

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

CRIMINAL APPEAL NO. 302 OF 2014

Somnath Virbhadrappa Vijapure,	)	
Age: 32 years, Occ.: Agriculture/ Labour	)	
Residing at Hiroli, Taluka Aland,	)	
District Gulbarga (K)	)	
(At present in Solapur District Prison	)	
Solapur)	)	...Appellant

Versus

The State of Maharashtra	)	
(Notice to be served on A.P.P. High Court,	)	
A.S., Bombay	)	...Respondent

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Ms.Payoshi Roy i/b. Dr. Yug Mohit Chaudhary for the Appellant.
Mr.V.B.Konde-Deshmukh, APP for the Respondent -State.

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**CORAM : PRASANNA.B.VARALE &
V.G. BISHT, JJ.**

RESERVED ON : 15TH SEPTEMBER 2020

PRONOUNCED ON: 13TH OCTOBER, 2020

JUDGMENT (PER: V.G.BISHT, J.)

1. The appellant-original accused has preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short, “the Cr.PC”) challenging the judgment and order of conviction and sentence passed by learned Sessions Judge, Solapur in Sessions Case

No. 169 of 2013 dated 15th March, 2014 by which the trial Court convicted the appellant/ original accused for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, “the IPC”) and sentenced him life imprisonment with a fine of Rs. 10,000/- and in default to deposit the amount of fine, ordered to undergo further rigorous imprisonment for a period of six months. The trial Court was, however, pleased to acquit the appellant-original accused of the offences punishable under Sections 504 and 506 of the IPC.

2. Briefly stated the prosecution case is that, on 30th January, 2013 at about 9.30 a.m., Bhalchandra Somshekhar Jawalkoti i.e., informant (PW-1), while standing in front of hotel of one Girmal Pomaji of village Wagdari, one Raghuveer Nanjude (PW-2) came and informed that on the same day at about 9.15 a.m., he and informant’s father, namely, Somshekhar Jawalkoti (deceased) while proceeding towards the village Hiroli by walk from Wagdari village, a luxury bus came from the Hiroli side and from which Somnath Virbhadrayya Vijapure i.e., accused alighted and came before them. The accused started complaining the deceased in respect of bandh (boundary) to which the deceased asked not to quarrel. The

prosecution alleges that after hearing this, the accused told deceased that he would see him immediately and then gave blow of an axe on his head, back and chest brutally. The deceased fell down. After getting injured seriously and when the informant tried to intervene, the accused rushed on his person and therefore, the informant kept himself aside. Later on, the accused ran into the forest.

3. The prosecution then contends that the informant then along with PW-2 rushed to the spot and with the help of others took his father to Rural Hospital, Akkalkot where the deceased was declared dead.

4. The First Information Report (for short, "FIR") was registered vide Crime No. 21 of 2013 with Akkalkot Police Station, Solapur for the offence punishable under Sections 302, 504 and 506 of the IPC. The investigation was taken up by the investigating officer, who prepared spot panchnama, seizure panchnama of various articles seized from the spot and recorded statements of witnesses.

5. PW-10 Police Naik took the muddemal property from the Regional Forensic Science Laboratory.

6. PW-7 Dr.Ravindra Mallikarjun Bansode conducted autopsy on the body of the deceased and noted number of injuries on his person and opined that the deceased had died due to haemorrhagic shock. The result of analysis issued by Forensic Science Laboratory shows that the human blood of group “O” was found on the clothes of the deceased and accused and an axe was also found to have stained with human blood. On completion of the investigation, police filed the chargesheet against the appellant-original accused under Sections 302, 504 and 506 of the IPC and committed the case to the Court of Sessions, Solapur.

7. To substantiate the charge against the appellant-original accused, the prosecution has examined as many as 10 witnesses and exhibited number of documents. The appellant- original accused was questioned under Section 313 of the Cr.PC about the incriminating evidence and circumstances and the appellant- original accused denied all of them as false.

8. Upon appreciation of oral evidence and circumstances, the trial Court convicted the appellant- original accused for the offence punishable under Section 302 of the IPC and sentenced him in the manner stated here in above. Hence, this appeal.

9. Ms.Roy, learned Counsel for the appellant/original accused, has made a valiant attempt to bring the case within the scope of Exception 4 to Section 300 of the IPC. She emphasized that a sudden quarrel broke out between the deceased and accused and in a fit of anger, the accused assaulted the deceased. Except one injury, rest of the injuries were simple in nature and in view of these circumstances, the learned trial Court wrongly convicted the accused under Section 302 of the IPC. The learned Counsel further submitted that having regard to the facts and circumstances of the present case, the accused ought to have been given the benefit of Exception 4 to Section 300 of the IPC. For all these reasons, the conviction under Section 302 of the IPC is not sustainable, argued learned Counsel. The learned Counsel placed reliance on the judgments in *Surinder Kumar Versus Union Territory, Chandigarh*¹ and *Adu Ram Versus Mukna and others*².

10. Mr.Konde-Deshmukh, learned APP, on the other hand, not only supported the impugned judgment and order of conviction but vehemently submitted that the injury was inflicted on the vital parts of the body by means of an axe. The evidence on record clearly indicates that the accused had clear intention to kill the deceased

¹ (1989) 2 Supreme Court Cases 217

² (2005) 10 Supreme Court Cases 597

and accordingly the accused acted cruelly and caused death of the deceased. The learned trial Court, according to learned APP, has properly appreciated the evidence and circumstances of the case and rightly convicted the appellant-original accused under Section 302 of the IPC. There being no illegality or perversity, the conviction so awarded by learned trial Court should not be disturbed, argued learned APP.

11. At the very outset, we would like to make it clear that the present appeal is argued by the learned Counsel for appellant-original accused purely on the point of sentence. The conviction is not disputed in any manner. What we understand from the submissions advanced before us by learned Counsel for the appellant- original accused is that the incident in question took place on a sudden fight without any premeditation and the act of appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without appellant -original accused having taken undue advantage or acting in a cruel or unusual manner.

12. Section 299 of the IPC explains culpable homicide as causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death,

or with the knowledge that the act complained of is likely to cause death. The first two categories require the intention to cause death or the likelihood of causing death while the third category confines itself to the knowledge that the act complained of is likely to cause death.

13. Section 300 of the IPC declares that except in those cases which are specifically excepted culpable homicide is murder in situations which have been specifically laid down. These are commonly referred to as firstly, secondly, thirdly and fourthly under Section 300 of the IPC. The Hon'ble Apex Court in the judgment in ***State of Andhra Pradesh v. Rayavarapu Punnayya and Another***³ inter alia held as follows :

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the

³ 1976 (4) SCC 382 : (AIR 1977 SC 45)

facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304, of the Penal Code".

14. It is also relevant to note that Exception 4 to Section 300 of the IPC which reads as under :

"Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation .- It is immaterial in such cases which party offers the provocation or commits the first assault".

15. In ***Surinder Kumar*** (*supra*), the Hon'ble Apex Court held that to invoke Exception 4 to Section 300 of the IPC, four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion ; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

16. Further, in *Arumugam v. State*⁴, in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under :
(SCC p. 596, para 9)

“9..... ’18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight ; (c) without the offender’s having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

17. The question before us, in the light of submissions advanced by either side, is whether in facts and circumstances of the case the appellant- original accused has been rightly convicted for the capital

⁴ (2008) 15 SCC 590

offence and if not whether the act attributed to him would constitute a lesser offence like culpable homicide not amounting to murder punishable under Section 304, part I or II of the IPC.

18. As far as this case is concerned, we are clear in our mind that the act committed by appellant- original accused amounts to culpable homicide. We find no merit in the contention advanced before us by learned Counsel for the appellant-original accused that the case of appellant-original accused is purely covered under Exception 4 to Section 300 of the IPC. Let us qualify this with reasons.

19. We have carefully and minutely perused the record. There is no dispute on the count that the relations between the parties were quiet strained on account of boundary dispute. This is sufficiently established by the prosecution by adducing necessary evidence to that effect.

20. PW-1 Bhalchandra Somshekar Jawalkoti, son of deceased, stated in his evidence (Exh. 10) that the agricultural land owned by them is situated at village Hiroli. His uncle Parmeshwar (PW-6) is also having share in that land. Virbhadrayya Vijapure i.e., father of

the accused owns agricultural land abutting to their agricultural land. It is his further evidence that there is a dispute between his family and family of Virbhadrayya on account of boundary of the land and that dispute is going on since last 1 and ½ years.

21. Similarly, PW-6 Parmeshwar Rachappa Jawalkoti stated in his evidence (Exh. 21) that deceased Somshekhar was his elder brother. Bhalchandra (PW-1) and Rajkumar are his sons. Their agricultural land is situated within the precincts of Hiroli. Virbhadrayya Vijapure is their neighbor in agricultural land. Relations between his nephews and his neighbour Vijapure were not cordial. The disputes were on account of bushes on the bandh and on account of boundary marks of the lands. Further, they were repeatedly saying to Vijapure that they should get measured their land through T.I.L.R. and even expressed desire to give their land to Vijapure, if excess land were found in their possession. However, they were extending threats of killing them.

22. We must point it out here that the version of PW-1 and PW-6 have virtually gone unchallenged in the cross examination. Therefore, the existing enmity between the deceased, PW-1 and PW-

6 on the one hand and the accused and his father on the other over the boundary dispute is clearly and firmly established by the prosecution on record. Even it goes a step ahead when PW-6 clearly expressed out in his substantive evidence that the accused and his father even had extended the death threats to them instead of their proposal of getting the lands belonging to them measured through T.I.L.R.

23. The evidence clearly points out the nefarious design being harboured by accused and his family members in their mind over the boundary dispute. One cannot lose sight of the fact that it is essentially in this background the genesis of the incident took place leading to the death of deceased.

24. This brings us to the actual incident in question.

25. PW-2 Raghuveer Girmalappa Nanjude stated in his evidence (Exh. 12) that he knew the deceased. The deceased was his friend. The deceased had arrived at his place on 29th January, 2013 and told him that he (deceased) and this witness were required to go to Hiroli for settlement of dispute. On the next day i.e. on 30th January, 2013, the deceased and he were proceeding towards Hiroli on foot. They had reached up to the house of Babu Mulla. One mini bus

proceeding from Hiroli to Wagdari had arrived at that spot. Accused alighted from the said mini bus and signaled him to stop after noticing him. This witness then noticed that the accused was armed with an axe. Exchange of hot words took place between the deceased and accused over the boundary dispute. The deceased then told accused that he would go to the police station and lodge a complaint. The accused said he would take care and see as to how he goes to the police station. It is his further evidence that thereafter accused assaulted the deceased with the help of axe on his chest. The deceased fell down on the ground. When this witness attempted to intervene and requested the accused not to assault deceased, the accused gestured as if he would be inflicting blow of axe on his person. He got frightened and ran away from the spot. The accused then inflicted about six blows on the person of the deceased with the help of an axe on his arms, head and shoulder. It is his further evidence that after assaulting the deceased, the accused went towards Hiroli and carried his axe with him.

26. The evidence of this witness must be read with all seriousness inasmuch as his evidence provides us a very clear picture as to the role of the parties to the dispute. First of all, it must be noted that

the moment accused alighted from the bus armed with an axe and after noticing PW-2 and deceased, he straightway went to them and then exchange of hot words followed between the accused and deceased over the boundary dispute. It is also very much pertinent to note that when the deceased told accused of his intention of approaching to the police station against the act of accused, the accused retorted and reflected his mind by saying that he would take care and see that how he reaches the police station. It is only then that the accused inflicted a blow of an axe on the chest of deceased making the latter fell down. He did not stop there. It is apparent from the evidence of this witness that when the deceased had fallen down, the accused then started raining axe blows on the person of deceased on his arms, head and shoulder.

27. What is strikingly apparent is that there was no such serious provocation to the accused which would have enabled him to take recourse of violence and use lethal weapon like axe. The evidence or rather cross-examination nowhere even remotely suggests that the provocation from the side of deceased was so grave and menacing that the accused was left with no alternative but to hit and inflict the blows in succession by means of an axe.

28. Records clearly establish that the accused had reached to an extreme end and intentionally killed the deceased. There is also no dispute that the death was instantaneous. The evidence on record gives a very clear and crystal picture that the occurrence had not taken place on account of a sudden and unpremeditated fight. The deceased, notably, who was unarmed after the first axe blow had fallen down and thereafter 5 - 6 blow of the injury was inflicted when he was in a helpless condition. The cruelty was writ large.

29. We are inclined to the view that in the facts and circumstances of the present case, it can be said that the appellant- original accused had an intention of causing death of the deceased when he committed the act in question. The incident was abundantly not fallout of grave and sudden provocation. The cumulative effect of all these circumstances, in our considered opinion, will not entitle the appellant-original accused to the benefit of Exception 4 to Section 300 of the IPC.

30. We also would like to touch and rely the evidence adduced by PW-7 Dr. Ravindra Mallikarjun Bansode(Exh. 24). In all, according to this witness, at the time of autopsy he noted six injuries. The details whereof are given in column No. 17. According to this

witness, the injuries noted by him were sufficient in ordinary course of nature to cause death. Thus, the medical evidence also furthers the case of prosecution.

31. The facts of **Surinder Kumar's** case (*supra*) are quite distinguishable vis-a-vis the present case. In the said case, after PW-2 and his deceased brother entered the room of the appellant and uttered filthy abuses in the presence of the latter's sister, tempers ran high and on PW-2 taking out a pen knife, the appellant picked up the knife from the kitchen, ran towards PW-2 and inflicted a simple injury on his neck. When the deceased intervened on the side of his brother PW-2, in the course of scuffle he received injuries, one of which proved fatal. In view thereof, the appellant was given the benefit of Exception 4 to Section 300 of the IPC. In the case in hand, there is no such obtaining situation and therefore, the judgment does not further the case of defence.

32. In the case of **Adu Ram** (*supra*), the High Court noted that fracture injuries were all seen on the hand and other non-vital parts of the body and there was no grievous injury on the head. All the injuries on the head were simple in nature and accordingly, the conviction was altered to Section 304 Part I IPC from Section 302 of the IPC and further taking note

of the fact that sometime has been spent during trial, custodial sentence was reduced to the period undergone. However, the fine from Rs.2,000/- was enhanced to Rs.10,000/-. In the appeal, the Hon'ble Apex Court taking note of the background facts and special features of the case opined that custodial sentence of six years would serve the ends of justice. It further observed that on the facts of the case, the case was covered under Section 304 Part II of the IPC but found no appeal on behalf of the accused persons apparently because of reduction of sentence.

33. Thus, the obtaining facts in the decision are quite distinguishable vis-a-vis the case in hand.

34. The act of the appellant- original accused in the facts of this case clearly show that he inflicted various injuries on the person of deceased leading to his death. None of the Exceptions in Section 300 are attracted. The act amounts to murder within the meaning of Section 300 of the IPC. The upshot of the above discussion is, we see no reason to interfere with the impugned judgment. The appeal, therefore, stands dismissed.

(V. G. BISHT,J.)

(PRASANNA.B.VARALE, J.)

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