

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 655 OF 1997**

|                                        |   |                    |
|----------------------------------------|---|--------------------|
| <b>Bapu alias Raju Dynandeo Chavan</b> | } |                    |
| aged-24 years, residing at Kunkeshwar, | } |                    |
| Taluka-Devgad, District-Sindhudurg.    | } | Appellant          |
|                                        | } | (Original Accused) |

V/s.

|                          |   |                                      |
|--------------------------|---|--------------------------------------|
| The State of Maharashtra | } | Respondent<br>(Original Complainant) |
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Mr. Lokesh Zade, court appointed advocate for the appellant  
 alongwith Mr. Manas Gawankar, advocate for the appellant.

Mr. S.R. Agarkar-APP for the State.

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**CORAM : SMT. SADHANA S. JADHAV, J**

**DATED : 15<sup>th</sup> OCTOBER 2019.**

**ORAL JUDGMENT :**

1. The appellant herein is convicted for the offence punishable under Section 304-I of Indian Penal Code and he is sentenced to suffer R.I. for ten years and to pay fine of Rs.2000/- (Rs.Two Thousand), in default, to suffer R.I. for six months in Session Case No. 46 of 1996 passed by Additional Sessions Judge, Sindhudurg-Oros vide Judgment and Order dated 21<sup>st</sup> March 1997. Hence, this Appeal.

2. Such of the facts necessary for the decision of this appeal are as follows:-

3. That, one Subhash Chavan happened to be the relative of the present appellant. They were distant cousins. On 4<sup>th</sup> April 1996 Subhash Chavan had been to the agricultural land popularly known as 'Gangachi Dhar'. He was plucking mango trees in his agricultural land. At that time i.e. at about 10.45 a.m. he was attacked by the present appellant with a sickle. He had sustained as many as 30 incised wounds. Upon hearing his cry PW-11 Dilip Damari rushed to the spot. He saw the present appellant hiding behind the trees and trying to flee from the spot. He went in the said direction, and saw one person giving sickle blow to another person. He had seen the assailant giving 4 to 5 blows. He saw a Tempo coming from east side, he requested the Tempo Driver to stop. Sarpanch of Village Kunkeshwar namely Subhash Ghadi alighted from the tempo with 3 / 4 persons. PW-11 had informed him about the ghastly act of a person and also informed Ghadi that the said person was concealing himself behind the trees.

4. PW-4-Subhash Ghadi went into the agricultural land, called upon the appellant and asked him as to why he was concealing himself. PW-4, PW-11 and others saw that he was wearing blood stained clothes. Blood was smeared on his hands and face and he seemed to be in a frightened condition. He kept feeling sorry for what he had done and had disclosed to PW-4 that when he entered into his agricultural land, Subhash Chavan had intentionally pelted stone at him. Upon being inquired as to why he had pelted a stone. In response he had hurled filthy abuses at him by referring to his mother. He got annoyed and had assaulted him with the sickle. The Sarpanch asked Bapu Chavan to return home and apprised him that he would make a report to the police station. Thereafter, PW-4 Subhash Ghadi and PW-

11 Damari went to the spot where the person was assaulted, they saw the injured person was lying in a pool of blood in a ditch. PW.11 could not bear the sight and therefore rushed home. The injured almost look dead. The people had carried Subhash Chavan to Primary Health Centre at Deogad.

5. The Medical Officer had reported the incident to the police. The statement of the injured was recorded. The injured was then taken to Goa for further medical treatment. However, he had succumbed to the injuries. The cause of the death was due to haemorrhage and shock as a result of multiple injuries to various parts of the body with several damages caused by cutting.

6. On 4<sup>th</sup> April 1996 itself, the appellant was arrested. Investigation was completed. Charge-sheet was filed. The case was registered as Sessions Case No. 46 of 1996. The prosecution has examined as many as 12 witnesses to bring home the guilt of the accused.

7. The case rests upon the evidence of PW.4- Subhash Ghadi before whom the accused-appellant had made an extra judicial confession, PW.6 Dr. Silvano Sapeco, the Doctor who had performed autopsy on the dead body of Subhash Chavan. Dr. Sanjay Marathe who had treated the injured at Deogad Rural Hospital and in whose presence the dying declaration was recorded. PW.10-Gopal Nigudkar, Executive Magistrate who recorded the dying declaration and PW.11- Dilip Damari who is an eye witness to the incident.

8. PW.4-Subhash Ghadi has deposed before the Court about the state of mind of the accused, soon after, he was caught hold by PW.4-Ghadi and his son. That, according to him upon enquiry the accused had voluntarily stated before him that he was going towards his land for watering plant, the injured had pelted stone at the accused. He had inquired with Subhash Chavan about the said act. In response Subhash Chavan hurled filthy abuses by referring to the mother of the accused. That, he had lost self control and therefore, had assaulted him with sickle on his legs, hands and head. He had realised the mistake, he had committed, felt sorry for the same. Sterling testimony of PW.4 has not been shaken by the defence. Infact, according to PW.4 people had gathered on the spot and he had requested the crowd that one of them shall call the police or the police patil and give information. However, the police had not reached the spot even at 11.30 a.m. He had some personal work and therefore, had returned home but he came back to the spot at about 11.30 a.m. after unloading mangoes and then had carried Subhash Chavan to Rural Hospital, Deogad. The family members of Subhash Chavan had accompanied him to the hospital where they reached by 12.15 p.m. The statement was recorded on the same day.

9. PW.10-Gopal Nigudkar has proved the dying declaration which is at Exhibit-38. The dying declaration would indicate that on 04/04/1996 when the deceased was plucking the mangoes the appellant had quietly come with a sickle and assaulted him. He had specifically stated that there is no enmity between both the families and that he does not know why he was assaulted by the appellant. Even according to Dr. Sanjay Marathe the said statement was recorded

in his presence, there is a specific denial to this suggestion that the injured was unconscious before admission and after admission.

10. Upon perusal of Exhibit-38, it appears that the endorsement of the Doctor is to the effect that the patient is conscious and oriented to give his statement.

11. PW-11 Damari has deposed in consonance with his statement under section 161 of Cr.P.C. and has stood the test of cross-examination without being shattered. It is seen from the records that in the statement under section 313 Cr.P.C. there is no serious challenge to the prosecution case, except denial in response to all questions. The learned Sessions Judge has held that there was grave and sudden provocation and therefore, according to the learned Sessions Judge the case falls within the ambit of exception I of 300 of Indian Penal Code. The learned Judge has placed reliance upon Exhibit-30, which happens to be dying declaration and had acquitted the accused of the offence punishable under section 302 of Indian Penal Code.

12. The State being aggrieved by the Judgment and Order of acquittal under section 302 of Indian Penal Code had filed a Criminal Appeal No. 447 of 1997 in this Court challenging the acquittal under Section 302 of Indian Penal Code. However, the Division Bench of this Court vide order dated 7<sup>th</sup> July 2005 had rejected the application seeking leave to appeal. Hence, there is no question of considering the charge under section 302 of Indian Penal Code. The learned Counsel appointed for the appellant has vehemently submitted that the original dying declaration would not inspire confidence. That, he was seriously

injured at the time when the dying declaration was recorded. However, the learned counsel Mr. Gawankar has submitted that it is doubtful as to whether the injured was conscious when he was taken to Deogad Hospital, in view of number of injuries sustained by him and that there was loss of blood. At this stage, it can be seen that in the dying declaration the deceased had not stated about the prelude to the incident, he had not expressed inimical terms with the accused and on the contrary had stated that the relations between both the families were cordial and that he had quietly apprehended him and assaulted him with a sickle.

13. As against this, the evidence in the nature of extra judicial confession disclosed the prelude to the incident, the cause for assault and the regret soon after the incident. Record would clearly indicate that the accused only had intention of teaching a lesson to the deceased. He was deprived of control and he had no intention of eliminating him. That, grievous injuries were sustained by the deceased in the course of his struggle to save himself from the unforeseen attack by the accused.

14. It does not appear to be a case of pre-meditation as was disclosed in the dying declaration. Moreover, the accused was a sane person. He was hardly 20 years at the time of incident and had been angered by the reaction of the deceased who happened to abuse by reference to his mother in a filthy language.

15. Mr. Zade had placed implicit reliance upon the judgment of the Apex Court in the case of *Madanlal V/s. State of Punjab* reported in

1992 Supp (2) S.C.C. 233, in which the facts are similar wherein the Court has held as follows:-

“A careful analysis of the facts and circumstances support our above view that the appellant had been deprived of the power of self-control at the reprehensible conduct of the deceased and gravely and suddenly was provoked. Even the subsequent conduct of the appellant did not reveal that he intended to cause the death of the deceased. The appellant admittedly did not run away from the scene of occurrence but he was very submissive and allowed himself to be secured by the witnesses at the scene itself. The deceased succumbed to the injuries three days after his admission in the hospital”.

16. In the present case also, the deceased had succumbed to the injuries after 2 days. The accused had admitted before P.W.-10 and P.W.4 immediately, that he had committed a mistake. However, the reason for assault was that upon hearing abuses levelled at his mother he was deprived of self-control. It can be said that the accused had knowledge that the injury caused by a sickle in all probabilities may result in the death of Subhash Chavan. However, it is a matter of fact that it had happened on the spur of the moment without any pre-mediation and therefore, the accused deserves to be acquitted of the offence under section 304 Part I and deserves to be convicted under section 304 Part II of the Indian Penal code by holding that the accused had no intention to cause death but had knowledge that in all probabilities, his act may be fatal.

17. One of the reason to consider reduction of sentence of the appellant is that he was 20 to 21 years of age at the time of incident and had not got married till the year 2017 in a hope of disposal of the appeal. However, he has got married in the year 2017.

18. In these circumstance, the appeal deserves to be partly allowed but not without recording appreciation for learned counsel Mr. Zade who espoused the cause of the appellant at a short notice. His professional fees are quantified as per rule, to be paid to him by High Court Legal Aid Services Committee, Mumbai.

### ORDER

- i) The appeal is partly allowed.
- ii) The conviction of the appellant for the offence punishable under Section 304 – I of the Indian Penal Code is hereby suspended and set aside.
- iii) The appellant is convicted for the offence punishable under section 304-II of the Indian Penal Code and is sentenced to suffer R.I. for 4 years. The sentence of fine is maintained.
- iv) The appellant is entitled to the set of from 04/04/1996 to 30/11/1997.
- v) The appellant shall surrender before the Additional Sessions Judge, Sindhudurg-Oros in Session Case No. 46 of 1996 on 15<sup>th</sup> November 2019, in the eventuality he does not surrender, the learned Additional Sessions Judge, Sindhudurg-Oros shall issue non-bailable warrant and get it executed within two weeks and proceed in accordance with law.

(SMT. SADHANA S. JADHAV, J)