appellant had abused her husband as his salary was not given.

11 Thus, the evidence of P.W. 3 Krishnanand and P.W. 8 Santosh clearly shows that the incident occurred during a sudden quarrel. Mr. Ansari then pointed out that the appellant gave just one blow on the chest with knife to Ramesh which is clear from the evidence of the eye witnesses and the medical

evidence. Mr. Ansari then submitted that this shows that it was not the intention of the appellant to cause the death of Ramesh. He submitted that if the appellant had intended to cause the death of Ramesh, the appellant would not have stopped after giving just one blow to Ramesh and he would have continued to assault Ramesh. The fact that the appellant did not do so, shows that the appellant did not have any intention to cause death of Ramesh. Mr. Ansari further submitted that the assault was not premeditated or preplanned but it happened on the spur of moment in a fit of anger. Mr. Ansari reiterated that the fact that the appellant during the course of sudden quarrel stabbed Ramesh and the appellant stopped after giving just one blow to Ramesh, would bring the case under Exception 4 to Section 300 of IPC and the case would thus be covered by Section 304 Part-II of IPC.

12 To bring a case within Exception 4 to Section 300 of IPC, all the ingredients mentioned in it must be found. It is to be noted that the word "fight" occurring in Exception 4 to Section 300 of IPC, is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no

time for passion to cool down. In this case, the evidence shows that both the parties had worked themselves into a fury on account of verbal altercation going on between them. However, for the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must also be shown that the offender has not taken any undue advantage or acted in a cruel or unusual manner. The fact that the appellant gave only one blow shows that he did not take any undue advantage or act in a cruel or unusual manner. However, we are not prepared to accede to the submission of Mr. Ansari that the case would fall under Section 304 Part-II of IPC. In our view, the case would fall under Section 304 Part-I of IPC, because we are of the opinion that the appellant did not just have the knowledge that his act is likely to cause death but infact, the appellant intended to cause death of Ramesh. We say so, on the basis of the weapon used, the part of the body where the injury was inflicted, the force used while assaulting and the nature of the injury.

13 Looking to all the above facts, we are of the considered opinion that the case cannot fall under Section 304

Part-II of IPC.

14 Considering the evidence on record, we are of the opinion that Exception 4 to Section 300 IPC applies to the facts of the case and the appropriate conviction would be under Section 304 Part-I of IPC. Hence, the following order is passed.

ORDER

(1) The conviction and sentence under Section 302 imposed on the appellant by judgment and order dated 22.7.2008 passed by the learned Ad-hoc Additional Sessions Judge, Thane in Sessions Case No. 78 of 2007 is set aside, instead, the appellant is convicted under Section 304 Part-I of IPC and sentenced to suffer R.I. for nine years and fine of Rs.5000/- (Rs. five thousand only) in default to suffer R.I. for one month.

(2) Appeal is partly allowed to the aforesaid extent.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]