

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.964 OF 2015

Ranjit Ganesh Chavhan
Aged 36 years, Occu. Nil,
R/o.Naik Nagar, Kacchi Zopadpatti,
Post : Kurhad, Pimpalgaon,
Tal.Pachora, District. Jalgaon.
(Nashik Central Jail)

... **Appellant**

V/s.

The State of Maharashtra,
(At the instance of Aarey Police Station
C.R.No.77/2013)

... **Respondent**

.....

Mr.Vikas K. Singh, Appointed Advocate for the Appellant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 21st NOVEMBER 2018.

ORAL JUDGMENT :

1 The appellant/accused, by this appeal, is challenging the Judgment and Order dated 09/05/2015 passed by the learned Additional Sessions Judge, Mumbai in Sessions Case No.168 of 2013 thereby convicting him of offences punishable under

Sections 452 and 304 Part I of the Indian Penal Code. For the offence punishable under Section 452 of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for three years apart from imposition of fine of Rs.1,000/- and default sentence of simple imprisonment for one month. For the offence punishable under Section 304 Part I of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.10,000/- and default sentence of simple imprisonment for six months.

2 The facts leading to the prosecution of the appellant/accused can be summarized thus :

- (a) According to the prosecution case, the appellant/accused Ranjit Chavhan married P.W.No.1 Shital in the year 2003 and the couple came to be blessed with a son named Sunny and a daughter named Bhawana out of this wedlock. They were residing in Pachora Taluka of Jalgaon District. The appellant/accused was not doing any work for livelihood and, therefore, his wife P.W.No.1 Shital came back to her matrimonial house at Mumbai along with her children. There used to be quarrel between P.W.No.1 Shital and appellant/accused Ranjit Chavhan. Therefore, one year prior to the incident in question, P.W.No.1 Shital got a divorce deed prepared from

an Advocate. On her request, the appellant/accused signed that divorce deed which was signed by Ram Bapu Sawant (since deceased) as witness. P.W.No.1 Shital then started residing with Ram Bapu Sawant (since deceased). The appellant/accused went back to his native place Pachora with his two children. However, subsequently, P.W.No.1 Shital brought back her children to Mumbai where she was residing with Ram Bapu Sawant.

- (b) According to the prosecution case, P.W.No.1 Shital came to know that appellant/accused Ranjit Chavhan has come to Mumbai. She, therefore, kept her both children locked inside her house. On the next day, she kept her children at the house of her friend Dhanlaxmi. While returning from work, P.W.No.1 Shital fetched her children and returned to her house. This was happened on 09/07/2013.
- (c) According to the prosecution case, at about 7.10 p.m. of 09/07/2013, the appellant/accused all of a sudden entered in the house of P.W.No.1 Shital and gave a blow of knife brought by him on left cheek of Ram Bapu Sawant, who was staying with P.W.No.1 Shital as her second husband. After giving a blow of knife on Ram Bapu Sawant, the appellant/accused suffered a fall. P.W.No.1 Shital then took her husband Ram Bapu Sawant out of one room house and

confined the appellant/accused in the said house by latching its door from outside.

- (d) P.W.No.1 Shital then took her husband Ram Bapu Sawant initially to Kanchi Hospital, Goregaon and thereafter Bhagwati Hospital , Borivali, where he died during the course of medical treatment on 11/07/2013.
- (e) Upon getting information about the incident of assault, P.W.No.5 Jaysing Sawant, Police Head Constable, who was on duty on mobile police van, went to the spot of the incident, which was room bearing Unit No.32, Ektanagar Rahiwashi Sangh, Aarey Colony, Goregaon. He found the appellant/accused lying in the pool of blood. P.W.No.5 Jaysing Sawant took the appellant/accused to the Bhagwati Hospital, where P.W.No.7 Dr.Mridul Dubey examined him and found to have suffered an abrasion on the left forearm.
- (f) P.W.No.1 Shital Sawant lodged report of the incident (Exhibit 13) and accordingly, Crime No.77 of 2013 for the offences punishable under Sections 452 and 326 of the Indian Penal Code came to be registered with Aarey Police Station, Mumbai. During course of investigation, clothes of the appellant/accused so also that of deceased Ram Bapu Sawant came to be seized. The spot was inspected. Report of

postmortem examination of the deceased was obtained. Seized articles were sent for chemical analysis and on completion of routine investigation, the appellant/accused came to be charge-sheeted.

- (g) The learned trial Court framed the charge for the offences punishable under Sections 452, 326 and 302 of the Indian Penal Code. The appellant/accused pleaded not guilty and claimed trial.
- (h) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all ten witnesses. First Informant Shital Sawant is examined as P.W.No.1. The report lodged by her is at Exhibit 13. Haresh Raut, a panch witness to the seizure of clothes of the appellant/accused is examined as P.W.No.2. Seizure panchanama is at Exhibit 19. Panch witness to the spot panchanama (Exhibit 23) namely Ramesh Bhalerao is examined as P.W.No.3. Hemamalini Ambekar, a neighbourer, who had witnessed the post-event happenings is examined as P.W.No.4. Police Head constable Jaysing Sawant is examined as P.W.No.5. Autopsy Surgeon Dr.Prasad Bhatanglikar is examined as P.W.No.6. Exhibit 31 is the report of postmortem examination of dead body of Ram Babu Sawant. Dr.Mridul Dubey, Medical Officer of Bhagwati Hospital is examined as P.W.No.7. Dr.Sunil Pandey, resident

Doctor of the said Hospital is examined as P.W.No.8. Dr.Jayashree Pawar, Medical Officer attached to Bhagwati Hospital is examined as P.W.No.9. Exhibit 42 is the report of the Medico Legal Case issued by this witness. Investigating Officer PSI Jagdish Deore is examined as P.W.No.10.

- (i) Defence of the appellant/accused, as seen from the line of cross-examination of prosecution witnesses as well as from his statement under Section 313 of the Code of Criminal Procedure is that of total denial. According to the defence, P.W.No.1 Shital desired to marry Ram Babu Sawant (since deceased) and, therefore, she had deserted the appellant/accused and his children. She then went to Mumbai. As per defence version, P.W.No.1 Shital then called the appellant/accused to Mumbai and took his signature on the divorce deed. She then went with Ram Babu Sawant and the appellant/accused returned back to his native place with his children. Then, on 09/07/2013, the appellant/accused went to Mumbai for meeting his children and P. W. No.1 Shital told him to come to meet them at 6.00 p.m. When he had been to the house of P. W. No.1 Shital for meeting his children, she obstructed the appellant/accused and started abusing him. Thereafter, as per the defence version, P. W. No.1 Shital took a knife and rushed on the person of the appellant/accused. He pushed her and in that process blow of the knife landed on

left cheek of Ram Bapu Sawant. Thereafter, P.W.No.1 Shital and Ram Bapu Sawant (since deceased)) assaulted the appellant/accused and he became unconscious.

- (j) After hearing the parties, the learned trial Court, by the impugned Judgment and Order, was pleased to convict the appellant/accused of the offences punishable under Sections 452 and 304 Part I of the Indian Penal Code and accordingly, he came to be sentenced as indicated in the opening paragraph of this Judgment.
- (k) The learned trial Court, for convicting the appellant/accused for the offence punishable under Section 304 Part I of the Indian Penal Code, gave the reasoning that a doubt arises as to whether the injury was sufficient, in the course of nature, to cause death of Ram Bapu Sawant and when such doubt arises, it goes in favour of the accused and, therefore, the instant case is falling under Section 304 Part I of the Indian Penal Code. Except this no other reason is given by the learned trial Court in support of its conclusion regarding the offence proved against the appellant/accused.

3 I heard Shri.Singh, the learned Advocate appointed to represent the appellant/accused at the cost of the State. He drew my attention to the FIR lodged by P.W.No.1 Shital to demonstrate

that after signing the divorce deed, the appellant/accused returned back to his native place along with his children. The learned Advocate further drew my attention to the version of P.W.No.1 Shital to demonstrate that there is no evidence to conclude that the appellant/accused entered in the house of the deceased armed with any weapon. The learned Advocate further pointed out admission of P. W. No.1 Shital to the effect that the seized knife is like a knife usually used in the kitchen for cutting vegetable. With this, the learned Advocate argued that the spot panchanama (Exhibit 23) demonstrates that the spot of the incident was one room house and at the north side, there was a kitchen platform containing the articles used for cooking. The learned Advocate for the appellant/accused with this material argued that the situation prevalent on the scene of offence unerringly points out that there was scuffle inside the house. With the aid of evidence of P.W.No.4 Hemamalini Ambekar, the learned Advocate for the appellant/accused further argued that in fact, the appellant/accused was assaulted by P.W.No.1 Shital and her second husband Ram Babu Sawant (since deceased). The learned Advocate for the appellant/accused further argued that this material on record demonstrates that the defence version is equally probable and even if the prosecution case is accepted as it is, then also the offence cannot travel to the offence punishable under Section 304 Part I of the Indian Penal Code. Purpose of visit of the appellant/accused to the house of deceased Ram Babu Sawant and P. W. No.1 Shital

was not to commit any offence or to intimidate or annoy them, but to meet his own children.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction and resultant sentence.

5 I have perused the submissions so advanced and also perused the Record and Proceedings including oral as well as documentary evidence.

6 In the case in hand, undisputedly, younger sister of P.W.No.1 Shital was given in marriage to the brother of appellant/accused Ranjit Chavhan. P.W.No.1 Shital had married the appellant/accused in the year 2003. Evidence of P.W.No.1 Shital further makes it clear that she along with the appellant/accused and their children were residing at Pachora Taluka in Jalgaon District. Thereafter, as per version of P. W. No.1 Shital, quarrel started between her and the appellant/accused and, therefore, they all came to reside at Mumbai. At Mumbai, as stated by P.W.No.1 Shital, the appellant/accused failed to take up any work for earning livelihood and, therefore, she told him that she do not want to cohabit with him and want to take divorce from him. Evidence of P. W. No.1 Shital shows that then she got the divorce deed prepared from one Advocate and the

appellant/accused signed the same without any protest. P.W.No.1 Shital then started residing with Ram Bapu Sawant (since deceased) as his wife, whereas the appellant/accused along with his children returned back to Pachora in Jalgaon District. This fact is categorically admitted by P.W.No.1 Shital in her cross-examination. Thereafter, he had taken back her children to Mumbai. Cross-examination of P.W.No.1 Shital shows that as a father, the appellant/accused had right to meet his children and she was knowing that without any prohibitory Orders, she was not in a position to restrain him from meeting his children. At this juncture, it is also apposite to refer to the FIR (Exhibit 13) lodged by P. W. No.1 Shital. It also contains a recital that she of her own has unilaterally decided to join company of deceased Ram Bapu Sawant as his wife and had taken children from the appellant/accused.

7 On the backdrop of these facts, which have surfaced from the evidence of P. W. No.1 Shital, let us see what she has deposed about the incident in question. As per her version, two days prior to 09/07/2013, the appellant/accused was seen near her house and, therefore, she kept her children locked inside her house for one day. On another day she shifted her children to the house of her friend Dhanlaxmi. With this, P.W.No.1 Shital has stated that on 09/07/2013, the appellant/accused came to her house and stabbed deceased Ram Bapu Sawant below left ear.

She shouted and brought Ram Bapu Sawant outside the house and put the appellant/accused inside the house. Thereafter, she latched the door of her house. Bare perusal of this version regarding the incident given by P.W.No.1 Shital appears to be improbable. How she was in a position to put the appellant/accused inside her house and confine him when he was holding a knife is not explained by her in her evidence. Her evidence indicates that in a simple manner, the appellant/accused entered in her house and stabbed deceased Ram Bapu Sawant. It is obvious that P.W.No.1 Shital is suppressing the genesis of the incident which is clear from perusal of other evidence on record.

8 P.W.No.3 Ramesh Bhalerao is a panch witness to the spot panchanama prepared on 10/07/2013. Evidence of his witness shows that when he inspected the spot which was one roomed house admeasuring 10 x 12 feet, he found utensils in the house scattered on the floor. There was blood on the floor apart from blood-stained knife. Sport panchanama (Exhibit 23) is reflecting this position. Then, there is evidence of immediate neighbourer P.W.No.4 Hemamalini Ambekar, who rushed on the spot soon after hearing shouts of P.W.No.1 Shital. This witness has categorically deposed that when she went to the house of P.W.No.1 Shital, she saw Ram Bapu Sawant (since deceased) holding his one hand on the injury sustained by him below his ear and catching hold of the appellant/accused by neck. P.W.No.4

Hemamalini Ambekar further deposed that at that time, the appellant/accused was found lying on the floor.

9 P.W.No.5 Jaysing Sawant, Police Head Constable has visited the spot of the incident immediately after the incident, on getting call from the Control Room to visit the scene of offence. As per version of this witness, when he went to the spot of the incident, he found the appellant/accused lying in a pool of blood. P.W.No.5 Jaysing Sawant had taken the appellant/accused to the Bhagwati Hospital for treatment. P.W.No.7 Dr.Mridul Dubey found the appellant/accused having suffered abrasion on his left forearm. If this material, coming on record from evidence of prosecution, is appreciated in proper perspective, then it becomes clear that there was scuffle between the prosecuting party as well as the appellant/accused and in the course of that scuffle, the appellant/accused had suffered a fall and he was found lying on the spot of the incident at the time of visit to the spot by P.W.No.5 Jaysing Sawant, Police Head Constable. P.W.No.1 Shital has not deposed that while entering in the house, the appellant/accused was carrying any knife. On the northern side of the small one room house, there was a kitchen platform. As admitted by P.W.No.1 Shital, the blood-stained knife found on the spot was a kitchen knife. Thus, it is clear from the evidence adduced by the prosecution that the appellant/accused entered in the house unarmed.

10 The reason for entering in the house of P.W.No.1 Shital was for meeting his own children, who were residing with P.W.No.1 Shital and deceased Ram Babu Singh. The weapon by which deceased Ram Babu Sawant had suffered injury, in all probability was available on the kitchen platform of the very same house. All these circumstances are indicating that after entering in the house of P.W.No.1 Shital, there was quarrel between the appellant/accused and P. W. No.1 Shital. In the course of that quarrel the incident in question had happened.

11 During course of investigation, shirt and pant of the appellant/accused came to be seized under seizure panchanama (Exhibit 19). Evidence of P.W.No.2 Haresh Raut shows that those were stained with blood. Blood-stained knife was found lying on the spot and it was seized under seizure panchanama (Exhibit 23) in the presence of P.W.No.3 Ramesh Bhalerao. Similarly, pant of deceased Ram Babu Sawant was also seized. Chemical Analysis report at Exhibit 63 shows that seized knife, blood found on the spot of the incident, pant of the appellant/accused as well as pant of the deceased were having stains of blood Group 'B'. Shirt of the appellant/accused was found containing human blood.

12 The appellant/accused was found on the spot of the incident after assault on deceased Ram Babu Sawant. Evidence of the Autopsy Surgeon P.W.No.6 Dr.Prasad Bhatanglikar which is

duly corroborated by contemporaneous postmortem report (Exhibit 31) shows that Ram Bapu Sawant died due to Hypovolemic Shock as a result of stab injury to neck. Thus, death of Ram Bapu Sawant was a homicidal death. Evidence on record indicates that the homicidal death of Ram Bapu Sawant was caused as the injury caused by a blow of knife was on the neck of the deceased. Evidence of P.W.No.1 Shital and P.W.No.4 Hemamalini Ambekar indicates that author of that blow was the appellant/accused. P.W.No.4 Hemamalini Ambekar had seen deceased Ram Bapu Sawant pressing the wound by one hand and catching hold of the appellant/accused by the other hand. Therefore, no infirmity is found in finding of the learned trial Court that the appellant/accused was the author of the fatal blow on neck of deceased Ram Bapu Sawant.

13 Now, let us examine what offence is committed by the appellant/accused. It is seen from the evidence on record, as discussed in foregoing paragraphs, that purpose of visit of the appellant/accused to the house of the deceased and his ex-wife P.W.No.1 Shital was just to meet his own children. His right to visit his own children is not even disputed by P.W.No.1 Shital. She was fully aware about the right of the appellant/accused to visit his own children. Circumstances brought on record indicate that P.W.No.1 Shital was preventing the appellant/accused from meeting his own children by locking them in her house or by

shifting them to the house of her friend Dhanlaxmi. At this juncture, it needs to be noted that even evidence of P.W.No.1 Shital indicates that the appellant/accused had meekly signed the divorce deed which she got prepared from the Advocate. That is how the appellant/accused has parted his way from the life of P.W.No.1 Shital. In this scenario, the incident in question took place inside the house of P.W.No.1 Shital. The evidence on record is indicating the scuffle between the parties. There was no intention on the part of the appellant/accused to commit murder of Ram Bapu Sawant and this is writ large from the fact that though the appellant/accused was knowing that his wife P.W.No.1 Shital wanted to reside with Ram Bapu Sawant, without raising any hue and cry, the appellant/accused signed the divorce deed and returned back to his native place with his children. Therefore, in every probability, in a sudden fight in the heat of passion without taking any undue advantage, the appellant/accused had committed the act of assaulting the deceased by using the knife which was very much available on the spot of the incident. Thus, the appellant/accused acted not with intention but at the same time, knowledge that his act is likely to cause death of Ram Bapu Sawant needs to be attributed to the appellant/accused as the weapon used was a knife. Therefore, the offence committed by the appellant/accused is falling under Part II of Section 304 of the Indian Penal Code.

14 Now the question which arises is what should be the quantum of sentence which needs to be imposed on the appellant/accused for the offence punishable under Section 304 Part II of the Indian Penal Code. 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 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

1 AIR 2004 SUPREME COURT 5047

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**¹ Division Bench of this court by modifying the conviction of the appellant/accused from the offence punishable under Section 302 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**² 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.

16 In the result, the appeal deserves to be partly allowed and, therefore, the following Order :

ORDER

(i) The Appeal is partly allowed.

(ii) Conviction of the appellant/accused for the offence punishable under Section 452 of the Indian Penal Code is quashed and set aside.

1 2015 ALL MR (Cri) 2628

2 2003 CRI.L.J. 2328

- (iii) Similarly, conviction of the appellant/accused punishable under Section 304 Part I of the Indian Penal Code and the resultant sentence is quashed and set aside.
- (iv) Instead, the appellant/accused is convicted for the offence punishable under Section 304 Part II of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for five years apart from payment of fine of Rs.5,000/- and in default thereof he is directed to undergo further simple imprisonment for a period of six months.
- (v) The Appeal stands disposed of with this Order.

(A.M.BADAR J.)