

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.460 OF 2013

Suresh s/o. Ganpat Chavan,
Age : 22 years,
Occ. Private Service,
Bhanudas Nagar,
Aurangabad

..Appellant
(Orig. Accused)

Vs.

The State of Maharashtra
(At the instance of
Jawahar Nagar Police Station,
Aurangabad)

..Respondents

Mr.A.K.Bhosale, Advocate for appellant

Mr.K.S.Hoke-Patil, APP for respondent

CORAM : S.S. SHINDE AND

R.G. AVACHAT, JJ.

RESERVED ON : JANUARY 07, 2019

PRONOUNCED ON : JANUARY 14, 2019

JUDGMENT (PER R.G. AVACHAT, J.) :-

This appeal is directed against the judgment
and order dated 31.10.2013 passed by learned Sessions

Judge, Aurangabad, in Sessions Case No.446 of 2012. By the impugned judgment and order, the appellant herein has been convicted of the offences punishable under Sections 302 and 324 of the Indian Penal Code ("I.P.C.", for short) and sentenced to suffer rigorous imprisonment for life with a fine of Rs.500/- and simple imprisonment for three months with a fine of Rs.100/-, respectively. In default of payment of fine amounts, the appellant has been directed to undergo rigorous imprisonment for six months and simple imprisonment for fifteen days, respectively. Both the substantive sentences have been directed to run concurrently.

2. The facts necessary to deal with this appeal are as follows :-

PW 1 – Seema (first informant) married the appellant about one and half years before 09.09.2012. On her marriage, she was residing with the appellant at her matrimonial home at Bhanudas Nagar,

Aurangabad. Her mother-in-law - Anuradhabai would also stay with them. PW 1's parental house was at Ambedkar Nagar, Aurangabad. PW 1 - Seema and the appellant have been blessed with a baby boy. On 07.09.2012, PW 1 - Seema had been to her parental house for giving a polio dose (oral vaccination) to her baby boy. The appellant made a call on her cell-phone on the next day and asked her to immediately return the matrimonial home. PW 1 - Seema told the appellant that she would come back on the next day i.e. on 09.09.2012. The appellant, therefore, discontinued the call in anger.

It is the case of the prosecution that since the appellant was annoyed with his wife PW 1 - Seema, she requested her mother - Babita to accompany her. Both PW 1 - Seema and her mother (deceased) came to her (PW 1's) matrimonial home by 04.00 p.m. on 09.09.2012. Both the appellant and his mother were at home. The appellant questioned PW 1 - Seema, as to why she did return late inspite of his repeated calls

for her immediate return. The appellant got angry. He slapped on the face of PW 1 – Seema. Babita, mother (deceased) of PW 1, intervened. The appellant took up handle (wooden) of a spade and gave two blows thereof on the head of the deceased. The appellant rained blows of wooden handle on the person of the PW 1 – Seema as well.

It is the case of the prosecution that PW 1 – Seema called her maternal cousin. He came and took Babita and PW 1 to Krushna Hospital on 09.09.2012. PW 1 – Seema lodged report (F.I.R. Exh.24) to the police. Pursuant to the FIR, crime vide C.R. No.143 of 2012 for the offences punishable under Sections 326, 325 and 323 of the I.P.C., came to be registered with Jawahar Nagar Police Station. Two days thereafter i.e. on 13.09.2012, Babita succumbed to the head injuries. An offence of murder, therefore, came to be registered against the appellant.

3. PW 10 – Laghu, Police Sub-Inspector attached to Jawahar Nagar Police Station, did investigation. Scene of offence panchnama (Exh.22) was drawn and inquest panchnama (Exh.25) was prepared. Clothes on the person of the deceased were taken charge of under panchnama (Exh.24). The appellant was arrested on 13.09.2012. The appellant made disclosure statement (Exh.55), pursuant to which the wooden handle came to be seized under panchnama (Exh.27). The body of the deceased was subjected to post mortem examination. All the seized articles were sent to the Regional Forensic Science Laboratory, Aurangabad. The C.A. reports were received. On completion of the investigation, charge-sheet was filed before the Court of learned Chief Judicial Magistrate, Aurangabad.

4. Learned Chief Judicial Magistrate committed the case to the Court of Session. Learned Sessions Judge framed Charge (Exh.5) for the offences punishable under Sections 302 and 326 of the I.P.C.

The appellant abjured the guilt and claimed to be tried. The appellant has been in jail since his arrest till date.

5. To sustain the charge, the prosecution examined ten witnesses and tendered in evidence documents in the nature of panchnamas, C.A. reports, post mortem report etc. We do not propose to catalogue the witnesses. Suffice it to say that it is a case based on the evidence of sole witness i.e. PW 1 – Seema.

6. Mr.A.K.Bhosale, learned Counsel for the appellant, would submit that the conviction could be based on the testimony of the sole/solitary witness, provided the witness is wholly reliable. In view of the learned Counsel, the evidence of PW 1 – Seema did not inspire confidence. Independent witness, though available, have not been examined. PW 1 – Seema was emotionally involved with someone else. She did not want to live with the appellant. At the relevant

time, the appellant was not at home. The deceased was opposed to PW 1's affair. PW 1 – Seema and her paramour might have eliminated the deceased, as the deceased was opposed to their affair. Learned Counsel would further submit that if the Court comes to the conclusion that the appellant was the author of the crime, it would not be an offence of murder. In view of learned Counsel, it would, at the most, be the offence of culpable homicide not amounting to murder, punishable under Section 304, Part II of the I.P.C.

7. Mr.K.S.Hoke-Patil, learned APP for the respondent, on the other hand, submits that the the evidence of PW 1 – Seema had a ring of truth. She was an injured witness as well. She did not have reason to give evidence against her husband. The appellant did not even make out a slightest case of his defence. The learned APP reiterated the reasons given by the Trial Court for convicting the appellant.

8. Admittedly, the appellant married PW 1 – Seema one and half years before 09.09.2012. The couple has been blessed with a baby boy. They would reside at Bhanudas Nagar. While the deceased mother of PW 1 – Seema had been residing at Ambedkar Nagar. PW 1 – Seema testified that on 07.09.2012, she had been to her parental house for administering polio dose to her baby boy. The appellant contacted her on cell-phone and asked her to come back immediately. She informed the appellant that she would come home next day. The appellant, therefore, discontinued the call in miff. PW 1 – Seema further testified that the appellant again made a phone call on 09.09.2012 and asked her to come back immediately. As the appellant was annoyed, she asked her mother (deceased) to accompany her. Accordingly, both of them came to her matrimonial home by 4:00 p.m. on 09.09.2012. This evidence of PW 1 – Seema has not been taken exception during her cross-examination. There is also no reason to doubt PW 1's version that she had been to her

mother's house and in response to the repeated calls by the appellant, she came back home accompanied by her mother.

9. Evidence of PW 1 – Seema further indicates that the appellant questioned her, as to why she did not come home early. The appellant, therefore, was annoyed and slapped on her face. When the deceased intervened, the appellant picked up a wooden handle and gave its blow on the head of the deceased. It is further in her evidence that the appellant then rained blows on the person of the deceased with wooden handle and she (PW 1) too, was not spared. PW1 further testified that as her mother became unconscious, she called her maternal cousin (PW 6). He came and took both of them to Krushna Hospital, since admission was denied to them by M.G.M. Hospital.

10. The appellant denied his presence at the relevant time at his home. He stated that PW 1 –

Seema was emotionally involved with one Ravi Ingale. Ravi had come to meet her there. As the deceased was opposed to their affair, both of them might have eliminated the deceased.

11. The incident took place at the house of the appellant, is undisputed. The deceased died of head injury, is evident from the post mortem report (Exh.43). PW 9 – Dr. Vikas had conducted autopsy. The cause of death was “head injury with fracture of left radius ulna with multiple contusions over body”.

12. It is reiterated that the evidence of other witnesses do not further the prosecution case. No reference to the said evidence, therefore, is made herein. Admittedly, the deceased died homicidal death. The question is, whether the appellant is the author thereof. The case is based on sole eye witness. The witness is none other than the wife of the appellant. She has no reason to falsely implicate

her husband and spoil her life. True, there is evidence (Exh.57) to indicate that the deceased had lodged an FIR against Ravi Ingale and two of his friends, alleging them to have kidnapped her daughter (PW 1 – Seema), as Ravi wanted to marry her. It was the incident of October, 2010, necessarily prior to the marriage of the appellant with her. Post marriage, there is no evidence to indicate PW 1 to have been involved with Ravi Ingale.

13. It is also true that the FIR has been lodged two days after the incident. There is also no evidence to indicate that the first informant (PW 1 – Seema) received injury as a result of beating by the appellant. It is to be stated that PW 1 – Seema did not claim to have received any visible injury. The appellant had slapped her and given one or two stick blows. PW 1 – Seema had to be first with her mother, who had become unconscious as a result of the head injury. The deceased was indoor patient. She did not gain consciousness till she breathed her last. It

indicates seriousness of the injury, compelling PW 1 to have been arounded the deceased, that has resulted in delay in lodging the FIR. It is true that PW 1 – Seema had denied her emotional involvement with one Ravi Ingale. She being a married woman, is bound to deny the same. Her denial of the said affair would, in no way, distract her testimony. *Falsus in uno falsus in omnibus* is not applicable. The fact remains that by the evidence of PW 1. It has been proved that on the fateful day by 4.30 p.m., the appellant slapped PW 1 – Seema and on intervention of her mother (deceased), the appellant picked up a wooden handle and gave its blow on the head of the deceased. The question is, whether this constitutes an offence of murder.

14. The deceased died three days after the incident. She had suffered two head injuries. PW 1 – Seema testified before the Court that the appellant gave one blow of wooden handle of a spade on the head of the deceased. Although there is no evidence to

indicate PW 1's involvement with Ravi Ingale, the appellant had every reason to doubt the same in view of the fact that the deceased had lodged the FIR against Ravi Ingale, alleging him to have had kidnapped PW 1 - Seema with a view to marry her. The conduct of the appellant, undoubtedly, indicates that he, therefore, did not want PW 1 to stay at her mother's house for long. No sooner she went to her mother's house in the vicinity of which, that fellow (Ravi Ingale) would reside, the appellant made PW 1 - Seema repeated phone calls, asking her to immediately come back. She, however, took three days to come back. On her return home, the appellant questioned her as to why she did not come back early. He was annoyed. He gave a slap on her face. On the intervention of the deceased, the appellant picked up/fetched wooden handle of a spade and gave its blow on the head of the deceased. The same indicates that it was not pre-meditated act. Had the appellant really wanted to eliminate the deceased, he would

have thrashed her head repeatedly. Facts rule out intention to kill the deceased. There is also nothing to indicate the appellant to have had intention to cause such bodily injury as is likely to cause death.

15. The wooden handle before the Court could not be connected with the offence in question. Although the same came to be seized pursuant to the disclosure statement (Exh.55) made by the appellant, when it was examined by Chemical Analyser, he did not spot any blood stain thereon. It, therefore, could not be said that the wooden handle seized pursuant to the disclosure statement made by the appellant, was the very article used by the appellant to assault the deceased and PW 1 – Seema.

16. In **Camilo Vaz Vs. State of Goa, (2000)9 SCC 1**, the Hon'ble Supreme Court, referring to the ambit of Section 304 of the I.P.C., held thus :-

14. This section is in two parts. If analysed, the section provides for two

kinds of punishment to two different situations: (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the "intention"; (2) if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a *danda* on a vital part of the body with such force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation, the case will fall in Part II of Section 304 I.P.C. as in the present case."

For better appreciation, Section 304 of the I.P.C. is reproduced below :-

"304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting

to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

17. In our view, it is not an offence of murder, but an offence of culpable homicide not amounting to murder, punishable under Section 304 Part II of the I.P.C. When the appellant hit the deceased with a wooden handle on vital part of the body, knowledge has to be imputed to the appellant.

18. The Trial Court observed that the appellant picked up the wooden handle only with a view to kill her. Close scrutiny of the evidence on record would, however, indicate that the appellant did not have any intention to eliminate the deceased. He was annoyed with his wife.

19. Since the death of Babita (deceased) is not instantaneous and she died three days after the incident, it demonstrates that the appellant had no intention to cause her death. In the absence of any intention to cause death or to cause such bodily injury to cause death, the offence does not fall within the scope of Section 300 of the I.P.C., but it will fall under Section 304 Part II.

20. We, therefore, hold the appellant guilty of the offence punishable under Section 304 Part II of the I.P.C. and not offence under Section 300 of I.P.C. His conviction under Section 302 of I.P.C. is, therefore, set aside. The appellant stands convicted

of the offence punishable under Section 304 Part II of the I.P.C. and is sentenced to undergo rigorous imprisonment for seven years. Rest of the terms of the order of conviction passed by the Trial Court to stand unaltered.

21. The appeal stands disposed of in aforesaid terms.

[R.G. AVACHAT, J.]

[S.S. SHINDE, J.]

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