

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1298 OF 2011

Ashok Shripat Chavan

R/o. Pargaon, Tal : Daund,

Dist. Pune

..Appellant

V/s.

The State of Maharashtra

At the instance of Yavat Police

Station

..Respondent

Mr. Rupesh Bobde for the Appellant.

Mrs. P.P. Shinde, APP for the Respondent/State.

**CORAM : NITIN JAMDAR AND
C.V. BHADANG, JJ.**

DATE : 17 AUGUST 2021

JUDGMENT (Per: C.V.BHADANG, J.)

. The challenge in this Appeal is to the Judgment and Order dated 24 June 2011 passed by the learned Additional Sessions Judge at Baramati in Session Case No. 83 of 2010. By the impugned Judgment, the Appellant/accused has been convicted for the offence punishable under Section 302 of IPC for having intentionally caused the death of his brother Ramesh Chavan. The Appellant has been sentenced to suffer imprisonment for life and to pay a fine of Rs. 1000/-.

2. The prosecution case may be briefly stated thus:

That on 01 July 2010 at about 10.00 a.m., the complainant Ranjana Chavan (PW-5) along with her husband Ramesh Chavan (since deceased) as well as the Appellant and his wife Surekha had visited Grampanchayat office, Kedgaon for obtaining the birth certificate of their son. They returned back to village Pargaon at about 6.30 p.m. The incident is alleged to have happened at about 7.00 to 7.30 p.m. on the same day in the hut where the Appellant was residing along with his wife Surekha. According to the prosecution, the Appellant is alleged to have consumed liquor and had a quarrel with his wife Surekha. The Appellant was said to be abusing his wife. The deceased along with his wife Ranjana (PW-5), two sisters Meena Mohite (PW-2) and Sangita Chavan (PW-3) went to the hut where the Appellant was residing along with his wife in order to intervene in the quarrel. It is the material prosecution case that the Appellant got annoyed on account of intervention and accosted the deceased as to why he is intervening in the quarrel. The Appellant is also alleged to have asked the deceased as to what is the relation between him and Surekha. The deceased is alleged to have told the Appellant that Surekha is just like his sister or mother. However, a scuffle appears to have ensued between Appellant and the deceased in which the Appellant is alleged to have made the deceased fall on the ground. The Appellant sat on the chest of the deceased and pressed his neck. The Appellant is also alleged to have slapped

his sister. The relatives who had gathered on the spot, rescued the deceased and shifted him to the hospital at Kedgaon where he was examined by Dr. Khaladkar, who declared him dead.

3. On the basis of the complaint lodged by Ranjana Chavan (PW-5), the widow of the deceased, an offence came to be registered which was investigated by PSI Trimbak Palekar (PW-8) of Police Station Yavat. The Investigating Officer drew a spot panchanam and the inquest panchanama of the dead body. The dead body was sent for postmortem which was conducted by Dr. Balasaheb Kadam (PW-7). The Investigating Officer recorded the statements of the witnesses and after completion of investigation a chargesheet was filed which was committed to the Court of Sessions.

4. The learned Sessions Judge framed charge against the Appellant for the offence under Section 302, 323 and 504 of IPC. The Appellant pleaded not guilty and claimed to be tried. The defence of the Appellant is one of the total denial and false implication.

5. At the trial, the prosecution examined in all eight witnesses and produced the record of the investigation. The Appellant did not lead any evidence in defence.

6. The learned Sessions Judge found that the Appellant has intentionally caused the death of his brother Ramesh by throttling and convicted and sentenced the Appellant as aforesaid. The Appellant however has been acquitted of the offence under Section 323 and 504 of IPC.

7. We have heard the learned counsel for the Appellant and the learned APP for the State. With the assistance of the learned counsel for the parties, we have gone through the record.

8. It is submitted by the learned counsel for the Appellant that except PW-5 Ranjana Chavan, the material prosecution witnesses i.e. PW-1 Anjana Chavan, PW-2 Meena Mohite, PW-3 Sangita Chavan and PW-4 Santosh Chavan have turned hostile and have not supported the prosecution. It is submitted that there is also delay in filing of the complaint by PW-5. It is submitted that conduct of PW-5 is not natural and therefore, no implicit reliance can be placed on her evidence particularly in the wake of the fact that the other prosecution witnesses as referred to above, who were examined by the prosecution as eye witnesses, have turned hostile.

9. The learned Counsel for the Appellant also submitted that the death in this case cannot be said to be caused by throttling as the general features of asphyxia are not present in this case.

10. The learned counsel alternatively submitted that this is a case where conviction deserves to be modified to one under Section 304 Part II of IPC. It is submitted that there is no premeditation and it is the deceased who had gone to intervene in the quarrel between Appellant and his wife and evidence of PW-5 also suggests that there was a scuffle between the Appellant and the deceased. It is therefore, submitted that this is a case which is covered by Exception 4 to Section 300 of IPC. On behalf of the Appellant reliance is placed on the decision of the Supreme court in *Suraj Mal v/s. State of Punjab*¹ and *Manke Ram v/s State of Haryana*² in order to submit that in a case where there is a sudden fight in the heat of passion, no intention can be attributed to the Appellant to cause death.

11. Learned APP has submitted that the evidence of PW-5 is natural and one inspiring confidence. It is submitted that PW-5 Ranjana Chavan accompanied the deceased to the house of the Appellant and as such she is natural witness to the occurrence. In the submissions of learned APP notwithstanding that PW-1 to PW-4 have turned hostile, implicit reliance can be placed on PW-5. It is submitted that oral evidence of PW-5 is supported by the medical evidence of PW-7 who has opined that the death was caused due to asphyxia on account of throttling. She submitted

1 1993 Supp (1) Supreme Court Cases 639

2 (2003) 11 Supreme Court Cases 238

that the case would not fall under Exception 4 to Section 300 of IPC.

12. We have carefully considered the rival circumstances and the submissions made. We have perused the prosecution evidence in the context of the defence and the submissions made at the bar.

13. PW-7 had noticed the following injuries on the dead body of Ramesh.

Abrasion contusion small bilaterally to thyroid, abrasion on abdomen left side, loin abrasion on chest. Bilateral to thyroid bruises subcutaneous region.

PW-7 has also noticed a fracture of the Thyroid bone and as per his opinion the death was caused due to asphyxia on account of throttling. Thus, the death clearly appears to be homicidal in nature.

14. It has come on record that the deceased was the real brother of the Appellant and their relations were cordial. PW-5 has admitted that there is no “enmity between the Appellant and the deceased”. The evidence on record shows that on the day of incident in the morning the Appellant and the deceased alongwith PW-5 and Surekha Chavan, who is wife of the Appellant had together gone to village Kedgaon for obtaining the

birth certificate and had returned at about 6.30 p.m. It has come in the evidence of PW-5 that while returning, the Appellant stopped midway and after some time came home after consuming liquor. It has come in her evidence that when she along with her husband i.e. the deceased were taking meals, there was a quarrel which had ensued between the Appellant and his wife Surekha. The Appellant was beating his wife. Hence, PW-5 along with her husband went to the hut of the Appellant along with her sisters-in-law Meena Mohite and Sanjana Chavan. She stated that the Appellant told the deceased that he had no concern in the matter and asked the deceased as to what relation he shares with his wife (Appellant's wife). The Appellant is alleged to have told the deceased that she is like his mother. The Appellant thereafter made the deceased fall on ground, sat on his chest and pressed his neck. When PW-5 Ranjana tried to intervene, the Appellant slapped his sister Meena and then ran away. PW-5 along with the help of others took her husband to Pargaon and thereafter to Kedgaon where after examination, he was declared dead. The evidence of PW-5 clearly indicates that there was no enmity between Appellant and the deceased. She also stated that a scuffle ensued on the spot. It may be mentioned that PW-1 Anjana, PW-2 Meena, PW-3 Sangita and PW-4 Santosh have not supported the prosecution. However, that in our view is not sufficient to discard the evidence of PW-5 who also claims to be an eyewitness and is a natural witness to the occurrence, being the

wife of the deceased. Thus, we find that there is sufficient evidence to show that the involvement of the Appellant in the incident. However, the conviction in our view deserves to be modified to one under Section 304 part II of IPC. Exception 4 to Section 300 provides that 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. The explanation appended to Exception 4 makes it clear that it is immaterial in such cases as to which party offers provocation or commits the first assault.

12. A perusal of the evidence of PW-5 shows that the Appellant had no motive or intention to assault or to cause death of his brother Ramesh. In fact, the Appellant along with his wife Surekha were in their own hut. It is the deceased who went to the hut of the Appellant to intervene in the quarrel between Appellant and his wife by which the Appellant appears to have been annoyed and had also accosted the deceased as to what relation he shares with his (Appellant's) wife. As noticed earlier, there is evidence that a scuffle ensued. Thus, in our view the incident had happened on the spur of the moment without any premeditation on the part of the Appellant. There is no weapon used. Thus, considering the overall evidence, we are of the opinion that this is a case which is covered by Exception 4 to

Section 300 of IPC and the conviction, therefore, is liable to be modified as prayed.

13. In the case of Suraj Mal (*supra*), the Appellant was alleged to have caused the death of his brother. The Supreme Court found that both the Appellant and his brother were drunk during the altercation arising out of sale of property by deceased wherein the Appellant was alleged to have dealt a single blow of knife. The Supreme Court found that the case was covered by Exception 4 to Section 300 of IPC.

14. Even in the case of Manke Ram (*supra*), there was no enmity between the Appellant and the deceased and there was absence of motive as in the present case. In that case the Appellant had invited the deceased to his room for a drink and when both of them were drinking, PW-5 Nephew of the deceased interrupted asking his uncle to get up and join him for a dinner. The deceased acceded to the said request because of which the Appellant got annoyed and abused the deceased after which a fight ensued between the Appellant and the deceased and the Appellant had fired a shot by his service revolver. The Supreme Court in the circumstances found that the conviction is liable to be altered to Section 304 Part II of the IPC.

15. The record shows that the Appellant was in custody from 09 August 2010 to 31 December 2010. The learned Session Judge has granted set off for the said period. The Appellant was taken in custody upon his conviction on 24 June 2011 and has thus, undergone imprisonment for more than 10 years. Section 304 part II invites a maximum sentence of 10 years of rigorous imprisonment. Thus, we find that Appellant has served the maximum sentence for the offence under Section 304 Part II of IPC.

16. Hence, the following order:

ORDER

- (i) The Appeal is partly allowed.
- (ii) The impugned judgment and order is hereby modified. The Appellant stands convicted of the offence punishable under Section 304 Part II of IPC.
- (iii) The Appellant is sentenced to rigorous imprisonment, for a period of ten years.
- (iv) The Appellant has served more than ten years of imprisonment. Thus, the Appellant be set

at liberty forthwith, if not required in connection with any other offence.

(v) Fine if paid, be refunded.

(C.V. BHADANG, J.)

(NITIN JAMDAR, J.)