

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 304 OF 2020

Amit s/o Shyamsunder Naidu,
Aged about 35 yeears, Occ. Private,
R/o Guard Line, Qtr No. J/28/F,
Nagpur

.... **APPELLANT**

// VERSUS //

The State of Maharashtra, through
Police Station Officer, Police Station,
Tahsil, Nagpur.

.... **RESPONDENT**

Ms. Sheetal S. Deshpande, Advocate for appellant.
Ms. H.N. Jaipurkar, A.P.P. for respondent-State.

CORAM : VINAY JOSHI, J.
DATED : 18/12/2020.

JUDGMENT :

Heard finally by consent of both the learned Counsel
appearing for the parties.

2. The challenge in this ap peal is to the judgment and order
of conviction passed by the Additional Sessions Judge, Nagpur in
Sessions Trial No. 267 of 2018 whereby the appellant (accused) was

convicted for the offence punishable under Section 304 (Part II) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- with stipulation of default.

3. Initially the accused was charged for committing homicidal death amounting to murder punishable under Section 302 of the Indian Penal Code. The Trial Court acquitted the accused of the charge under Section 302 of the Indian Penal Code, however convicted for the offence punishable under Section 304(Part II) of the Indian Penal Code and punished as aforesaid mentioned. The State has not challenged the order of acquittal under Section 302 of the Indian Penal Code.

4. The prosecution case can be stated briefly that, informant Mangala Naidu was the wife of deceased namely Shyamsundar. The accused Amit Naidu is the son of informant Mangala Naidu. It is the prosecution case that, the accused Amit has committed murder of his father. The informant Mangala stated in her report that on the date of incident i.e. on 10.04.2018, around 11.30 pm, her husband Shyamsundar (deceased) and son Amit (accused) both returned to the house under influence of alcohol. Deceased Shyamsundar under intoxication has slapped to accused Amit. In response accused beat Shyamsundar by means of a steel pot. Particularly he dealt blows by

steel pot at the head of deceased Shyamsundar. Informant tried to intervene and also telephonically informed the things to her relatives. Within short time Shyamsundar was shifted to the hospital in injured condition. She has immediately went to the Police Station and lodged report (Exhibit 17). Initially Police registered crime vide C.R. No. 176 of 2018 for the offence punishable under Section 307 of the Indian Penal Code. During treatment Shyamsundar died, hence, the crime was converted into the offence punishable under Section 302 of the Indian Penal Code. Investigating Officer on completion of formalities of investigation, filed final report in the Court of concerned Magistrate.

5. On committal, the accused denied the guilt, hence prosecution has examined total eight witnesses to establish the guilt. The accused took defence of insanity and to substantiate his defence, examined witness Dr. Mamarde. On appreciation of evidence trial Court by denying the defence of insanity held that, the act of accused falls under exception 4 to Section 300 of the Indian Penal Code. It is held that the accused had no intention to kill his father, however, he had adequate knowledge that his act is likely to cause death. With such finding trial Court convicted accused for the offence punishable under Section 304 (Part II) of the Indian Penal Code and imposed aforesaid mentioned sentence.

6. The defence has not challenged that deceased met with homicidal death. The prosecution has produced inquest panchnama (Exhibit 20) and Post Mortem report (Exhibit 30). It reveals that the deceased sustained bleeding injuries at his head which caused underscalp hematoma over right parieto-temporal and left-fronto parietal region. The prosecution has examined P.W.6 Dr. Wankhede who has conducted autopsy. He has noted that there were total 17 surface wounds. Particularly he found internal injuries under the scalp and skull. He has opined the cause of death as head injury and the internal injuries were individually sufficient to cause death. In view of said evidence undoubtedly it is a case of homicidal death. Moreover, defence neither denied the factum of homicidal death nor suggested any other possibility for death. Therefore, without hiccups it can be safely held that Shyamsundar met with homicidal death.

7. It is a prosecution case that accused dealt several blows by steel utensils at the head of deceased which were proved to be fatal. Accused has denied the occurrence, but in the alternative raised defence of insanity. P.W.1 Mangala has stated that on 10.04.2018 in the late evening her husband (deceased) and son (accused) returned to the house. There was hot exchange of words in between them. Accused got annoyed and assaulted his father by means of stainless steel pot at

head, back and neck. Due to said assault her husband fell down in the pool of blood. The entire line of cross-examination was to establish the defence of insanity. In other words, the evidence about occurrence has not been challenged.

8. The prosecution has examined PW.5 Anshuman who was the son of deceased. The Sessions Judge on verifying the understanding capacity of child witness has recorded his evidence. It has come in his evidence that on the date of occurrence deceased and accused returned to the house under influence of alcohol. Deceased lost balance to which accused gave support, however, deceased slapped to the accused. Immediately accused got annoyed and assaulted by fist blows kicks and then dealt blows by steel pot on the head and face of deceased. The evidence of child witness has not been shattered during cross-examination nor the occurrence has been denied.

9. Pertinent to note that, mother as well as son of accused deposed about the assault made by him on his own father. There was no reason for these two close relatives to depose falsely which may turn to their detriment. Evidence of these two eye-witnesses is constant, cogent and trust-worthy. They had no reason to falsely implicate their kin in serious charge of murder that too by excluding

real culprit. Therefore, evidence of these witnesses sufficiently proves that the accused has assaulted deceased by means of steel pot resulting into his death.

10. Coming to the defence of insanity, it is argued that the accused was suffering from mental disorder, therefore, his act falls under the general exceptions carved out under Chapter IV of the Indian Penal Code, which excludes the liability. In this regard, certain admissions were pointed to suggest that since beginning accused was suffering from mental disorder. The defence Counsel took me through the evidence of P.W.2 Anuradha (wife of accused). She admits that in the year 2017, accused was suffering from insomnia for which he was taken to the Government Mental Hospital for treatment. She admits that the accused was also taken to Dr. Suleman Virani for treatment in the year 2016.

11. The defence has examined witness Dr. Mamarde who has examined accused in past. It is his evidence that he was attached to Regional Mental Hospital, Nagpur. He has examined accused once and recommended for medical treatment. It has come in his evidence that as per medical papers accused was examined by Dr. Sachin Uikey on 11.03.2016 and then lastly examined on 17.05.2017. He deposed that

the accused was having history of decreased sleep, abusive and violent behavior and accused was addicted to alcohol as well as Ganja (narcotic Drugs). Doctor has diagnosed that it was a case of “Alcohol induced psychosis” and for that medical treatment was provided. On the basis of said evidence, it is strenuously argued that accused by reason of unsoundness of mind was incapable of knowing the nature of act and therefore, his case falls under Section 84 of the Indian Penal Code.

12. Learned A.P.P. strongly opposed the submission by stating that casual treatment in the hospital is not sufficient to establish the defence of insanity. According to her, onus squarely lies on the accused to establish the defence of insanity in which the accused utterly failed. She has also pointed out the cross-examination of P.W.1 Mangala who denied that accused is mentally retarded and was suffering from mental illness. During cross-examination defence witness Dr. Mamarde stated that “alcohol induced psychosis” can happen due to excessive consumption of alcohol. He stated that possibility of accused being normal person cannot be ruled out.

13. Section 84 of the Indian Penal Code, falls under one of the general exceptions carved out by the Code in order to absolve the

accused of the liability. Though, initial burden of proving of commission of the offence by the accused is on the prosecution, the burden to bring the case under one of the exception is on the accused. No doubt, the said burden can be discharged on the preponderance of probability. The Section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was unable to know consequences of his act due to reason of unsoundness. The keyword of the Section is “at the time of doing act” meaning thereby the past history or subsequent instances are not sufficient to exclude the liability. The crucial point of time is the time when the offence takes place. No doubt while drawing conclusion, all the relevant circumstances are to be taken into consideration.

14. Though as per defence the accused was initially treated by Dr. Suleman Virani however, he has not been examined. It reveals from defence witness that accused was examined in the hospital on 11.03.2016 and then on 17.05.2017. It is to be remembered that alleged incident took place on 10.04.2018 i.e. near-about after one year from last examination. The ailment which has been spelt out is alcohol related periodical phenomenon. There is no material to infer that the accused was continuously under mental trauma or had lost the soundness of mind. Mere abnormality of mind or partial delusion or

extreme behaviour affords no protection under Section 84 of the Code. Particularly, there is no material that at the time of occurrence accused was suffering from unsoundness.

15. The prosecution has tendered a list of eight offences registered against the accused. Bare perusal of list discloses that from the year 2014, he had committed bodily offences, theft and possessed illegal arms. It has come in the evidence that just ten days prior to the occurrence accused came out of jail in another offence. The said history indicates that accused was totally sane and was repeatedly indulging into criminal activities. for this reason also it cannot be said that he was suffering from unsoundness of mind.

16. Certainly, the state of his mind before or after the commission of offence is relevant. In that regard on revisiting the evidence it seems that the behavior of accused was quite normal. It has come in the evidence of P.W.1 Mangala that the accused was not doing any work for livelihood and was addicted to liquor. He used to demand money for consuming liquor. Due to the drinking habit, his wife P.W.2 Anuradha left her matrimonial house. It is relevant to note that P.W.2 Anuradha (wife of accused) deposed that on the date of occurrence accused came to her maternal house and raised a quarrel. The said

instance denotes that the accused was in his full senses as he visited his wife's house and quarreled as usual.

17. Pertinent to note that PW.3 Shaikh Asfaq Sheikh Rahim a neighboring person deposed that soon after the occurrence he rushed to the spot. It is his evidence that he saw the deceased lying in the pool of blood whilst accused was coming out of the house. Particularly, he stated that accused threatened him for not to give evidence about the incident in Court. The said very act of the accused itself postulates that he was fully aware about the nature of act and its consequences meaning thereby he was totally sane. Having regard to these facts, it is evident that the defence fails short to establish that at the time of commission of offence by reason of unsoundness accused was incapable to know the nature of act. Mere prior instance of taking treatment would not save him from the consequences of act which was done with full knowledge. Extending benefit of general exception in undeserving cases would also lead failure of justice. It reveals that the Trial Court has rightly rejected the defence theory of insanity and therefore, conviction for the offence punishable under Section 304 (Part II) of the Indian Penal Code deserved to be maintained.

18. So far as, the quantum of punishment is concerned, needless to say that the sentence should be in-proportion to the atrocities committed by the accused. Section 304 (Part II) provides a punishment of imprisonment which may extent to 10 years, or with fine, or with both. The Trial Court has not seriously dwelled upon the issue of proportionality of sentence while awarding maximum punishment prescribed for the offence. It has come on record that the wife of accused was living separately however his mother and minor children are living with him. The act of accused was totally unintentional one. Having regard to these factors, term of 7 years rigorous imprisonment would meet the ends of justice. In view of that, the appeal deserves to be partly allowed.

19. Conviction of accused namely Amit s/o Shyamsunder Naidu for the offence punishable under Section 304 (Part II) of the Indian Penal Code is hereby maintained. The impugned judgment passed in Sessions Case No. 267 of 2018 is modified only to the extent of sentence.

20. Instead of sentence imposed by the Trial Court, the accused is sentenced to suffer rigorous imprisonment for seven years and to pay find of Rs.2000/-, in default of payment of fine, he shall undergo

simple imprisonment for six months.

21. The Accused is entitled for set off in terms of Section 428 of the Code of Criminal Procedure. The Criminal Appeal stands disposed of accordingly.

JUDGE

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