

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.466 OF 2016
WITH
CRIMINAL APPLICATION NO.869 OF 2016
IN
CRIMINAL APPEAL NO.466 OF 2016**

**MAHENDRA @ MAYUR CHHAGAN MARU)
Aged 23 years, Occupation : Service,)
Residing at K/10, Municipal Chawl,)
Dhan Mill Naka, N.M.Joshi Marg,)
Mumbai – 400 013.)...APPELLANT**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Amrish Salunke a/w. MrAfzal Payak, Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 12th SEPTEMBER 2018

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the judgment and order dated 30th March 2016 passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions

Case No.1044 of 2013, thereby convicting the appellant/accused no.2 of the offence punishable under Section 304(II) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 10 years apart from direction to pay fine of Rs.25,000/- and in default to undergo further rigorous imprisonment for 1 year.

2 Brief facts leading to the institution of the present appeal can be summarized thus :

(a) According to the prosecution case, PW1 Pradeep Parmar, the First Informant was residing at Prabhadevi Municipal Chawl of Mumbai. On occasion of Raksha Bandhan festival, his brother Manoj Parmar (since deceased) came to visit his house for two days. Appellant/accused no.2 Mahendra @ Mayur, acquitted accused no.1 Chhagan Maru and acquitted accused no.3 Dhiraj Maru were also residing in the vicinity of the house of PW1 Pradeep Parmar.

(b) The incident in question took place at about 11.10 p.m. of 21st August 2013 at the open space near Prabhadevi

Sanskritik Kendra, Mumbai. PW7 Navin Parmar – son of PW1 Pradeep Parmar had been to the Prabhadevi Sanskritik Kendra at that time. He spitted gutkha in the chamber of the gutter at that Prabhadevi Sanskritik Kendra. Mother of appellant/accused no.2 Mahendra @ Mayur, namely Manjula, had seen that incident of spitting gutkha in the chamber of the gutter. She abused PW7 Navin Parmar, who also retaliated by counter arguments. The quarrel ensued. Acquitted accused Chhagan and Dhiraj along with juvenile in conflict with law started beating PW7 Navin Parmar. After hearing the sound of commotion, PW1 Pradeep Parmar, PW2 Dinesh Kathpara and PW9 Smt.Bhalgi Parmar went to the scene of occurrence.

- (c) It is the case of prosecution that during the course of quarrel, accused persons started beating PW7 Navin Parmar and his uncle Manoj Parmar (since deceased) tried to intervene to save PW7 Navin Parmar. At that time, appellant/accused no.2 Mahendra @ Mayur joined the

quarrel with a knife in his hand and gave a blow thereof to PW7 Navin Parmar. In an attempt to save PW7 Navin Parmar, that blow landed on the armpit of his uncle Manoj Parmar. The said blow proved to be fatal and Manoj Parmar was declared dead after giving brief medical treatment to him at the K.E.M. Hospital, Mumbai, in the night intervening 21st August 2013 and 22nd August 2013 itself.

- (d) After death of Manoj Parmar, his brother PW1 Pradeep Parmar lodged the First Information Report (FIR) (Exhibit 25) on 22nd August 2013 itself at N.M.Joshi Marg Police Station, which has resulted in registration of Crime No.243 of 2013 for offence punishable under Sections 302 and 307 read with 34 of the Indian Penal Code against the accused persons. Routine investigation followed. The accused persons came to be arrested. On the basis of voluntary disclosure statement (Exhibit 36) which came to be recorded vide Seizure Panchnama Exhibit 56 on 24th August 2013, a knife came to be recovered. Clothes of the accused

persons came to be seized and on completion of routine investigation, appellant/accused no.2 Mahendra @ Mayur along with other accused persons came to be charge-sheeted.

- (e) The learned trial court framed Charge for the offence punishable under Section 302 and Section 307 read with 34 of the Indian Penal Code against three accused persons. Fourth accused, namely, Jayesh Maru was found to be juvenile in conflict with law and the charge-sheet against him was ordered to be filed before the Juvenile Justice Board.
- (f) The accused persons abjured their guilt and claimed trial. In order to bring home the guilt to the appellant/accused, the prosecution has examined in all fourteen witnesses. The defence of the accused persons including the appellant/accused was that of total denial. However, they did not enter in defence.

(e) After hearing both the parties, the learned trial court by the impugned judgment and order was pleased to acquit the appellant/accused no.2, so also other accused persons of the offence punishable under Section 302 and Section 307 read with 34 of the Indian Penal Code. Appellant/accused no.2 Mahendra @ Mayur was, however, convicted of the offence punishable under Section 304(II) of the Indian Penal Code and he came to be sentenced accordingly.

3 I have heard the learned counsel appearing for appellant/accused no.2 Mahendra @ Mayur. He argued that appellant/accused no.2 Mahendra @ Mayur is not disputing his conviction for the offence punishable under Section 304(II) of the Indian Penal Code. However, the quantum of sentence imposed upon the appellant/accused is disproportionate to the proved offence. It is argued that appellant/accused no.2 Mahendra @ Mayur is not having any criminal antecedents and the offence held to be proved against him is his first offence. He has family to maintain and considering the fact that the appellant/accused is

convicted of the offence punishable under Section 304(II) of the Indian Penal Code, sentence of rigorous imprisonment for 10 years imposed on the appellant/accused is highly disproportionate.

4 The learned APP opposed the appeal by arguing that the blow dealt by appellant/accused no.2 Mahendra @ Mayur on deceased Manoj Parmar was a forceful blow which has caused damage to the heart of the deceased, apart from puncturing the lung and causing fracture of rib bones. Hence, according to the learned APP, the impugned judgment and order of conviction and the resultant sentence needs no interference at the hands of this court.

5 I have carefully considered the rival submissions and also perused the record and proceedings including deposition of prosecution witnesses and documentary evidence adduced on record.

6 Evidence of PW7 Navin Parmar coupled with evidence of his father PW1 Pradeep Parmar and that of PW9 Smt.Bhalgi Parmar – mother of deceased Manoj Parmar unerringly points out that in the quarrel which commenced because of spitting of gutkha in the chamber of gutter by PW7 Navin Parmar, appellant/accused no.2 Mahendra @ Mayur gave a blow of knife which ultimately landed on the armpit of deceased Manoj Parmar. PW7 Navin Parmar has categorically stated in his evidence that after spitting of gutkha by him in the chamber of gutter, Manjula, who happens to be mother of appellant/accused no.2 Mahendra @ Mayur, abused him and picked up quarrel. PW7 Navin Parmar further deposed that he also started arguing with her and then accused persons started assaulting him. As per version of PW7 Navin Parmar, his uncle Manoj Parmar (since deceased) came to rescue him and the blow of knife dealt by appellant/accused no.2 Mahendra @ Mayur landed on the armpit of Manoj Parmar causing bleeding injury.

7 PW1 Pradeep Parmar has deposed that while sleeping in the gallery of his house, he heard noise in the night hours of 21st August 2013, and therefore, he directed his brother Manoj Parmar (since deceased) to ascertain why public is raising noise. PW1 Pradeep Parmar had also followed his brother Manoj Parmar (since deceased) and saw *maramari* between PW7 Navin Parmar and the accused persons. PW1 Pradeep Parmar has categorically that appellant/accused no.2 Mahendra @ Mayur assaulted Manoj Parmar (since deceased) by means of a knife when Manoj Parmar (since deceased) tried to save PW7 Navin Parmar.

8 Though PW2 Dinesh Kathpara has stated that appellant/accused no.2 Mahendra @ Mayur was holding knife and deceased Manoj Parmar suffered bleeding injury, this witness has conveniently avoided to state that it was appellant/accused no.2 Mahendra @ Mayur who gave blow of knife to deceased Manoj Parmar. PW9 Smt.Bhalgi Parmar's evidence shows that after hearing noise of quarrel, she came out of her house and rushed to the spot to see appellant/accused no.2 Mahendra @

Mayur assaulting her son Manoj Parmar (since deceased) by means of knife.

9 As seen from evidence of PW1 Pradeep Parmar, injured Manoj Parmar was taken to K.E.M. Hospital where he was treated by PW10 Dr.Shrikant Perka, Junior Resident. Evidence of this Medical Officer shows that within half an hour of admission to the hospital, Manoj Parmar succumbed to the injuries suffered by him.

10 PW6 Dr.Girish Tasgaonkar, Medical Officer of K.E.M. Hospital, conducted autopsy on dead body of deceased Manoj Parmar. Report of postmortem examination is at Exhibit 41. This contemporaneous document coupled with evidence of Medical Officer PW6 Dr.Girish Tasgaonkar shows that deceased Manoj Parmar was having following antemortem injuries :

“Stab injury with two stitches in situ were present over lateral aspect of left side of chest below left axilla, obliquely placed, upper end situated posteriorly and lower end situated anteriorly,

situated 20 cm from midline. Upper end situated 33.5 cm and lower end situated 30 cm from left anterior superior iliac spin. On removal of stitches, edges on approximation are size of 4 cm x 0.5 cm x cavity deep. Both the angles were acute, bevelling present on lower margin. Both the margins are clean cut and blood infiltrated. Track dissection done. Track directed upwards, backwards and towards midline piercing skin subcutaneous tissue underlying intercostal muscles of intercostal space between 6th and 7th rib of left side of chest, left side of pleura further causing perforating wound in lower lobe of left lung with entry wound of size 2 cm x 0.1 cm and exit wound of size 1.5 cm x 1 cm then piercing antero lateral aspect of left ventricle of size 2.5 cm x 0.1 cm x cavity deep. All margins are clean cut and blood infiltrated.”

11 Evidence of PW6 Dr.Girish Tasgaonkar further shows that corresponding to the external injury, there was internal injury over intercostal space between 6th and 7th rib of left side of chest of 3.5 cm x 0.8 cm cavity deep. There was collapsing of lung due to this injury.

12 With this evidence, the prosecution has successfully established the fact that deceased Manoj Parmar died homicidal death caused by appellant/accused no.2 Mahendra @ Mayur.

13 The learned trial court has considered the fact that the incident in question happened on the spur of moment and appellant/accused no.2 Mahendra @ Mayur had not harboured any intention of committing murder of deceased Manoj Parmar. It is held that the prosecution, with the evidence adduced, has established the offence punishable under Section 304(II) of the Indian Penal Code and this finding is not challenged by the prosecuting agency. There was a single blow dealt by appellant/accused no.2 Mahendra @ Mayur which ultimately landed on the armpit of the deceased. The act attributed to appellant/accused no.2 Mahendra @ Mayur was done certainly with knowledge that it is likely to cause death, but without there being any intention to cause the death. Thus, no infirmity can be found in the conviction of appellant/accused no.2 Mahendra @

Mayur of the offence punishable under Section 304(II) of the Indian Penal Code.

14 Now let us examine whether the consequent sentence of rigorous imprisonment of 10 years imposed on appellant/accused no.2 Mahendra @ Mayur for the offence punishable under Section 304(II) of the Indian Penal Code is proper or not. It is well settled that it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was committed. The sentencing court are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The sentence is required to be adequate, just and proportionate with the gravity and nature of the crime. At the same time, circumstances of the accused are also required to be kept in mind while imposing the sentence, as one of the objects of the criminal justice system is to rehabilitate the transgressors and the criminals.

15 As pointed out above, the incident took place because of quarrel between PW7 Navin Parmar and mother of appellant/accused no.2 Mahendra @ Mayur. Perusal of the sentencing trend in past for the offence punishable under Section 304(II) of the Indian Penal Code shows that sentence of 10 years of rigorous imprisonment is too harsh considering the facts and circumstances of the case. In the matter of **Shivappa Buddappa Kolkar alias Buddappagol vs. State of Karnataka**¹, modifying the conviction of the appellant/accused from the offence punishable under Section 302 of the Indian Penal Code to the one punishable under Section 304(II) of the Indian Penal Code, the Honourable Supreme Court had imposed sentence of imprisonment for a period of five years apart from fine of Rs.7,000/- on the appellant/accused. In the matter of **Padmakar s/o. Dadarao Thorat vs. The State of Maharashtra**² Division Bench of this court by modifying the conviction of the appellant/accused from the offence punishable under Section 302

1 AIR 2004 SUPREME COURT 5047

2 2015 ALL MR (Cri) 2628

of the Indian Penal Code to the offence punishable under Section 304(II) of the Indian Penal Code, had sentenced the appellant/accused therein for rigorous imprisonment for 5 years apart from payment of fine of Rs.500/-. Similarly, in the matter of **Manke Ram vs. State of Haryana**³ by altering the conviction of the appellant/accused therein from the offence punishable under Section 302 of the Indian Penal Code to the one punishable under Section 304(II) of the Indian Penal Code, the Honourable Supreme Court was pleased to award sentence of 5 years of rigorous imprisonment apart from fine of Rs.2,000/- on the appellant/accused therein. Considering this trend in sentencing for the offence punishable under Section 304(II) of the Indian Penal Code, it needs to be held that the sentence imposed on the appellant/accused is disproportionate, and therefore, needs to be scaled down.

16 In the result, the following order :

3 2003 CRI.L.J. 2328

ORDER

- i) The appeal is partly allowed.
- ii) Conviction of appellant/accused no.2 Mahendra @ Mayur of the offence punishable under Section 304(II) of the Indian Penal Code is maintained. However, sentence of rigorous imprisonment of 10 years imposed on him by the learned trial court is altered to sentence of rigorous imprisonment for 5 years. Fine of Rs.25,000/- and default sentence of rigorous imprisonment for 1 year is maintained.
- iii) The appeal stands disposed off with this order.
- iv) In view of disposal of the appeal, Criminal Application No.869 of 2016 also stands disposed off.

(A. M. BADAR, J.)

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