

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1062 OF 2015**

Rakesh Dattatray Rindhe,
Age : 35 years, Occ.: Business
Residing at Tukainagar, Vadgaon BK,
Pune
(At present in Yerawada Central Prison,
Pune).

... Appellant
(Orig. Accused)

Vs.

The State of Maharashtra

... Respondent

Mr. Shriram S. Kulkarni, for the Appellant.

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

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

JUDGMENT RESERVED ON : 15.12.2020.

JUDGMENT PRONOUNCED ON : 22.12.2020.

JUDGMENT : PER SADHANA S. JADHAV, J.

1. The appellant herein is convicted for the offence punishable under section 302 of Indian Penal Code and sentenced to suffer R.I. for life and to pay fine of Rs.5,000/- in default to suffer RI for one month by the District Judge – 12 and Additional Sessions Judge, Pune in Sessions Case No.120 of 2014 vide judgment and order dated 6th October 2015. Hence, this appeal.

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

(i) That, on 28th October 2013, the appellant herein along with Malikarjun (PW2) had been to Vadgaon Budruk, Sinhagad Road. They visited the beer shoppe. They consumed one beer each till 11.30 pm. The appellant also took parcel of one beer. They both went to Tukainagar and they consumed beer on a hillock. While they were seated on the hillock Parmeshwar @ Prathamesh (hereinafter referred to as “the deceased”), a friend of PW2 and neighbour of accused approached them and asked PW2 as to whether he had tobacco, he got an answer in the negative but he continued to have a dialogue with the appellant and PW2. The appellant had asked him to leave the spot immediately. The deceased not only declined to leave the spot but had raised a quarrel with the appellant and PW2 over a trivial issue. A verbal altercation had ensued between the deceased and the appellant. In the said altercation, the deceased had humiliated the appellant by referring to his weakness and “taking no action in his own cause when there was a theft in his house and therefore, he should not give such threats to him”. The appellant was annoyed to an extent that he strangled the deceased with his leather belt, pushed him in a pit

nearby and then threw a stone on him. The appellant thereafter, upon realising that he had caused grievous hurt to the deceased dragged PW2 to Dattawadi Police Station and narrated the whole episode to the officer-in-charge of the Police Station.

(ii) At about 6.30 am, Crime No.280 of 2013 was registered at Dattawadi Police Station at the instance of the brother of the deceased i.e. Aadinath Dhavare for offence punishable under section 302 of Indian Penal Code.

(iii) The prosecution examined as many as 10 witnesses to bring home the guilt of the accused.

3. PW1 – Aadinath happens to be the brother of the deceased. He has deposed before the Court that on 28th October 2013, after dinner his brother left the house. In the early hours of 29.10.2013, i.e. at about 3.30 am, the Police of Vadgaon Police Station visited his house and inquired about Prathamesh who was not present in the house. All the family members searched for Prathamesh. Thereafter, they were taken to a rocky place by the Police. His brother was lying in a pit in an injured condition. A stone and his footwear were lying near him. The Police had then taken him to the Police Station where he saw the

appellant and Malikarjun. He has proved the contents of the FIR which is marked as **Exh.17**. It is elicited in the cross-examination that the Police had taken the body of the deceased in an ambulance from the scene of offence. It is admitted that the house of the accused is adjacent to the house of the deceased.

4. The prosecution mainly rests on the evidence of PW2 – Mallikarjun who happens to be an eye-witness to the incident and the person who was taken to the Police Station by the appellant. The statement of PW2 was recorded under section 164 of Cr.P.C. on 25.11.2013 which is at **Exh.20**. In his testimony before the Court, PW2 has narrated the prelude to the incident. According to him, after consuming the first beer near the shoppe, the appellant had purchased one more parcel and consumed the same in the rocky area in Tukainagar. They had then returned to the mandal. Prathamesh who happened to be the friend of PW2 came to the spot and asked PW2 for tobacco. PW2 did not have tobacco but the deceased continued to chat with PW2. The appellant was not interested in chatting with Prathamesh and asked him to leave, whereupon Prathamesh had retorted by saying that the appellant is not the owner of the place and

therefore, has no right to ask him to leave. An altercation ensued between the appellant and Prathamesh. The deceased taunted that, when the appellant had failed to take any action against the theft in his own house, it would be futile to threaten him of dire consequences. At this juncture, the appellant was deprived of his self-control and strangled Prathamesh with the leather belt. He thereafter, pushed him in a pit and threw a stone upon him. He then realised the consequence of his act and held the hand of PW2 and took him to Police Chowki to report the matter. On the way, he had thrown the belt in a bush. At the Police Station, it was the accused- appellant who narrated the entire incident to the Police Officer Mr. Lokhande i.e. PW8. The statement of PW2 was also recorded on the same day.

5. PW2 has identified the belt with which Prathamesh was assaulted. The Police had verified the narration given by the appellant from PW2 but had not recorded the same. PW2 had then led the Police to the scene of offence. A specific question was put to PW2 as to whether he had reported about the quarrel to the family members of the deceased. The answer was,

“Ans. the quarrel ensued all of a sudden and as such I was there to intervene the quarrel.”

The next question was “did you inform the family members of Prathamesh after accused put stone on his head? The answer was,

“NO, because the accused held my hand and took me to Police Chowky.”

6. PW2 has further clarified that he had attempted to rescue himself from the accused but his hand was held firmly and he was taken to the Police Chowki. Although the quarrel was witnessed by several people from the locality nobody had even attempted to intervene. It is also clarified that the Police had called for the ambulance and the deceased was taken to Sasoon Hospital.

7. The learned counsel for the appellant has drawn attention of the Court to the statement of PW2 recorded under sections 161 and 164 of Cr.P.C. He has denied the suggestion that the accused has not narrated the incident to the Police.

8. PW3 – Dr. Ajay Taware had conducted autopsy on the dead body of Prathamesh on 29th October 2013 and has deposed that at the time of autopsy, he has noticed the following injuries on the person of the deceased:-

(i) Lacerated wound present over left frontal eminence 4x1 cm

- x bone deep, irregular, reddish.
- (ii) Lacerated wound present occiput on right side 6 cm behind right ear, 3x1 cm x bone deep, irregular, reddish,
 - (iii) Contused abrasion over right frontal eminence, 2 x 1 cm, irregular, reddish,
 - (iv) Contused abrasion over right eyebrow laterally, 2 x 1 cm, irregular, reddish,
 - (v) Contused abrasion over the right zygomaticotemporal region 2x1.5 cm, irregular, reddish,
 - (vi) Lacerated wound over middle third of right eyebrow 1x0.5 cm, muscle deep, irregular, reddish,
 - (vii) Abrasion present over upper 1/3rd of dorsum of nose 1x1 cm, irregular, reddish,
 - (viii) Abrasion over right ala of nose 1x1 cm, irregular, reddish,
 - (ix) Abrasion over left shoulder superolaterally 2x1 cm, irregular, reddish,
 - (x) Multiple abrasions over back on right scapular region of sizes varying from 4x1 cm to 1x1 cm, irregular, reddish.
 - (xi) Contused abrasion over neck on right side laterally, horizontal, present 4 cm below right angle of mandible of size 4 x1 cm reddish,
 - (xii) Ligature mark present over neck situated 7 cm below chin, directed horizontally towards right side 7 cm below right angle of mandible of length 8 cm, width 0.5 cm, reddish, parchmentised.”

The injuries on the body of the deceased would show that

there was a scuffle between the accused and the deceased before the deceased was strangled. The accused was unarmed and in a heat of passion had removed the belt and strangled the deceased.

9. The post-mortem notes are at Exh.24. The final opinion as to the cause of death is “asphyxia due to strangulation”. PW3 has specifically stated that the injuries in column no.17 are possible by hard and blunt object and that the leather belt which is marked at Article ‘B’ is not hard and blunt object.

10. PW4 – Shankar is a panch for the scene of offence which is at **Exh.29**. According to him, there was only one stain of blood in the pit and in the lane. PW5 – Raghavendra is a panch for seizure of leather belt at the instance of the accused which was recovered from the bush. The said panchanama is at **Exh.31**. PW6 is the panch for seizure of the clothes of the accused. The said panchanama is at **Exh.37**. It appears from the evidence of PW7 – Subhash Salve that the parents and relatives of the deceased were present at the time of inquest panchanama and that they had noticed marks of strangulation on the neck of the deceased.

11. PW8, 9 and 10 are the Police officers who had investigated the crime. PW8 – Dattatray Lokhande was attached to Dattawadi Police Station. PW8 was the first person to whom the accused along with PW2 had met in the intervening night of 28th and 29th October 2013. According to him, at about 2.30 am of 29th October 2013, the accused and PW2 had been to the Police Station and there PW2 had informed the Police that Parmeshwar was throttled by the accused. That, he was then pushed in the ditch by the accused. That, the accused had strangulated the deceased and then further assaulted with a stone. That, the spot of incident is situated on a hillock which is surrounded by a hutment area. It is elicited in the cross-examination that the parents and relatives of the deceased were present in the hospital until the post-mortem was concluded. He admits that he had not personally informed the parents of the deceased about the untimely death of their son Prathamesh. He admits that he had not prepared any document on the spot.

12. PW9- Balasaheb Makar attached to Dattawadi Police Station has stated that PW2 had narrated the incident to the Police.

13. The learned counsel for the appellant submits that the

accused had no motive nor intention to assault the deceased in such a manner as to cause his murder. He has placed emphasis on the evidence of PW2 who has candidly admitted before the Court that there was a sudden quarrel. The act of the appellant was not premeditated and that, it was the deceased who had given a grave and sudden provocation to him and thereby invited the wrath of the appellant. That, there was no time for the passions to cool down. The accused was not armed with any weapon and the assault was with the leather belt which was a part of his attire. That, the accused had immediately realised the consequences of his act and, therefore, had dragged PW2 to the Police Station and had himself set the law in motion. The issue for quarreling may be trivial but it had ignited the passions of the appellant. That, he had no intention to cause such an injury which would cause the death of the deceased and that the Court cannot be oblivious of the fact that the incident had occurred on the spur of the moment, in an altercation and therefore, according to the learned counsel for the appellant, the case of the appellant would fall under section 304 Part II of the Indian Penal Code.

14. As against this, the learned APP submits that the act of the appellant had resulted into the death of a young boy. That the

evidence of the eye-witness is sufficient to uphold the conviction of the appellant for an offence punishable under section 302 of Indian Penal Code. The learned APP also submits that the accused cannot claim the benefit of being under the influence of alcohol and that the reason for assault was so trivial that it cannot be said that the accused was provoked by the deceased.

15. It is clear from the admitted facts of the case that there was no enmity between the accused and the deceased neither the accused had any motive to eliminate the deceased. A reference to his failure in taking any concrete steps in respect of the theft of gold in his own house must have signalled a strong stimulus or provocation to the accused. There cannot be any hard and fast rule to determine as to whether a particular act or a gesture or words would be sufficient to provoke a person. It depends on the psyche of a person which indicates a mental or psychological structure of a person especially as a motivation to act in an aggressive manner and therefore, the argument of the learned APP, that there was no provocation as such from the deceased cannot be taken into consideration.

16. The admitted facts of the case would indicate that:-

- (i) The accused was under the influence of alcohol at the time of the incident;
- (ii) the arrival of the deceased on the spot was not anticipated by the accused;
- (iii) the accused was not interested in chitchatting with the deceased and therefore, had asked him to leave the spot, to which the deceased sternly replied that the said spot is a public place and did not belong to the accused. A verbal altercation had ensued between the accused and the deceased and that in the said altercation, the deceased had referred to an incident pointing towards the failure of the accused to take appropriate action in respect of the theft of gold from his house. The said reference had irked/provoked the accused and he had drawn the leather belt from his apparel and strangled the deceased.
- (iv) The accused was deprived of his self-control temporarily and soon after the accused realised that he has committed an unlawful act, he had, in fact, dragged PW2 to the Police Station and reported the incident immediately and had almost surrendered to the custody of the Police.

- (v) It was the accused who had set the law into motion although the Police has recorded the FIR at the behest of PW1 subsequently.
- (vi) That the recovery of the belt at the instance of the accused cannot be taken into consideration under section 27 of the Indian Evidence Act as the place where the belt was thrown was known to PW2 and it cannot be said that it was in the exclusive knowledge of the accused.

17. The question that falls for determination in the above mentioned facts, is as to whether the accused can be held liable for an offence punishable under section 302 of IPC or whether the case of the appellant would be covered by any of the Exceptions to section 300 of the IPC. Exception 4 of Section 300 reads as follows :-

“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.”

18. A plea of grave and sudden provocation for claiming acquittal or for alteration for a lesser offence can be considered only upon the evaluation of the facts and circumstances of the case i.e. the circumstances in which the offence has been committed coupled with

the fact whether the incident had taken place on the spur on the moment, the intention/knowledge of the accused while inflicting blow or injury and whether the injury was caused without premeditation in a sudden fight. In the present case, it is more than clear that the accused had no intention to cause the death of the deceased but he had the knowledge that the act of strangulation would result in death.

19. The act of pushing the deceased in a pit and throwing a stone over him cannot necessarily be termed as a cruel act and neither it can be said that the accused had taken undue advantage of the situation for the simple reason that the act of strangulation with the belt and pushing the deceased in the pit is a part and parcel of the same transaction as there was no time for cooling the passions. Section 304 of Indian Penal Code reads as follows :-

“S.304 - Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[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.”

20. The act of the accused of reporting to the Police soon after the incident can be considered under section 8 of the Indian Evidence Act to arrive at a conclusion that the accused repented for his own act and, therefore, has set the law into motion.

21. In view of the above discussion, the conviction of the appellant for the offence punishable under section 302 of IPC deserves to be quashed and set aside and instead the appellant deserves to be held liable for an offence punishable under Section 304 Part II of the Indian Penal Code and sentenced accordingly. Hence, we pass the following order:-

ORDER

- (i) Appeal is partly allowed;
- (ii) The conviction of the appellant for the offence punishable under section 302 of IPC is hereby quashed and set aside;
- (iii) The accused – appellant is convicted for an offence punishable under section 304 part II of the IPC and sentenced to RI for 8 years;
- (iv) The sentence of fine is maintained;
- (v) The appeal is disposed of accordingly.

22. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

Digitally
signed by
Pallavi M.
Wargaonkar
Date:
2020.12.22
16:31:21
+0530

(N.J. JAMADAR, J.)

(SMT. SADHANA S. JADHAV, J)