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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.453 OF 2012**

Shri Tanaji Prabhakar Bodke	]	
Age – 40 years, Occ. Rickshaw Driver	]	
R/o A-6, Vittarag Society, Datta nagar,	]	
Pethrod, Panchavati, Nashik,	]	
Taluka & District – Nashik	]	
(Now in Central Prison, Nashik Road)	] ..	Appellant/Accused
vs.		
The State of Maharashtra	]	
(Through Inspector of Police,	]	
Panchavati Police Station, Nashik)	]..	Respondents

Mr.Mihir Joshi appointed Advocate for Appellant/accused.
Mr.Arfa Sait, APP for the State.

**CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.**

**RESERVED ON : 16th JULY, 2021.
PRONOUNCED ON : 30th JULY, 2021.**

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

1] This appeal takes an exception to the Judgment and order dated 9th November 2010 passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No. 176 of 2009.

2] By the impugned Judgment and order the appellant who was accused before the trial Court has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced

to suffer Rigorous Imprisonment for life and to pay fine of Rs.1000/-, in default of payment of fine to suffer Simple Imprisonment for 6 months.

3] The deceased Prabhakar Bodke was the father of the present appellant/accused. It is the case of the prosecution that there was a dispute between the deceased and accused on account of sale of plot on Gangapur Road, Nashik. It is alleged that on 20th June 2009 at about 7.00 to 7:30 p.m an altercation took place between the deceased and the accused. It is alleged that during the said altercation the accused assaulted the deceased by stool on his head and chest. In the incident, the deceased was injured and was taken to the hospital, however, he was declared brought dead.

4] On the basis of report lodged by PW 1-Tukaram Bodke, crime was registered against the accused for the offence punishable under section 302 of the Indian Penal Code vide Crime no. I-311/2009. On completion of investigation charge sheet was filed against the accused for the said offence.

5] The 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 accused for the said offence by the impugned Judgment and order.

6] We have heard the learned counsel for the accused and the learned APP for the State.

7] The learned counsel for the accused submitted that the evidence on record and more particularly, the medical evidence would indicate

that death of the deceased was accidental. It is submitted that the trial court was, therefore, not justified in arriving at the finding that the death of the deceased was homicidal. It is submitted that the impugned Judgment and order, therefore, be quashed and set aside, and the accused be acquitted.

8] On the other hand, learned APP submitted that the evidence on record would show that on the day of incident altercation took place between the deceased and accused. It is further submitted that as per the statement of the accused under Section 313 of the Code of Criminal Procedure the deceased was quarrelling with him under the influence of liquor and therefore he pushed him. It is submitted that the medical officer who conducted postmortem has, however, in no uncertain terms stated that injuries which were there on the person of the deceased are not possible in case of accidental fall. It is submitted that in such circumstances the trial Court was justified in convicting the accused for the offence punishable under Section 302 of the Indian Penal Code. It is submitted that no interference is thus called for in the impugned Judgment and order and appeal needs to be dismissed.

9] On the basis of submissions the only question which arises for our consideration is whether the death of the deceased was homicidal or accidental.

10] According to PW 1-Manohar Bodke, who is also first informant, the deceased was his cousin. On 20th June 2009, at about 9 p.m he received a phone call of his nephew Kamlesh who told him that some dispute is going on between the deceased and the accused. He, therefore, went to the house of the deceased. The door of the house

of the deceased was closed from inside. He pushed the door. The accused was sitting on the cot. He went in the bedroom and saw that the deceased was lying on the floor in injured condition.

11] In the cross examination he has admitted that in the complaint, he has not stated that there was dispute between the deceased and the accused on account of sale of plot on Gangapur road to one Suhas Kande. He has further admitted that he has not stated in his complaint that the door of the flat of deceased was closed from inside.

12] According to PW 3 Leelabai Umbare the neighbour of the deceased, on the day of incident at about 7.00 to 7.30 p.m she heard the sound of the quarrel between the accused and the deceased. She went to their house, however door was closed from inside. She knocked the door, however it was not opened. Hence she came back to her house.

13] In the cross examination on behalf of the accused her evidence with regard to quarrel between the deceased and the accused has not been challenged. On the contrary, it was suggested to her that personally she had not seen the altercation between the deceased and accused.

14] PW 5 Kusumbai Korde is another neighbour of the deceased. According to her on the day of incident at about 7.00 to 7.30 p.m she heard altercation of the deceased and accused.

15] In the cross examination similar suggestion was given to this witness, that personally she had not seen altercation between the

deceased and the accused as the door was closed and she had only heard their altercation.

16] The defense of the accused is that his father was quarrelling with him under the influence of liquor and he just pushed him.

17] It thus appears from the evidence on record and defense of the accused that some sort of altercation took place between the deceased and the accused and during the said altercation the deceased sustained injuries. To ascertain whether the injuries were accidental or homicidal, it is necessary to examine the medical evidence on record.

18] According to PW 6 Dr. Surekha Yenge, she conducted postmortem on the dead body of the deceased on 21st June 2009. On external examination she found following injuries :

- i] Contused lacerated wound 1'x1'x1' above left eye brow.
- ii] A deep contused lacerated wound 5x5x5 inch over occipital area of right side.
- iii] Fracture of occipital bone.
- iv] Fracture ribs No.4, 5 and 6 of right side.
- v] Liver laceration of 3 x 3 cm. Evident.

According to PW 6 the cause of death is head injury with polytrauma. She has stated that considering the nature of injuries it may be a homicidal death. She has stated that the injuries are possible in case of assault by stool with force and injuries are not possible in case of fall from stool.

19] In the cross examination PW 6 has admitted that it may be an accident. However, PW 6 has thereafter denied all the suggestions which were put to her to elicit that, the above mentioned injuries were

accidental. Considering the nature of injuries sustained by the deceased i.e. fracture to occipital bone and fracture of ribs, the defense of the accused does not appear to be probable. The trial Court was, therefore, justified in arriving at the finding that the death of the deceased was homicidal.

20] PW 4 Jayshree Bodke, the wife of the brother of the accused has however stated that there was no dispute between the deceased and the accused on any count. PW 1 has admitted that, in his complaint he has not stated that there was a dispute between the deceased and the accused on account of sale of plot on Gangapur Road. It thus appears that on the day of incident all of a sudden altercation took place between the deceased and the accused and during the said altercation the accused assaulted the deceased.

21] In the case of Surinder Kumar vs. Union Territory, Chandigarh, reported in (1989) 2 SCC 217, 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.”

22] 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/accused for offence punishable under Section 302 of the Indian Penal Code vide Judgment and order dated 9th November, 2010 is quashed and set aside.

iii] The conviction of the appellant/accused 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]

[PRASANNA B. VARALE, J]