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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.961 OF 2014**

Indrajeet @ Indrya Pachoram Balotiya	]	
age: 24 years	]	<u>Appellant</u>
r/o C.T.S. Road Thakkerbappa Colony	]	Ori. Accused
Chembur, Mumbai	]	No.1

V/s.

The State of Maharashtra	]	
Through C.B.D. Belapur Police Station	]	Respondent
Navi Mumbai	]	

Mrs. Nasreen S.K. Ayubi, appointed advocate
for the Appellant.
Mr. Arfan Sait, A.P.P., for the Respondent-
State.

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

DATE : 22nd AUGUST, 2017.

ORAL JUDGMENT [Per: DR. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by the original accused No.1, challenging the judgment and order dated 6th January, 2007, passed by the Ad-Hoc Additional Sessions Judge, Thane, in

Sessions Case No.179 of 2005, thereby convicting the appellant, for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer R.I. for life and to pay fine of Rs.1,000/- in default to suffer R.I. for one month.

2. Brief facts of the appeal can be stated as follows :-

On 29/12/2004, at about 00.20 hrs, while P.W.1 PSI Pokale was on night patrolling duty in the area of CBD Belapur, he received wireless message that one person in injured condition was lying in front of Raheja Circuit Building at Sector 11. Hence, he went there and found the appellant lying in injured condition on the footpath. On enquiry, the appellant gave his name as Ashok. Considering his condition, he was taken to N.M.C.Hospital at Washi. As the appellant did not regain consciousness, his statement could not be recorded. P.W.1 PSI Pokale, then again went to the spot and made enquiry with P.W.8 Mohammed Laskar, who was watchman in the Mayuresh Building. On the basis of that enquiry, it was transpired that the said watchman had heard noise of quarrel, going on between 3 to 4 poor persons in front of Mayuresh Building. Out of them, one injured person i.e. appellant

herein went towards Raheja building.

3. In pursuance of this information, P.W.1 PSI Pokale went further and found that two persons were lying in the injured condition on the right side foot way. Both of them had succumbed to the injuries. At some distance from the said place, one knife and one Jambia alongwith chilly powder, cigarette packet and lighter were also found scattered. It was transpired that the appellant and his associate had assaulted these two persons. Hence, P.W. 1 PSI Pokale lodged complaint (Exh.18) on behalf of State against the appellant and his associate.

4. On the said complaint C.R.No.222 of 2004, was registered. During the course of investigation, the inquest panchnamas were made. The dead bodies were sent to postmortem. From the spot, various articles including knife and jambia came to the seized under panchnama. The clothes of the deceased also came to be seized. All these articles were sent to Chemical Analyzer. In the course of further investigation, names of the deceased were transpired to be Mahesh Shetty and Raju Madrasi. It was also transpired that the appellant was having illicit

relations with P.W.6 Jayashree, the wife of the deceased Mahesh Shetty. On the day of incident, P.W.6 Jayashree has seen the appellant and deceased leaving her house together and thereafter deceased Raju Madrassi also went in search of deceased Mahesh. On the arrest of appellant, at his instance the purse of deceased Mahesh was recovered. It was containing the photograph of the deceased Mahesh and P.W.6 Jayashree. Accused No.2 Rakesh, then came to be arrested and on completion of further investigation, chargesheet was filed in the Court of Judicial Magistrate First Class, Washi.

5. On committal of the case to the Court of Sessions, at Thane, charge was framed against appellant and co-accused vide Exh.4. Both of them pleaded not guilty and claimed trial, raising defence of denial and false implication.

6. In support of its case, the prosecution examined in all 10 witnesses. The appellant also examined Medical officer Dr. Vivek Malpure to prove that in the said incident, he was also seriously injured.

7. In the light of this evidence, the trial Court was pleased to acquit accused No.2 Rakesh. Trial Court, however, convicted the present appellant for the offence under Section 302 of IPC and sentenced him, as aforesaid.

8. This judgment of the trial Court is the subject matter of this appeal. In this appeal, we have heard learned counsel for the appellant and learned APP.

9. According to learned counsel for the appellant, the entire prosecution case is based on the circumstantial evidence as there is no direct evidence on record. It is submitted that the alleged incriminating circumstances are not at all established by the prosecution and they do not form unbroken chain. In the alternate, it is submitted that as the evidence on record proves that in the same incident, appellant has also sustained injuries, the prosecution case at the most can fall only under Section 304 part-II of the Indian Penal Code and not under Section 302 IPC.

10. Per contra, submission of learned APP is that there is ample evidence on record, especially the testimony of P.W.6

Jayashree, which proves not only the motive, but also the circumstance of the deceased last seen in the company of the appellant. Further, there is corroborating evidence of recovery of weapons and Chemical Analyzer's report (Exh.87 to 91). According to learned APP as this is a case of double murder, it has to be held that the conduct of the appellant was aggressive. He has committed brutal assault on two persons. Out of them, Raju Madrasi was totally innocent one as against him, appellant has no motive. Thus, according to learned APP, the case cannot come within the purview of section 304 part-II of IPC. It is submitted by learned APP that the conviction recorded by the trial Court for the offence punishable under Section 302 of IPC, therefore, being just, legal and correct, the appeal needs to be dismissed.

11. Admittedly, this case is based on the circumstantial evidence. First circumstance relied upon by the prosecution is motive on the part of the appellant. The evidence of P.W.6 Jayashree is of vital importance in this respect. She has deposed that she and deceased Mahesh were in love with each other. The appellant was a friend of Mahesh and Mahesh was knowing him.

As Mahesh was convicted in a case and was sent to jail, in his absence, appellant used to come to her house and insisting on her to leave the deceased and marry with him. It is her evidence that during the said period she had sexual relations with the appellant. After deceased Mahesh was released from Jail, appellant disclosed this fact to him. Still Mahesh continued to reside with her as husband and wife. Appellant, however, continued to visit their house and instigated Mahesh. One day the quarrel took place between appellant and Mahesh and in that quarrel, he has given threats to Mahesh.

12. According to her further evidence, on the date of incident, appellant came to their house at about 4.00 p.m. and he took Mahesh with him. Thereafter at about 7.00 p.m. both of them returned to the house and then quarrel took place between them. However, the appellant then took Mahesh with him towards Belapur Railway Station and thereafter Mahesh did not return to the house. Meantime Raju came to their house to ask about Mahesh. She told him that Mahesh had gone to Belapur Railway Station alongwith the appellant. Hence Raju went towards that direction. He also did not return. Only on the next day, in the

morning police came to her house and she was taken to one hospital, where she identified the dead bodies of Mahesh and Raju. She has also identified the appellant Indrajeet, though he has stated his name to P.W.1 PSI Pokale as Ashok.

13. According to her evidence, appellant wanted to marry with her. However, as she was not willing for the same, appellant has killed Mahesh. This witness is cross-examined at length by the defence. However, nothing worthwhile is elicited in her cross-examination to disbelieve her evidence. Her evidence proves two important aspects that Mahesh has left alongwith the appellant and he was last seen in the company of appellant. Further, her evidence also proves motive on the part of the appellant to eliminate Mahesh.

14. The prosecution has also placed reliance on the evidence of P.W.8 Laskar, who was working as watchman in Mayuresh building and who has heard quarrel and the scuffle between the appellant and the deceased. He has found the appellant in injured condition and informed the police about it.

15. The next circumstance on which reliance is placed is the memorandum statement of appellant (Exh.69) and in pursuance thereto, the recovery of money purse belonging to Mahesh, in which the photograph of Mahesh and Jayashree was found. It was seized under panchnama (Exh.70). It is proved through the evidence of panch P.W.4 Farhan Chaudhary and P.W.10 PI Ghadage.

16. The prosecution has also relied upon the recovery of three knives from the spot of incident under spot panchnma Exh.62 and seizure of clothes of the deceased and the appellant Exh.35 and 36. The Chemical Analyzer's Reports Exh.87 to 91 prove that the blood stains of blood group "B" of Mahesh were found on the knives and even on the clothes of the appellant.

17. The prosecution has also relied on the evidence of P.W.9 Police Constable Kadam to prove that when appellant was taking treatment in the hospital and this witness was guarding the appellant, the appellant has absconded therefrom on 6.1.2005 and he could be traced and arrested only on 2.2.2005.

18. Thus, in our considered opinion there is more than sufficient evidence on record to prove the involvement of the appellant in the assault. As a matter of fact, the appellant is also not seriously disputing the occurrence of the incident. On behalf of appellant, evidence of Dr. Malpure is led to prove that he has sustained injuries in the same incident and those injuries were in the nature of one incised wound towards left maxillary region, one C.L.W. over left occipital region, Incised wound on right forearm lower third radial border, one incised wound left intra scapular area, C.L.W. over left eye middle third, abrasion on upper lip left side and abrasion on left chest anterior inframammary region.

19. According to learned counsel for appellant, therefore, the injuries sustained by the appellant are more than sufficient to bring his case within the purview of section 304 part-II of the Indian Penal Code.

20. However, as rightly submitted by learned APP, even a cursory glance to the evidence of P.W.7 Dr. Bhushan Jain, who has conducted postmortem on the dead bodies of Mahesh and

Raju, is more than sufficient to prove brutality of the attack. It is pertinent to note that Mahesh has sustained as many as four stab injuries on the vital part of his body like chest and abdomen, one incised wound on right forearm, and two abrasions over right back scapular region lateral aspect and over right back on the lower part of the thoracic region. Whereas Raju has sustained three stab injuries and multiple abrasions over dorsal. Assault was so brutal that both the deceased succumbed to the assault on the spot itself. The assault was made by knife and Jambia which were seized from the spot. It is the case of double murder. One can understand at the most assault by appellant on the deceased Mahesh, but there was absolutely no reason for the assault on the deceased Raju and that too such a violent and brutal assault. The conduct of the appellant of throwing away money purse of deceased Mahesh so as to destroy the identity of the dead body and further that of absconding himself from the hospital also goes to negate his contention that it was a case of sudden provocation. It is pertinent to note that the appellant has taken the deceased Mahesh alongwith him and thereafter subjected him to such brutal assault. Therefore, everything appears to be pre-planned and per-mediated. In such circumstances the benefit of section 304 part-II

cannot be extended to the appellant.

21. In our considered opinion, the trial Court has properly weighed and assessed the evidence on record and disbelieved the case of the appellant as regards even the private defence which was urged before the trial Court. It is also pertinent to note that the appellant in his statement recorded under Section 313 of Code of Criminal Procedure, nowhere raised his contention of private defence or of sudden provocation. His only defence was of total denial and false implication which is proved to be false on the appreciation of evidence on record. Therefore, we have no hesitation in confirming the conviction and sentence of the appellant as recorded by the trial Court. The appeal, therefore, holds no merit and hence stands dismissed.

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