

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 735 of 1997

Nilkanth Ramesh Komare

..Appellant

v/s.

The State of Maharashtra

..Respondent

Mr. Z.M. Avhad for the Appellant.

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

**CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 4th April 2019.**

ORAL JUDGMENT :

1. Heard.

2. The appellant herein is convicted for the offence punishable under section 304- Part-II of the Indian Penal Code and sentenced to suffer undergo rigorous imprisonment for six years and to pay fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for six months by II Additional Sessions Judge, Nashik vide judgment and order dated 12th November 1997 in Sessions Case No. 15 of 1997. Hence, this appeal. Some of the facts necessary in the decision of this appeal, are as follows:-

3. The appellant herein happens to be the nephew of one Nandlal Durgadas Komare. Veeru who happens to be son of (Nandlal Komare) and his brother Naresh Komare are doing contract work of fixing tiles. The work was on contract basis. Veeru was assisting

Nandlal Komare in his work. The appellant was also assisting him. In short, the appellant happens to be the first cousin of Veeru.

4. The appellant had worked with Nandlal Komare for some time and he had not received the amount of Rs. 125/- towards his wages. On 5th of January 1996, the appellant had approached the house of Nandlal demanding of Rs. 125/-. There was some verbal altercation. He was paid an amount of Rs. 125/- and he had returned.

5. On 6th of January 1996 at about 12.00 noon Veeru had been to the house of Naresh Komare. Naresh was residing at Gaikwad Mala, Nashik Road. Whereas Ramesh was residing at Vidyanagari Kanchan Apartment in the city of Nashik. The grand mother of the appellant named Laxmibai was residing with Naresh. The appellant had started residing with his uncle Ramesh for almost 1 and ½ months prior to 6th January 1996.

6. On 6th January 1996 Veeru arrived at the house of his uncle Naresh where the appellant was residing and had complained to his Grandmother about the incident dated 5th January 1996. Veeru had halted for some time in the house of his uncle. The appellant had narrated the incident dated 5th January 1996 to his Grandmother Laxmibai and Aunt Sushma. He had complained that Veeru had abused his uncle in filthy language at home. In the meanwhile, Veeru had arrived at home and there was an altercation between Veeru and the present appellant. The said altercation had taken violent turn, that the Grandmother had attempted to intervene. It is the case of the prosecution that in the said altercation

the appellant had stabbed Veeru. He had given knife blow on his chest and over abdomen. After he sustained injuries, Sushma, Laxmibai and the accused-appellant had admitted the injured Veeru in the Hospital. The father of Veeru had learnt about the said incident and thereafter, lodged a report at the police station, on the basis of which, the Crime No. 11 of 1996 was registered at Nashik Road Police Station against the accused -appellant for an offence punishable under section 302 of Indian Penal Code. Upon completion of investigation, the charge-sheet was filed on 22nd February 1996. The case was committed to the Court of Sessions and registered as Sessions Case No. 15 of 1997. The prosecution examined as many as eight witnesses to bring guilt to all the accused.

7. The case rests upon direct evidence of PW-2 Sushma Komare who happens to be the paternal aunt of appellant as well as the deceased. The second eye witness is Laxmibai who happens to be the grandmother of the appellant as well as the deceased.

8. It is pertinent to note that both Sushma and Laxmibai have been declared hostile by the prosecution. It *Prima facie* appears that both the women were equally related to the deceased as well as the accused.

9. In the present case, it would be necessary to equally rely upon the answer given by the appellant to question No. 58 in his statement under section 313 of Cr.P.C. It is contended by the accused-appellant that on the day of incident Veeru had been to the appellant's house at Gaikwad Mala. He wanted to talk to the

appellant, that on that day he had been to the house of the appellant, between 6.00 pm. to 6.30 p.m. At that time, Veeru under the influence of alcohol started hurling filthy and abusive language towards the mother of the appellant. He had gone to the extent of telling the mother of the appellant that the appellant was not the son of his mother, born from his uncle. They had started quarreling over the said issue. In the meanwhile, Veeru had picked a knife to assault the appellant. The grandmother Laxmibai had intervened. In order to save Laxmibai. The appellant had pushed her aside and at that time, Veeru was still brandishing his knife towards the present appellant. There was an altercation between them and they both had fallen down. While they were quarreling, Sushma had arrived at the spot and at that stage, the appellant had thrown the knife which he had snatched from the hands of Veeru. It is clear that Veeru sustained the injuries during the incident of altercation. The conduct of the accused soon after the incident also needs to be taken into consideration that he had admitted the injured to the Hospital. Initially, the injured was taken to Vare Hospital and from there, to the hospital of Dr. Thole. The appellant has specifically stated that in the natural course of business, he had caught knife when Veeru was abusing baseless allegations against his mother that the appellant had not caused injuries with an intention to assault and therefore, he was not armed with any weapon, when he visited the house. It appears to be a case of grave and sudden provocation.

10. The appellant had lost his mental equilibrium upon hearing the allegation levelled against his mother. Moreover, it was

Veeru who had drawn the knife. It is an incident in which it cannot be said that the accused can be held liable for culpable homicide not amounting to murder since the offence was committed in a heat of passion and on grave and sudden provocation. There was sudden quarrel between the accused and the deceased and it is the defence of the accused that he had not acted in a cruel manner nor he had taken any undue advantage of the situation and therefore, it cannot be said that the accused has committed an offence punishable under section 304-Parat II of Indian Penal Code. It cannot be said that the appellant had knowledge that his act would have necessarily resulted into his death since, he was not aggressive. It was Veeru who had picked up the knife and had made an attempt to assault the accused. The incident has occurred when the appellant was deprived of his power of self control due to grave and sudden provocation and hence, the case would fall under the Exception I and Exception IV of Section 300 of Indian Penal Code. Hence, the appeal deserves to be allowed.

ORDER

- i) Appeal is allowed.
- ii) The judgment and order dated 12th November 1997 passed by II Additional Sessions Judge, Nashik, thereby, convicting the appellant for the offence punishable under section 304, Part-II of the Indian Penal Code is quashed and set aside. Bail bonds of the appellant shall stand

cancelled. In the event fine is paid, the same shall be refunded.

iii) The appellant is acquitted of the offence punishable under section 304–Part II of the Indian Penal Code. Order accordingly.

(SMT. SADHANA S. JADHAV, J)