

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

CRIMINAL APPEAL NO. 15 OF 2013

Ravindra Chandar Pawar
Aged 25 years, R/o. Medha Adivasi
Wadi, Taluka Roha, Dist. Raigad ..Appellant
V/s.
The State of Maharashtra ..Respondent

Ms. Apeksha Vora for the Appellant.
Ms. Prajakta Shinde, APP for the Respondent / State.

MAMTA
AMAR
KALE

Digitally signed
by MAMTA
AMAR KALE
Date:
2021.07.30
13:29:42 +0530

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

DATE : 26 July 2021

Judgment : (Per C. V. Bhadang, J.)

. By this Appeal, the Appellant (Accused No.1) is challenging the judgment and order dated 2 May 2012 passed by the learned Additional Sessions Judge at Mangaon, District Raigad in Sessions Case No.04/2011. By the impugned judgment, the Appellant has been convicted for the offence punishable under Section 302 of IPC for having intentionally caused the death of Sunil Arjun Waghmare. The Appellant has been sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- and in default, to undergo Rigorous Imprisonment (R.I.) for one year.

2. The prosecution case may be briefly stated thus-

The incident in question is alleged to have happened on 9 August 2010 at about 3.00 p.m. in front of the house of the complainant Yashoda Waghmare (P.W.1). The Appellant and the co-accused Nos.2 and 3 who are respectively the father and the wife of the present Appellant, are alleged to have assaulted Shankar Laxman Pawar by means of stick on his head due to which Shankar Pawar fell unconscious. It is the prosecution case that deceased Sunil Arjun Waghmare went to intervene in the incident and had taken the injured to his house. Annoyed by this, the Appellant and the co-Accused are alleged to have pushed the deceased Sunil Waghmare to his house which is near the spot of the incident and the present Appellant while pushing the deceased pressed his neck and squeezed his private part resulting into injuries to his testicles. In so far as the Accused Nos.2 and 3 are concerned, it is alleged that they had assaulted Shankar Pawar by means of stick and Accused No.3 is also alleged to have pushed the deceased Sunil Waghmare till his house. Presently, we are only concerned with the role played by the Appellant and the challenge to his conviction and sentence.

3. On a complaint being lodged by P.W.1, an offence came to be registered with Police Station Roha at Crime No.92/2010. During the course of investigation, the Investigating Officer Mr. Vivek Deore (P.W.7) visited the spot of

incident and drew a spot panchanama as well as inquest panchanama of the dead body which was sent for post mortem examination. P.W.4 Dr. Shruti Shirke conducted post mortem examination and issued an Advanced Certificate about the cause of death and post mortem report (Exh.24). According to P.W.4 deceased Sunil Waghmare died on account of neurogenic shock due to testicular injury with associated injury to vital organ-brain. There were no external injuries found on the dead body. The Investigating Officer recorded statement of witnesses and upon completion of investigation, a charge-sheet came to be filed against the Appellant and the co-accused which was committed to the Court of Sessions and was registered as Sessions Case No.04/2011.

4. The learned Sessions Judge framed a charge against the Appellant and the co-accused on 30 May 2011 under Section 302, 324 and 323 r/w. 34 of IPC to which the Appellant and the co-accused pleaded not guilty and claimed to be tried. The defence of the Appellant is one of total denial and false implication.

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

6. The learned Sessions Judge has found the Appellant guilty for the offence punishable under Section 302 of IPC and he has been sentenced as aforesaid. Hence, this Appeal.

7. We have heard Ms. Vora, the learned counsel for the Appellant and Ms. Shinde, 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 there were no external injuries found on the body of the deceased and the Medical Officer - P.W.4 has admitted that if a person under the influence of liquor falls on the road (which according to the learned counsel, has come on record is a cement road) there is a possibility of an internal injury to brain. It is submitted that the internal injury in the nature of haematoma found on the deceased cannot be attributed to any assault by the Appellant in view of the prosecution evidence. It is pointed out that P.W.4 has also admitted that in case of scuffle by a kick blow, injury is possible to the testicles. It is submitted that the seized articles have not been shown to be sent for the report of Chemical Analyser nor the stick which is allegedly seized as a weapon used in the assault, was shown to P.W.1. She therefore submitted that the learned Sessions Judge was in error in finding the Appellant guilty.

9. Alternatively, the learned counsel placing reliance on the decision of the Supreme Court in *State of Karnataka Vs. Shivalingaiah*¹ has submitted that the offence at the highest would fall under Section 325 / 326 or Section 304 Part II of IPC. The learned counsel was at pains to point out that according to prosecution the deceased had gone to intervene in the incident between the accused and Shankar Pawar and therefore no intention could be attributed to the Appellant to assault or injure deceased Sunil Waghmare who had gone to intervene in the quarrel. It is submitted that the evidence would indicate that the deceased might have received the injuries, in the incident which happened at the spur of the moment and without pre-meditation. It is submitted that in any event, no intention could be attributed to the Appellant to cause such bodily injury to Sunil Waghmare which may in the ordinary course of nature be sufficient to cause his death. The learned counsel pointed out that the Appellant has undergone imprisonment for more than 10 years and in the event the offence is modified to one under Section 326 or Section 304 of IPC, the Appellant be let out on the imprisonment already undergone.

10. The learned APP has supported the conviction. It is submitted that there is eye witness account of the assault and in the absence of any circumstances to indicate that the said evidence is not acceptable, no exception can be taken to the

¹AIR 1988 SC 115

conviction of the Appellant. The learned APP also submitted that the nature of the injury caused to the deceased which includes an internal injury in the nature of a haematoma and the crushing of the testicles is sufficient to attribute intention to the Appellant to cause death.

11. We have carefully considered the circumstances and the submissions made and we find that the conviction of the Appellant can be modified to one under Section 304 part II of IPC. P.W.1 Yashoda is the widow of deceased Sunil. She states that on the day of incident at about 3.00 p.m. Sunil was taking lunch in the house while she was cleaning utensils outside. There was a scuffle between Ramesh and Ravindra and they were abusing each other. At that time, father of Appellant namely Shankar came at the spot and was trying to intervene in the quarrel. At that time, father of Ravindra came at the spot i.e. Accused No.2 who gave a blow on the head of Shankar by stick resulting into a bleeding injury because of which Shankar fell unconscious. It can thus be seen that the principal incident of altercation and a scuffle and an assault was between Ramesh and Ravindra in which the Accused No.2 had assaulted Shankar by a stick. It is at this point that the deceased came at the spot leaving his lunch and took Shankar to his house and asked Ramesh to send for a Doctor. According to prosecution, annoyed by this, the Appellant and other co-accused are alleged to have pushed

the deceased in which in so far as the present Appellant is concerned, the allegation is that he caught hold the neck of the deceased with one hand and with the other pulled / squeezed the private part of the deceased, because of which, Sunil fell on the ground and on examination, he was declared dead by P.W.5 Dr. Nandini Telenge.

12. We do not find that the evidence on the point has been shaken in the cross examination. P.W.2 Shankar Pawar is the other injured witness. P.W.3 who is a spot panch had turned hostile. P.W.4 is a Medical Officer who had conducted the post mortem whose evidence has already been referred to and P.W.5 is the Medical Officer who had examined the deceased and declared him dead. P.W.6 Ramesh Pawar states that the Appellant had come to his house for charging mobile and made certain remarks regarding the sister in law of Ramesh Pawar (sister of his wife). Ramesh Pawar is alleged to have stated that it is he who is maintaining them. Thereupon, the accused assaulted Ramesh Pawar . He states that at that time his father came to intervene. P.W.6 Ramesh Pawar is again the witness who was assaulted alongwith his father and lastly P.W.7 is the Investigating Officer.

13. Having gone through the prosecution evidence, we are unable to accept that there was no incident of any such assault as claimed on behalf of the Appellant or that he has been falsely

implicated. The question however is what is the offence which can be said to be proved against the Appellant. A perusal of the prosecution case and the evidence would show that the deceased had gone to intervene in the incident of an altercation followed by a scuffle and an assault between the Appellant and Shankar Pawar. Thus, primarily, the Appellant cannot be attributed with any intention or motive or premeditation to assault the deceased. It is on account of the fact that the deceased went to intervene and took Shankar Pawar to his house and sent for a Doctor, that the Appellant got annoyed in which according to prosecution, the deceased was pushed till his house and in the meantime, the Appellant is alleged to have squeezed the private part of the deceased resulting into his death.

14. As per Section 299 of IPC which defines culpable homicide, whoever causes death by doing an act, with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Section 300 of IPC which is relevant for the purpose sets out exceptions and states that except cases which fall under the various exceptions, culpable homicide is murder if the act by which the death is caused is done with an intention of causing death.

15. In our considered view, this would be a case which would be covered by Exception 4 to Section 300 which inter alia 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. In our considered view, in all probability, the Appellant was annoyed by the intervention of the deceased and the fact that it was the deceased who had taken Shankar Pawar to his house and had sent for medical help. In our view, the incident of assault on the deceased happened on the spur of the moment and in any case, no premeditation can be attributed to the Appellant to assault the deceased. Even going by the prosecution case, as it stands essentially the deceased had gone to intervene in some other quarrel.

16. *Shivalingaiah*, was an Appeal preferred by the State. In that case, the learned Sessions Judge while acquitting the Respondent / Accused under Section 302 of IPC, had found him guilty of the offence under Section 323 of IPC. In the face of similar allegation of the Respondent / Accused having caused the death of deceased Giri Gowda by squeezing his testicles, the High Court found that the offence would fall under Section 325 of IPC. In other words, the High Court found that the offence would be only of intentionally causing grievous hurt against, which the State was before the Supreme Court. The Supreme Court in the facts and circumstances of the case, found that the

offence would not fall either under Section 302 or Section 304 Part II of IPC as it would not be covered by clause *Thirdly* of Section 300. The Supreme Court, however made it clear that it would depend upon facts and circumstances of each case. The following observations in para 3 are apposite.

We wish to make it clear that it cannot be that in all circumstances such an act would not be covered by clause Thirdly and therefore, amount to culpable homicide amounting to murder punishable under Section 302 or culpable homicide not amounting to murder punishable under Section 304 Part II. It all depends on the facts and circumstances of each case whether the accused had the requisite intention or knowledge. The High Court has brought out the circumstances which show that the respondent acted on a sudden impulse.

17. Considering the over all circumstances, we find that the conviction deserves to be modified to one under Section 304 Part II of IPC.

18. Coming to the point of sentence, Section 304 Part II of IPC invites a maximum sentence which may extend to 10 years or with fine or with both. The Appellant is in custody since 9 August 2010 and has put in more than 10 years of imprisonment which is the maximum punishment under Section 304 Part II of IPC.

19. In the result, the following order is passed.

ORDER

1. The Appeal is partly allowed.
2. The impugned judgment and order is hereby modified. The Appellant stands convicted of the offence punishable under Section 304 Part II of IPC.
3. The Appellant is sentenced to rigorous imprisonment, for a period of ten years.
4. 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.
5. Fine if paid, be refunded.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)