

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.534 OF 2016**

Dada @ Pravin Babaso Patil].. Appellant/accused
vs.
The State of Maharashtra]
(At the instance of Karad City Police Station)].. Respondent

Ms. Payoshi Roy i/b Dr.Yug Mohit Chaudhary, for Appellant.
Ms.P.P. Shinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV &
N.R.BORKAR, JJ.**

**RESERVED ON : 4th FEBRUARY, 2021.
PRONOUNCED ON : 10th MARCH, 2021.**

JUDGMENT : (PER : N.R.BORKAR, J)

1] This appeal takes an exception to the Judgment and order dated 8th March, 2016 passed by the learned Additional Sessions Judge, Karad, in Sessions Case No.6 of 2012. By the impugned judgment and order, the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer R.I. for life and to pay fine of Rs.1000/- and in default of payment of fine to suffer S.I. for three months.

2] It is the case of the prosecution that on the day of incident which took place on 25th September, 2011, the deceased Suresh Desai

was residing with his family at Shastrinagar, Malkapur, Karad. The appellant/accused was residing in their neighbourhood. The deceased and the appellant/accused were friends. They both were working as labourer. The deceased and accused intermittently used to consume liquor together.

3] It is alleged that, on the day of incident i.e. on 25th September, 2011 at about 6.00 p.m. in the evening, the deceased demanded Rs.20/- from his wife (PW 1), who is first informant in the present case, to purchase Gutkha pouch. At that time, the deceased was under the influence of liquor. PW 1, therefore, refused to give him Rs.20/-.

4] It is alleged that at about 8.00 p.m. , the deceased with a view to purchase Gutkha pouch, went towards the shop of PW 5 Vijay Pawar. It is alleged that the appellant/accused followed him and at that time the accused was also under the influence of liquor. It is alleged that a scuffle took place between the deceased and the appellant/accused and in the said scuffle, the appellant/accused assaulted the deceased by knife on abdomen and neck. The deceased was taken to hospital, however, he was declared brought dead.

5] On the basis of report lodged by PW 1, Karad City Police Station registered the crime against the appellant/accused vide CR No. 258 of 2011 for the offence punishable under Section 302 of the Indian Penal Code. On completion of investigation charge-sheet was filed against the appellant/accused.

6] The appellant/accused was charged and tried for the offence punishable under Section 302 of the Indian Penal code. As

stated earlier, the trial Court convicted the appellant/accused for the said offence.

7] We have heard the learned counsel for the appellant/accused and learned APP for the respondent/State.

8] Learned counsel for the appellant/accused has submitted that the evidence on record will show that the deceased and the accused were friends. It is submitted that at the time of incident the deceased as well as the accused were under the influence of liquor. It is submitted that all of sudden a scuffle took place between the deceased and the accused and in the said scuffle, the accused assaulted the deceased. It is submitted that considering these facts and circumstances, at the most, it will constitute an offence punishable under Section 304(I) of the Indian Penal Code. It is submitted that the trial Court was, therefore, not justified in convicting the appellant/accused for the offence punishable under section 302 of the Indian Penal Code. In support of her submissions, the learned counsel for the appellant/accused has relied upon the following Judgments :

- i] (2007) 11 SCC 218 Byvarapu Raju vs. State of A.P. & Anr.
- ii] (2010) 15 SCC 585 Mukesh vs. State of Madhya Pradesh,
- iii] (1989) 2 SCC 217 Surinder Kumar vs. Union Territory, Chandigarh.

9] On the other hand, learned APP for the State has supported the impugned judgment and order. According to the learned APP, considering the nature of injuries i.e. two stab wounds the appellant/accused is not entitled to benefit of exception 4 to Section 300 of the Indian Penal Code. It is submitted that the appeal be dismissed.

10] Exception 4 to Section 300 of the Indian Penal Code reads thus :

"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.

11] In the case of Surinder Kumar vs. Union Territory, Chandigarh (*supra*), the Hon'ble Supreme Court has held :

"7. To invoke exception 4 to Section 300 of the Indian Penal Code 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. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner."

12] In the present matter, PW 1 Manda Suresh Desai, an eye witness to the incident has stated that on 25th September, 2011 at about 7.00 p.m., while she was at her house, she heard the sound of quarrel between the deceased and the accused. She went out and saw that the appellant/accused was abusing and beating her husband in front of the shop of PW 5 Vijay Pawar. She has stated that the appellant/accused assaulted her husband by knife on his neck and left side of stomach. Her husband had fallen down and blood started oozing from his injuries.

13] In the examination-in-chief itself, PW 1 has stated that the accused was under the influence of liquor. In the cross-examination conducted on behalf of the appellant/accused, PW 1 has admitted that her husband was taken to hospital by the accused for treatment of his mental illness. She has further admitted that her husband refused to take medical treatment for his mental illness. She has further admitted that her husband and the appellant/ accused used to consume liquor daily. She has further admitted that there was no dispute between her husband and the appellant/accused on any count, at any time.

14] It appears from the evidence of PW 1 that at the time of incident the deceased was under the influence of liquor. It is thus apparent that at the time of incident, both, the deceased and the appellant/accused were under the influence of liquor. PW 1 has admitted that there was no dispute between the deceased and the accused on any count and at any point of time. From these circumstances, the only inference which can be drawn is that all of sudden a quarrel took place between the appellant/accused and the deceased and in the said quarrel the appellant/accused assaulted the deceased. The incident, therefore, does not appear to be premeditated.

15] The next question is whether the appellant/accused has acted in cruel manner. The evidence of PW 1 does not show that the appellant/accused acted in a cruel manner. PW 1 has stated that appellant/accused assaulted her husband on neck and stomach by knife. Two blows by knife, in the facts and circumstances of present case, in our view, are not sufficient to hold that appellant/accused has acted in cruel manner. The Hon'ble Supreme Court has held that the

number of wounds caused during the occurrence is not a decisive factor.

16] Considering the overall facts and circumstances of the case, we are of the view that requirements of Exception 4 to Section 300 of the Indian Penal Code in the present case are satisfied. The appellant, therefore, deserves to be convicted for the offence under Section 304(I) of the Indian Penal Code. Hence, the following order :

ORDER

i] Appeal is partly allowed.

ii] The conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code vide Judgment and order dated 8th March, 2016 is quashed and set aside.

iii] The conviction of the appellant is altered to an offence punishable under Section 304(I) of Indian Penal Code and he is sentenced to rigorous imprisonment for ten years.

iv] Sentence of fine is maintained.

v] The appellant/accused is in Jail. Set off be granted to the appellant/accused for the period of detention undergone by him till date.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]