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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 30 OF 2021

Shri Ajit Bezharuah, son of Haren
Bezbaruah, age 35 years, resident of c/o
Mahesh Gaude, Varca, Salcete, Goa, r/o
5, Jabangpar, P.S. Goreswar, Sub-Divn.
Tamulpur, District Baksa, Assam.
Presently lodged as Convict Prisoner at
Central Jail, Colvale.

...APPELLANT

Versus

1. State (Through P.I. Curchorem
Police Station, Goa).

2. Public Prosecutor, High Court of
Bombay at Goa, Altinho, Panaji, Goa.

...RESPONDENTS

Mr. Virendra Parsekar, Advocate *for the Appellant.*

Mr. Pravin Faldessai, Additional Public Prosecutor *for the
Respondents.*

CORAM:

REVATI MOHITE DERE &
M. S. JAWALKAR, JJ.

RESERVED ON:

9th December 2021.

PRONOUNCED ON: 21st December 2021.

JUDGMENT: (per M.S. Jawalkar, J.)

1. Heard Mr. Virendra Parsekar, the learned Counsel for the petitioner and Mr. Pravin Faldessai, the learned Additional Public Prosecutor for the respondents.

2. The appellant has preferred this Criminal Appeal being aggrieved by the judgment and order dated 24.02.2020/06.03.2020, passed by the learned Additional Sessions Judge, South Goa, Margao, convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.30,000/-.

3. The brief facts of the prosecution case are as under:

On 31.12.2015 at about 10:00 a.m. at the left side front room of House No. 33/A, Pokermol, Kalay, Sanguem, Goa, the accused over the issue of labour work, stabbed a kitchen knife, having steel blade in the stomach of Ratan Das and caused severe bleeding injury to him. Further, said Ratan Das was declared as brought dead by the Medical Officer, Hospicio Hospital, Margao. Accordingly, the accused was charged for committing the murder of Ratan Das. Charge was framed against the accused for the offence punishable under Section 302 of IPC, for which, the

accused pleaded not guilty and claimed to be tried. The prosecution examined 16 witnesses in support of its case. Thereafter, the statement of the accused under Section 313 of Cr.P.C. came to be recorded. The accused examined one witness in his defence. The learned Additional Sessions Judge after hearing, convicted the accused and sentenced him, as aforesaid.

4. The appellant challenged the said order mainly on the ground that the learned Sessions Judge ought to have held that the prosecution has failed to prove its case beyond all reasonable doubt against the appellant. It is submitted by the learned Advocate Mr. Parsekar for the appellant that there was no sufficient and cogent evidence to establish that the appellant has committed the offence. He submitted that there was delay in lodging the complaint, however, the learned Sessions Judge held that it has been satisfactorily explained by PW-1. It is stated that the findings recorded by the learned Sessions Judge are perverse and contrary to the evidence on record.

5. The learned Counsel for the appellant submitted that if the sketch of scene of offence is seen, it was a closed room where the incident occurred and therefore, it is doubtful whether PW-1 had seen the offence. Secondly, the existence of the kitchen knife on

the spot, is doubtful as workers were not residing where the construction was going on. It is submitted that PW-16/P.I., Investigating Officer, deposed about only one injury on the deceased, however, the autopsy report speaks about two injuries and the second injury was neither disclosed or explained. It is submitted that there is inconsistency in the deposition of the witnesses and as such, the appellant is entitled for acquittal.

6. Learned Counsel for the appellant in the alternative submitted that the evidence and the facts on record would reveal that the offence, if any, would be one under Section 304 of IPC and not “murder”. It is submitted that at the most, it will be the case of culpable homicide not amounting to murder. Learned Counsel for the appellant submitted that Exception 4 to Section 300 covers acts done without premeditation, in a sudden fight in the heat of passion, upon a sudden quarrel with the deceased without the offender having taken undue advantage and not having acted in a cruel or unusual manner. It is submitted that the case is not covered under Section 302 of IPC and therefore, the conviction be altered to Section 304 (Part I or Part II). In support of his contention, the learned Counsel for the appellant relied on the following citations:

- i. Sridhar Bhuyan Vs. State of Orissa, (2004) 11 SCC 395;*
- ii. Budhi Singh Vs. State of Himachal Pradesh, (2012) 13 SCC 663;*
- iii. Ranjit Sarkar Vs. State of Tripura, (2016) 15 SCC 756;*
- iv. Vijay Pandurang Thakre & Others Vs. State of Maharashtra, (2017) 4 SCC 377 and*
- v. Surain Singh Vs. State of Punjab, (2017) 5 SCC 796.*

7. Learned Additional Public Prosecutor, Mr. Pravin Faldessai submitted that there is an eye witness, whose evidence clearly goes to show that the accused stabbed the deceased, Ratan Das with a knife in his stomach, which is the vital part of the body. It is submitted that there is vital evidence to bring home the charge against the accused. It is submitted that the intention of the accused i.e. to cause the death of Ratan Das, is also clear from this act. It is submitted that the medical evidence and the forensic evidence fortify the prosecution case. It is submitted that the learned Sessions Judge rightly appreciated these facts and evidence on record and the conviction under Section 302 of IPC is perfectly justified.

8. We have considered the rival contentions of the parties and perused the evidence on record. From the evidence of PW-1, Nayan Shelke, it appears that her brother-in-law i.e. PW-6, Navo Shelke and she (PW-1) had undertaken construction of their respective houses and for the said purpose, they had engaged a contractor, PW-3, Mahesh Gawde, who had hired the services of the accused and the deceased and one Jairam and some other persons as labourers. On 31.12.2015 at 10:00 a.m., while she was taking rest at her house at Kalay, Sanguem alongwith her new born baby, she heard the accused and the deceased Ratan Das quarreling in their language, so she came out and saw both, the accused and the deceased fighting. She saw a knife in the hand of the accused and that the accused stabbed Ratan Das in his stomach and upon the accused stabbing Ratan Das, he started bleeding. Thereafter, the accused threw the knife on the ground after taking it out from the stomach of Ratan Das. She has deposed that the accused and the deceased were quarreling for about 15 minutes before she came out of her house.

9. The learned Trial Court rightly appreciated the evidence of PW-1 and in fact, there was no reason for her to falsely implicate

the accused, who was engaged by the contractor for carrying out the construction. The testimony of PW-3, Mahesh Gawde corroborates with the evidence of PW-1, Nayan Shelke, who is an eye witness. He also deposed that he had engaged the services of the accused, the deceased Ratan Das and Jairam for construction purpose. He also deposed that he was informed on phone at about 10:30 a.m. about the fight that had taken place between the accused and Ratan Das and as such, PW-3 reached the spot immediately after the incident. He further deposed that he saw the accused on the spot as deposed by PW-1 in her evidence. He identified the clothes of the accused as well as the deceased, which they were wearing on the day of the incident and those were stained with blood. He deposed that Ratan Das was in a sitting position and on inquiry, he disclosed to Mahesh Gawde (PW-3) that the accused assaulted him with a knife because of the fight between the two. Thus, the statement of the deceased, made to PW-3, relating to the cause of the death, is relevant under Section 32 of the Indian Evidence Act.

10. The deposition of PW-1, PW-3 and PW-6 also reveals that the labourers were allowed to stay in one of the under construction room and they even cooked food in the said room. Thus, using of knife in committing the offence is clearly

established as the same was recovered from the spot. Apart from this, report of CFSL, spot panchanama, scene of offence panchanama, deposition of the panch witnesses, clearly support commission of offence by the accused.

11. Thus, the prosecution has established beyond reasonable doubt that the death of Ratan Das was caused by the accused. The death of the deceased was caused due to stab injury and was a homicidal death. Now, the only next question which arises for our determination is that whether, it is a case of culpable homicide amounting to murder or otherwise.

12. At this stage, reference is necessary to the provisions of Section 300 of the IPC, which, inter alia, provide that 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 secondly, 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 thirdly, 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 fourthly, if he 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.

13. Therefore, it is clear that if the case of the appellant falls under any of the Exceptions to Section 300 of the IPC, the appellant is not liable to be convicted for murder though he may be convicted for culpable homicide not amounting to murder.

14. The first Exception deals with a situation where the accused whilst deprived of the power of self control by grave and sudden provocation, causes the death of person who gave the provocation or causes the death of any other person by mistake or accident. This explanation is subject to certain provisos. The first proviso is that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

15. The fourth Exception deals with the situation where 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.

16. The evidence on record clearly shows that accused, the deceased and some other labourers were engaged by one contractor for construction work of PW-1 and PW-6. It also reveals from the evidence that to complete the construction work, some labourers started living there including the accused and the deceased. The weapon of the offence is a kitchen knife, which was easily available on the spot. The injury is only one stab injury. From the evidence, it also reveals that there was a quarrel between the accused and the deceased for about 15 minutes prior to the incident of assault. The subsequent conduct of the accused reveals that he did not try to flee from the spot and was there till the deceased was taken to the hospital, is also relevant.

17. Thus, there is nothing on record to show that there was premeditation or intention to kill the victim. Therefore, the offence falls under Exception 4 of Section 304 of IPC. This Exception deals with a situation where culpable homicide is not amounting to murder, if it is committed without premeditation, in a sudden fight, in a heat of passion, upon a sudden quarrel and without the appellant having taking undue advantage or acted in a cruel manner. The material on record suggests that the incident took place on account of a sudden fight in a heat of passion upon a quarrel between the accused and the deceased. The Hon'ble

Apex Court in **Sridhar Bhuyan** (supra) has held thus:

“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 IPC. 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 have 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'.”

18. On similar principle, in **Surain Singh** (supra), the conviction under Section 302 of IPC of the accused is converted from 302 to 304 (Part II) of IPC.

19. In view of the evidence on record, the learned Sessions Judge ought not to have convicted the appellant under Section 302 IPC, but rather conviction was to be under Section 304 (Part II) of IPC. Though the act of the appellant was done with the knowledge that it was likely to cause the death of the deceased, the same was without any intention to cause death or cause bodily injuries so as to likely to cause death. As the act is committed without premeditation in a sudden fight, in a heat of passion, upon a sudden quarrel, the act falls under Exception 4 to Section 300 of IPC.

20. Though, the accused in his defence has taken a plea while recording his statement under Section 313 of Cr.P.C. that Jairam committed the offence and he ran away and that he (accused) has not committed any offence, however, there is sufficient evidence on record, so also there is evidence of eye witnesses to show that offence has been committed by the accused himself. However, his conviction under Section 302 of IPC was uncalled for and it ought to have been under Section 304 (Part II) of IPC. This is because though, the act was done with knowledge that it was likely to cause the death of the deceased, the same was without any intention to cause death. There is no premeditation as can be gathered from the fact that there was a sudden quarrel, the

weapon used is kitchen knife and there is only one stab injury. As such, the conviction under Section 302 of IPC is liable to be set aside and substituted with the conviction under Section 304 (Part II) of IPC.

21. Insofar as sentence is concerned, considering the evidence on record, we are satisfied that the appellant is required to suffer imprisonment for a term of 10 years, which is in fact the maximum period prescribed under Section 304 (Part II) of IPC. There is no order insofar as default in payment of fine of Rs.30,000/- is concerned passed by the learned Sessions Judge. Hence, we add that in case of default of payment of the fine amount, the accused shall suffer simple imprisonment for six months.

22. Accordingly, we dispose of this Appeal by making the following order:

O R D E R

- (a) The Appeal is partly allowed.
- (b) The conviction of the appellant under Section 302 of IPC is set aside and substituted by conviction under Section 304 (Part II) of IPC.

- (c) The sentence imposed upon the appellant is modified. The appellant shall now suffer rigorous imprisonment for 10 years and pay fine of Rs.30,000/- and in default to undergo six months of simple imprisonment.
- (d) The appellant will be entitled to benefit in terms of Section 428 of Cr.P.C.
- (e) The impugned judgment and order stands modified accordingly.

M. S. JAWALKAR, J. REVATI MOHITE DERE, J.

VAIGANKAR
ESHA SAINATH

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