

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.413 OF 1995

**Parshuram Shankar Kamble
Circle No.I,
Yervada Central Prison,
Pune-6.**

..Appellant

Versus

The State of Maharashtra

..Respondent

**Shri. B. J. Sarwade for the Appellant.
Mrs. P. P. Shinde, APP for the Respondent.**

**CORAM : R. M. SAVANT &
SMT. SADHANA S. JADHAV, JJ**

**RESERVED ON : 05.07.2017
PRONOUNCED ON : 26.07.2017**

JUDGMENT (Per R. M. Savant, J)

1 The conviction of the accused i.e. the Appellant herein under Section 302 of the Indian Penal Code (“IPC” for short) and his being sentenced to life imprisonment and to pay a fine of Rs.100/- is the subject matter of the above Criminal Appeal.

2 The Appellant would be referred as the accused and the Respondent – State would be referred to as the prosecution. The incident took place on 13.06.1991. It is the case of the prosecution that one Bapu Chavan was residing in a hut at Yashodhara Chawl Committee Hutment,

Ramabai Colony, Ghatkopar (E), Mumbai-400 075. The accused and some others also resided in the nearby huts. It is the case of the prosecution that on the evening of 13.06.1991 the Complainant i.e. Bapu Chavan and his wife Sharda (deceased) were sitting outside their hut and chitchatting. At around 10.00 p.m., the accused came there and started abusing Sharda. The reason for that was that 4 – 5 days prior to the said incident, Sharda told the neighbours that the accused possessed a knife. The accused continued abusing for about 15 minutes. During the said 15 minutes the Complainant i.e. Bapu Chavan sent his wife to the room. However the accused continued abusing.

3 Thereafter Complainant i.e. Bapu Chavan went inside his room, but accused was still continuing with his abusing. Thereafter Sharda came out of her room and the husband i.e. the Complainant followed her. On being asked why he was abusing, the accused went to his hut, came back with a knife and stabbed Sharda on her left below the ribs and on her right side elbow. On the accused stabbing Sharda there was a hue and cry and many persons came out of their huts. One Smt. Surekha Laxman Shevekar who was cleaning utensils seeing the accused stabbing Sharda, threw a Tava at him. The accused pounced upon the said Smt. Surekha Laxman Shevekar and also assaulted her. He thereafter ran away. On account of the stabbing by the accused, Sharda fell down

and she was immediately removed to the hut of one Inamulla who was a neighbour. She was laid on a chatai. Someone brought a Rikshaw. She was brought down to the Eastern Express Highway and removed to Rajawadi Hospital where she was declared dead before admission. It seems that at the said time the telephone lines were out of order and hence the Complainant was advised to go to Pant Nagar, Police Station and lodge a complaint, which he did. In his complaint, he has named the accused as the person who had stabbed his wife. The Police thereafter visited the Rajawadi Hospital and inquest was carried out. The clothes on the person of the Sharda were seized. The body of Sharda was sent for postmortem. The Police visited the place of offence and carried out Panchanama. The blood stained Chatai and scrapping were seized. The blood stained clothes of the Complainant were also seized. The accused was arrested. The accused whilst in Police custody volunteered to show the place where the knife was concealed. The statement of the accused was recorded as a memorandum which the two Panchas signed. The accused led the Police and the Panchas to the spot i.e. Timber shop on the Eastern Express Highway, Near Ramabai Colony and behind the Timber shop he took out a knife from the gap and handed over the same to the Police. The knife was packed, labeled, sealed and seized under the Panchanama drawn in continuation of the memorandum earlier drawn at

the Police Station. Both the Panchas signed it. The accused was sent to the Police surgeon for sample of his blood and nail clippings. The articles which were seized during the investigation were forwarded to the Chemical Analyzer.

4 On the completion of the investigation, a charge-sheet was filed in the Metropolitan Magistrate's 31st Court, Vikhroli and the case was committed to the Sessions Court on 27.09.1991. The accused was charged as under :-

“FIRSTLY :- That on or about 13th day of June 1991 at about 22.15 hrs. Opp. hut of Babu Chavan, Yashodhara Chawl Committee, Ramabai Colony, Ghatkopar (E), Bombay-75, you intentionally and/or knowingly caused death of Smt. Sharda Bapu Chavan & thereby committed offence of murder punishable U/S. 302 of IPC & within my cognizance.

SECONDLY :- That on the aforesaid date, time and place and in the course of same transaction you committed assault otherwise on grave provocation on Smt. Surekha Laxman Shevekar & thereby committed an offence punishable U/S. 352 of IPC & within my cognizance.”

5 In support of its case the prosecution examined the following witnesses.

“1) Bapu Dagdu Chavan (complainant) as PW-1

2) Sanjay Shankar Hadwale as PW-2

3) Deepak Namdev Mane as PW-3

4) Dr. Dattu Pune Varade (C.M.O.) as PW-4

5) Shankar Bapu Renose (I.O.) as PW-5”

6 The accused did not examine any witness nor produced any documents.

7 The prosecution also produced the following documents and articles :-

“Documents

1) F.I.R. - Ex. 6

2) Memorandum part of the panchnama dt. 16.6.91 regarding recovery of knife – Ex.9

3) Panchnama part dt. 16.6.91 regarding recovery of knife–Ex.9-A.

4) Two labels with signatures of PW-3 pasted on the packet containing knife -Ex. 10 (colly)

5) Postmortem notes with ADR – Ex.12 (colly)

6) Inquest panchnama dt. 14.6.91 exhibited by consent u/s 294 Cr.PC.-Ex14.

7) Place of occurrence panchnama dt. 14.6.91 exhibited u/s 294 Cr.PC.-Ex.15

8) Panchnama dt. 14.6.91 regarding seizure of clothes of the complt. PW-1 exhibited u/s 294 Cr.P.C.-Ex-16

9) Copy of memo dt. 21.6.91 sending accused for sample of blood and nail clippings -Ex.17

10) Copy of the forwarding letter dt. 27.6.91 and two reports of the C.A. Both dated 7.8.91

Articles

1) A carton together with the seal -Art. 1

2) The biscuite colour pant and greed colour full shirt of the Comptt. - Art-2(colly)

3) The printed saree, the peticoat and the blouse of the decd. -Art. 3 (colly)

4) A chatai together with wrappers – Art, 4 (colly)

5) A knife – Art. 5

6) A bundle of wrappers at Art. 6

7) ('X' for identification) white half pant of the accd.”

8 The Trial Court i.e. the Learned Additional Sessions Judge framed the following issues :-

“1) Whether Smt. Sharda Bapu Chavan died homicidal death due to stab injuries ?

2) Whether the accused stabbed Smt. Sharda Bapu Chavan with a knife being Art.5 ?

3) Whether the accused committed assault otherwise on grave provocation on Smt. Surekha Laxman Shevekar ?

4) What offence if any, is committed by the accused ?

5) What order ?”

9 In so far as the first two issues are concerned, the Trial Court answered the said issues in the affirmative. In so far as the issue No.3 is concerned, the Trial Court held the said issue as not proved and in so far as the issue No.4 is concerned, the Trial Court held the accused guilty of causing death of Sharda and hence punishable under Section 302 of the IPC.

10 We have heard the Learned Counsel appearing for the accused and the Learned APP for the State. We have with the assistance of the Learned Counsel and the APP have gone through the evidence of the witnesses produced by the prosecution. We have also taken note of the documents and the articles which have been produced on behalf of the prosecution and more especially the postmortem report. Having regard to the charge that was framed against the accused the issue as regards the cause of death of the deceased would have to be first taken

into consideration which has been rightly done so by the Trial Court. In so far as the cause of death is concerned, the evidence of Dr. Dattu Varde (PW-4) who carried out the postmortem of the body of the deceased Sharda assumes importance. It has come in the evidence of Dr. Dattu Varde that on external examination he found the following injuries which were anti-mortem. In so far as the internal examination is concerned, he has deposed that the following injuries were found :-

“Stab wound coming from 4th and 5th I/C/S then peritrating into Lt. Middle Lobe of Lung through and through with Haemorrhax and Lt. Side chest cavity with Lt. Lung collapse with Lt. Side mediastinal haemorrhage.”

He has further stated that in his opinion the internal injury corresponds to the external injury No.1 which was necessarily fatal and that all the injuries were capable of being caused by a sharp cutting instrument like a knife. The said witness was shown the knife which is Article 5. On seeing the knife, he has stated that the external injuries as well as internal injuries were capable of being caused by a knife like the knife which is marked as Article 5. He has further deposed that the cause of death according to him was the shock on account of the stab wound to the lung followed with haemorrhax (unnatural). Through the evidence of Dr. Dattu Varde the postmortem notes were marked as Exh.12 were proved as having been prepared by him while conducting the

postmortem. Since the homicidal death of Sharda is not disputed by the defence, it would have to be held that the Sharda died of the stab injuries which were suffered on account of the attack on her by the accused.

11 In the context of the issue as to whether the accused stabbed the deceased Sharda with the knife i.e. Article 5 leading to her death, the evidence led by the prosecution of the two witnesses i.e. Bapu Chavan (PW-1) who is the complainant and husband of the deceased and the evidence of Sanjay Shankar Hadwale who was the neighbour of the deceased is relevant.

12 The Complainant i.e. Bapu Chavan (PW-1) has stated that on 13.06.1991 at around 10.00 p.m. he and his wife were sitting outside their hut when the accused came there and started abusing in filthy language. On being questioned as to why he was abusing them, the accused started abusing all the more. It has further come in his evidence that he sent his wife inside the room yet the accused continued abusing. He himself thereafter went inside the room but the accused did not stop abusing. Both of them then came out of the room but the accused was still abusing. It has further come in his evidence that accused then went to his hut which was nearby came back with a knife and stabbed his wife Sharda on the left below the ribs and on her right side elbow. Upon this,

Sharda fell down in a pool of blood. Sharda was taken to the room of one Inamulla who was his neighbour and laid on a Chatai.

In his evidence Sanjay Hadwale (PW-2) has stated that on 13.06.1991 at around 10.15 p.m. he was in his hut and that the distance between his hut and the hut of (PW-1) was around 10 to 12 feet. He further deposed that on that day there was some quarrel between deceased Sharda and the accused Parshuram Kamble, hearing which he came out of his room and saw the accused going to his room and coming back with a weapon and stabbing Sharda. The said Sanjay Hadwale (PW-2) is the person who alongwith some other went for bringing an autorikshaw. The said witness is the resident of the same locality. He has in his evidence deposed that he is knowing the accused. There is no allegation that there was any sort of quarrel or misunderstanding between the said witness and the accused.

Similarly, there was no suggestion put to the (PW-1) that there was any misunderstanding between the accused and the (PW-1) or that something had cropped up because of their drinking. It has come in the cross-examination of (PW-1) that the (PW-1) and the accused were friends. A suggestion was put to the (PW-1) that Sharda dashed against the iron sheet of her room and thus sustained injuries. A similar

suggestion was also put to Dr. Dattu Varde but he opined that if one dashed against an iron sheet, one will not suffer the injuries such as the ones found on the person of the deceased. The attempt to falsify the postmortem report also failed as the suggestion put to the (PW-1) that prior to the incident he and his wife i.e. deceased had already taken their meal was replied in the negative. It is required to be noted that the knife Article 5 was recovered under Section 27 of the Evidence Act and Panchanama to that effect was made vide Exh.9 and Exh.9A. The evidence of one of the Panchas Deepak Namdeo Mane was led. There is no allegation that the relations between the Pancha Deepak Namdeo Mane and the accused were strained. Hence the evidence of the Panch witness as rightly observed by the Trial Court appeared to be truthful. In so far as the injuries sustained by the deceased are concerned, Dr. Dattu Varde (PW-4) has stated that the external as well as the internal injuries found on the person of the deceased were capable of being caused by the knife i.e. Article 5.

13 In so far as the implication of the accused for the said crime is concerned, there were no electric light in the area and residents were using kerosene lamps, it is required to be noted that the Complainant (PW-1) and the other eye witness Sanjay Hadwale (PW-2) and the accused were residents of the same locality and were knowing each other

hence the chances of mistaken identity have to be ruled out. It is also required to be noted that the accused went on abusing for about 15 minutes. The distance between the (PW-1) and the accused at the time when he stabbed his wife Sharda was only one feet. The nature of the injuries as stated by the Complainant in the FIR also tally with the inquest Panchanama Exh.14 and the Postmortem notes Exh.12 Colly. The Trial Court i.e. the Learned Judge of the Sessions Court has not countenanced the submission raised on behalf of the accused that the presence of the Complainant i.e. the (PW-1) in the hospital from 10 p.m. on 13.06.1991 upto 7.00 p.m. of 14.06.1991 was peculiar. The Trial Court has observed that the FIR was lodged at 00.10 hrs. of 14.06.1991. The Police thereafter reached the hospital, conducted inquest, seized clothes of the deceased and then went to the place of offence. To do all the aforesaid things must have obviously taken time. The Trial Court has observed that the Learned Counsel for the accused was not able to point out as to how either affected the prosecution or the defence.

14 The Trial Court has also not countenanced the submission raised on behalf of the accused that the place of offence, Panchanama Exh.15 and the Panchanama Exh.16 i.e. seizing the clothes of the Complainant Bapu Chavan (PW-1) in the presence of the (PW-1) is improbable. The Trial Court has observed that Exh.15 shows that it

commenced at 3.30 a.m. and completed at 4.30 a.m. and Exh.16 shows that it commenced at 6.20 a.m. and completed at the same time. Hence the Trial Court did not find any improbability in either of them. The Trial Court also did not countenance the submission that the Complainant Bapu Chavan was tutored by the Police which was admitted by him in the cross-examination in the light of what the (PW-1) has stated towards the end of his cross-examination. The Trial Court observed that if the incident had taken place in June 1991 and the witness was giving evidence in June 1995 and therefore if the witness had asked the police to read over to him his complaint as and by way of refreshing his memory, there was nothing wrong in it. The Trial Court also as indicated above has ruled out the case of mistaken identity which was sought to be urged on behalf of the accused on the ground that in the area there was no electricity and the residents were using kerosene lamps and it was rainy season, the chances of mistaken identity cannot be ruled out. The Trial Court also did not find any contradiction in the evidence of the Sanjay Hadwale (PW-2). The attempt of the defence to question the recovery of the weapon i.e. knife has also proved futile. The recovery Panchanama Exh.9 is explicitly clear. It speaks about the accused going behind the timber shop and taking out the knife from the gap. In so far as the description of the knife is concerned, the same is given in the Panchanama as well as by the

Pancha witness Deepak Namdeo Mane (PW-3). The attempt of the defence to pick holes in the prosecution on the basis of the time of death has also failed. The Trial Court has referred to the note of postmortem which is part of Exh.12 Colly which shows that the body of the deceased was brought to the morgue at 4.00 a.m. on 14.06.1991. The Trial Court has observed that taking time that may have been consumed in completing the formalities. The Trial Court has observed that the death may have taken place at around 10.30 or 11.00 p.m. on 13.06.1991. The contention raised on behalf of the accused as regards the recovery Panchanama which according to the Learned Counsel for the accused before the Trial Court was drawn at the Police Station wherein knife Article 5 was seized, the Trial Court has observed that the said contention seems to have been raised with an attempt to mislead the Court as the recovery Panchanama Exh.9A was drawn at the place of recovery and not at the Police Station. The Trial Court has also rejected the contention based on the fact that the person who arrested the accused has not been examined and that the E.P.R. was not recorded by the Constable at Rajawadi Hospital. The Trial Court has observed that the said contention could not be sustained as no question put to the investigation officer Renose when he was in the witness box. In so far as the second contention about the E.P.R. is concerned, the Trial Court observed that it

cannot be presumed that the Constable at the Rajawadi Hopsital has not recorded the E.P.R. Pertinently, no question or suggestion was put by the defence to the Investigation Officer Shri. Renose. Hence, taking into consideration all the aforesaid facts, the Trial Court has held that it would have to be held that it is the accused who has stabbed Sharda Bapu Chavan with the knife Article 5.

15 Having regard to the fact that the accused was named in the FIR, there was recovery of the knife Article 5 at his instance under Section 27 of the Evidence Act, the events which are transpired prior to the accused stabbing the deceased, namely he was abusing the (PW-1) and his wife whilst they were sitting and chitchatting outside their hut and the abuses of the accused continuing in spite of the fact that both the (PW-1) and the deceased had gone back to their hut and came out after sometime and the fact that accused went to his hut and returned back with knife and stabbed Sharda i.e. deceased. Hence his act of going to his hut and coming back with knife was deliberate act on the part of the accused with an intention to cause harm to the deceased Sharda. The prosecution has by leading evidence proved that the injuries caused by the knife were cause for the death of the deceased.

16 It was sought to be urged on behalf of the accused was that

there was no previous enmity and that there was no motive which can be ascribed for the accused stabbing the deceased. It was also sought to be submitted that the instant case was covered by the part II of Section 304 of the IPC. The question that therefore arises is whether the offence committed by the accused would fall within the ambit of part II of Section 304 of the IPC. In the said context it is required to be noted that the accused and the deceased were neighbours, there is no motive alleged against the accused, the act of the accused of going to his hut and coming back with a knife and stabbing the deceased can be attributed to a fit of rage of the accused. It cannot be said that the accused had any intention to kill the deceased. In our view, therefore the instant case is covered by part II of Section 304 of the IPC. Hence the conviction of the accused under Section 302 of the IPC would have to be set aside and substituted by the conviction under Section 304 part II of the IPC.

17 The accused is therefore convicted of the offence under Section 304 part II of the IPC and is accordingly sentenced to 10 years of imprisonment. The accused has already undergone imprisonment for a period of 8 years. It is submitted at the Bar that the Appellant has in effect undergone imprisonment for 10 years which includes remissions and therefore he is sentenced to the period already undergone. He shall be released forthwith, if not, required in any other offence.

ORDER

- i) Appeal is partly allowed.
- ii) Appellant herein is acquitted of the offence under Section 302 of the IPC.
- iii) Appellant stands convicted for offence under Section 304 (II) of the IPC and is sentenced to suffer 10 years of imprisonment.
- iv) Appellant is sentenced to the period of imprisonment already undergone.
- v) Sentence of fine is maintained.
- vi) Appeal is accordingly disposed of.

[SMT. SADHANA S. JADHAV, J]

[R.M.SAVANT, J]