

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 37 OF 2017

STATE OF GOA

Through Mapusa Police Station ... Appellant

V/s.

Shri Ravi Rathod,

Aged 32 yeras, s/o. Tharu Rathod,

R/o. Saliswado, Parra, N/o. Balurgi
Tanda, Afzalpur, Karnataka,

Presently undergoing sentence in ... Respondent
Central Jail, Colvale.

Mr. Mahesh Amonkar, Additional Government Advocate for the appellant.

Mr. Amey Phadte, Advocate for the respondent.

**Coram:- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.**

Date:- 9th October, 2019

ORAL JUDGMENT: (Per C.V. Bhadang,J.)

By this appeal the Appellant/State is seeking enhancement of sentence awarded to the respondent. The respondent was prosecuted for an offence punishable under

Section 302 of the Indian Penal Code (IPC, for short), before the learned Additional Sessions Judge, Panaji in Sessions Case No.40 of 2012 on the allegation that on 25/07/2012 at about 23.00 hours at Saliswado, Parra, Bardez Goa, he committed the murder of his wife Geeta Rathod, by assaulting her with knife.

2. The learned Sessions Judge by the Judgment and Order dated 18/08/2016 convicted the respondent for the offence punishable under Section 304 Part I of IPC and sentenced the respondent to undergo simple imprisonment for five years and to pay a compensation of ₹5,000/- to his daughter Sanjana Rathod and in default thereof to undergo simple imprisonment for two months.

3. It is a matter of record that the respondent has served his sentence and has since been released from custody.

4. We have heard Mr. Mahesh Amonkar, learned Additional Public Prosecutor for the appellant and Mr. Phadte, learned Advocate for the respondent. With the assistance of the

learned Counsel for the parties, we have gone through the records.

5. It is submitted by Mr. Amonkar, learned Additional Public Prosecutor for the appellant that the respondent has inflicted as many as 17 injuries on his wife resulting in her death and the offence was committed in the presence of their minor daughter. It is submitted that looking to the seriousness and heinousness of the crime, the learned Sessions Judge ought to have awarded maximum punishment of life imprisonment or atleast 10 years of imprisonment as prescribed under Section 304 Part I of IPC. It is submitted that as a result of the act of the respondent two children of the respondent and the deceased have been rendered orphan and the offence being committed against women and weaker section of the society, ought to have been dealt with sternly.

6. Mr. Phadte, learned Advocate for the respondent on the contrary has submitted that the learned Sessions Judge after considering the over all circumstances, has rightly awarded

the sentence of five years imprisonment and no case for enhancement of the sentence is made out. Mr. Phadte, learned Counsel for the respondent has pointed out that the respondent is suffering from AIDS, which is one of the circumstances considered by the learned Sessions Judge while deciding upon the quantum of sentence. It is submitted that presently the respondent is diagnosed to be in the second stage of AIDS. It is submitted that the incident has been held to have occurred in a sudden fight and in heat of passion and there is no premeditation on the part of the respondent to cause death of his wife and therefore this Court may not interfere in the quantum of the sentence awarded.

7. We have given our anxious consideration to the rival circumstances and the submissions made. The respondent although was tried for the offence punishable under Section 302 of IPC has been held guilty for the offence punishable under Section 304 Part I of IPC i.e. culpable homicide not amounting to murder. Section 304 Part I of IPC invites the maximum punishment of imprisonment of life or 10 years of

imprisonment with fine. While deciding upon the quantum of sentence, the Court has to weigh the aggravating and extenuating circumstances and then to decide the quantum of sentence which accordingly would meet the ends of justice. Normally, this Court would be slow in interfering with the quantum of sentence, except where the sentence is found to be grossly inadequate or shockingly disproportionate to the offence held to be proved against the accused.

8. We have carefully gone through the reasoning articulated by the learned Sessions Judge on the point of determination of the quantum of sentence. We do not find that any exception can be taken to the finding as recorded. The learned Sessions Judge has considered that the respondent is a first offender and that there was no premeditation and the act of the respondent was not pre-planned. The learned Sessions Judge has come to the conclusion that the incident occurred at the spur of the moment in a sudden fight and the heat of passion. It is true that the respondent has inflicted as many as 17 injuries on his wife which has resulted in her death. However,

considering the circumstance that the respondent is now said to be terminally ill (which aspect was not disputed on behalf of the appellant), we are not inclined to interfere with the quantum of the sentence as awarded. On a careful weighing of the aggravating and extenuating circumstances and the present medical condition of the respondent we find that the sentence awarded is adequate, the appeal is without any merit and is accordingly dismissed.

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

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