

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 5 OF 2021

Mr. Ravi Shirodkar
s/o. Chandrakant Shirodkar,
52 years,
Indian National
r/o. House No.149, Savo Wado,
Oxel, Sivolim – Goa.
(presently lodged in Mordern Jail, Appellant
Colvale)

V/s.

- 1 Police Inspector Anjuna Police Station,
Anjuna – Goa.
- 2 State
Through Public Prosecutor,
High Court of Bombay at Goa, Respondents.
Panaji- Goa.

Mr. Anoop Gaoker, Advocate under Legal Aid Scheme for the
Appellant.

Mr. S.G. Bhobe, Public Prosecutor for the respondents.

**Coram :- M.S. SONAK &
SMT. M. S. JAWALKAR, JJ.**

Reserved on : 19th June,2021.

Pronounced on: 24th June,2021.

JUDGMENT : (Per SMT. M. S. JAWALKAR,J.)

The present appeal is filed through legal aid being aggrieved by the Judgment and Order dated 31/06/2013 passed by the learned Additional Sessions Judge, Mapusa,Goa in Sessions Case No. 34/2013 convicting the appellant under section 302 of IPC and sentencing the appellant to undergo imprisonment for life and to pay fine of ₹5000/-; and in default to undergo imprisonment of six months. There was delay in filing appeal which came to be condoned and the appeal was taken up for final hearing,

2. The accused was chargesheeted by Anjuna Police Station before learned JMFC Mapusa and case was then committed before the Sessions Court as the said offense under Section 302 of IPC is alleged to have been committed. Charge came to be framed against accused on 25/09/2014 under Section 302 of IPC. The accused was charged that on 24/02/2014 between 14.00 hrs to 17.30hrs at House No. 149, Savo Wado, Oxel Siolim, did committed murder of his mother Mrs. Nali Shirodkar. The accused kept silent and therefore Sessions Court considered it as refusal of charge and proceeded further.

3. Prosecution in all examined 12 witnesses including

Investigating Officer in support of his case. Statement of accused under Section 313 came to be recorded and learned Sessions Court passed the impugned judgment.

4. Grounds raised in the present appeal namely is that the Additional Sessions Judge ought to have held that the prosecution have failed to prove preparation or premeditation on the part of the accused/appellant to commit offence under Section 302 IPC. It is not spelt out from evidence on record. The learned Sessions Judge ought to have held that the prosecution have failed to prove or to connect the chain of events, the guilt of the accused and thereby ignored the settled principles of law.

5. The learned Sessions Judge erred in considering irrelevant daily quarrels between the appellant and the deceased as motive and wrongly appreciated the evidence of Pw2, Pw7, Pw9 and Pw11. The learned Sessions Judge has failed to appreciate that the ingredients of Section 302 IPC are not existing as the evidence on record are contrary. The requisite to convict under Section 302 IPC i.e. intention or knowledge in terms of the same Section have not been established nor proved by the prosecution.

6. We have heard learned Advocate Mr. Anoop Gaokar for

appellant appointed under Legal Aid Scheme and learned Public Prosecution Mr. S.G. Bhobe for respondent State. Perused evidence on record and judgment passed by the learned Additional Sessions Judge Mapusa. Now rival contentions fall for our determination.

7. It appears that the learned Sessions Judge considered evidence of Pw2- Arun Shirodkar brother of accused /complainant in the present case so also Pw7- wife of Pw2 and sister in law of the accused. He also considered the evidence of Pw8, Pw9 and Pw11 who are neighbours of the accused to conclude motive. None of these witnesses are the eye witness Pw2 was not present at the time of incident. All these witnesses considered by the Sessions Judge on the point of motive deposed that the accused is unmarried, he was unemployed, jobless and was having habit of drinking alcohol. He used to demand money from his mother and if she refused he used to fight with her and used to assault and abuse her. The complainant himself deposed that otherwise the accused was good with his mother but when she used to refused to give money to him for alcohol, he used to fight with her.

8. From the other evidence on record the prosecution clearly establish that the accused is the only person who assaulted

his mother in that regard evidence of Pw7 is important as at the relevant time her husband and her son were not present in the house and after she returned to home she started doing her household work. She deposed that

“There was loudspeaker noise coming from the temple, however, I heard the accused abusing his mother and demanding money from her for his alcohol. I heard the mother of accused saying the accused not to abuse her. Thereafter there was no voice of the mother coming from that side. I saw the accused desperately moving in and out and was saying “Baik marle, Baik marle”. The accused and we used to address the mother of the accused as Bai. Thereafter I went inside the portion occupied by the accused and in the kitchen I saw my mother in law on the floor lying in a pool of blood and she was partly nude and she was unconscious. Blood was coming from her head and her face was full of blood.”

9. Suggestions were there on the part of the accused to the prosecution witnesses that somebody might have entered from the rear side door of the kitchen and assaulted the deceased. However, this hypothesis is without any basis and substance. It have consistently came on record that there was lock to the rear side door from inside. In such circumstances the accused is the only person who is inside the house. the quarrels between the accused and the

deceased is the routine feature and it is consistently come in the deposition of above referred five witnesses. Therefore there is hardly any doubt that the accused only have assaulted the deceased. The evidence of Pw7 also establishes that before the incident there was quarrel going on and the accused himself came out saying that “baik marle” (they used to call “bai” to their mother) Moreover, there were abrasions to the accused also which shows that there was some scuffle between the deceased and the accused. There is a ring of truth in the evidence of Pw7 and there is nothing to disbelieve her statement. As such application of Section 106 of Evidence Act by the learned Session Court is perfectly justified. From the evidence on record we think that it is unnecessary to go into the question of homicible death of the deceased. There is sufficient material on record to connect the accused with the said assault, so also overwhelming evidence on record to conclude death was homicidal one.

10. Now question is whether the act of the accused by which the death is caused is culpable homicide amounting to murder or falls within the exceptions excepted under Section 300 of IPC. Admittedly, the accused is unmarried, jobless and was in habit of consuming liquor. It was routine that he used to demand money

for consuming liquor from his mother and on refusal he used to fight, quarrel and abuse to his mother. On the day of incident also though accused kept silent what exactly happened inside the house it can be gathered from the evidence of Pw7 as well as conduct of the accused. There is sufficient evidence on the record including CFSL report that the accused assaulted his mother. At the same time it has also come on the record that there was quarrel going on between the deceased and the accused. The prosecution nowhere established that there was any premeditation.

11. Section 300 with Exception Four reads as under :

“300. Murder.— Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly.— If the person committing the act knows that it is so imminently dangerous that it must, in all

probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

.....

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.”

If there was any premeditation or intention to kill the accused would not have remained on the spot after the said incident. The conduct that neither he fled from the spot nor tried to disappear any evidence clearly goes to show that the sudden fight was there and in hit of passion the act was committed. Reference of citation “**State of AP v/s. R. Punneya**” (AIR 1977 SC 45) would not be out of place wherein Hon'ble Apex Court held that

“when the court is confronted with the question whether the offence is “murder” or “culpable homicide not amounting to murder”, the problem is to be approached in three stages the questions to be considered at first stage is whether the accused had done an act by doing which he has caused the death of another person. Proof of said causal connection between the act of the accused and the death leads to

the second stage of consideration whether that act of the accused amounts to culpable homicide as defined in Section 299. if the answer of this question is prima facie found in the affirmative the stage is reached for considering the operation of Section 300 IP Code. This is the stage at which the court should determine whether the acts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contend 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 the question is found to be positive, but comes within any of the Exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder under the first part of Section 304. But sometimes the facts are so inter-twined and the second and third stages are so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and the third stages.”

12. Section 304 of IPC reads as under :

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

Part II of the Section 304 provides less punishment if there is a “culpable homicide not amounting to murder” where the act is done with the knowledge that it is likely to cause death, but without any intention to cause any death, or to cause such bodily injury as is likely to cause death. Section 304 does not create an offence but provides punishment for culpable homicide not amounting to murder. If the death is caused and case is covered by any of the five Exceptions of Section 300, then such culpable homicide is not amounting to murder. Section 304 draws distinction for the penalty in cases covered by one of the five Exceptions when there was intention to kill a person and where there was only knowledge that the death will be likely to be caused.

13. The intention is the state of the mind which has to be inferred from the facts and circumstances of each case particularly

the nature of the weapon, how it was used and the injuries inflicted. The number of injuries is not always the determining factor in ascertaining the intention. The medical evidence shows that there were injuries and fracture to her face. The weapon used is wooden plank. There are injuries to the accused also. Deposition of Pw7 also suggest that there was quarrel going on which she heard and suddenly there was silence. In view thereof, the case is squarely falls within the Exception 4 of Section 300. Nowhere prosecution established that there was premeditation before assault. As discussed earlier conduct of the accused after the incident is also material. He did not tried to flee from the spot nor made any attempt to disappear the evidence. His restless behaviour as deposed by Pw7 suggestive of shock to him also. Therefore in our considered opinion the act of accused cannot be said to be culpable homicide amounting to murder at the most it would fall under Exception 4 of Section 300 and is liable for punishment under Section 304 Part II. Section 304 Part II is attracted as the accused committed the offence without premeditation in a sudden fight in the heat of passion upon the sudden quarrel and no intention to cause such bodily injuries as was likely to cause death but had the knowledge that the injury was likely to cause death. Thus in the absence of intention the accused is

liable for lesser punishment as provided under Section 304 Part II.

14. We appreciate the efforts taken by Legal Aid Panel Counsel, Mr. Anoop Gaokar and also appreciate the approach of the learned Public Prosecutor, Mr. S.G. Bhobe.

ORDER

(a) The Order passed by the learned Additional Sessions Judge, Mapusa in Sessions Case No. 34/2013 dated 31/06/2016, convicting accused under Section 302 of IPC, is hereby quashed and set aside and substituted by the following order:

(i) The accused is guilty for the offence punishable under Section 304, Part II of IPC and is hereby sentenced to imprisonment for a period of ten years and to pay a fine of Rs.5,000/-. In default of payment of fine, to suffer simple imprisonment for six months.

(b) Appeal is disposed of accordingly.

SMT. M.S. JAWALKAR,J.

M.S. SONAK,J.

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BHOR

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