

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 524 OF 2010

Sanjay @ Sanju.Lala Dahikar,
Aged about 24 years,
R/o Girguti, Taluqa – Chikhaldara,
District – Amravati.

.... **APPELLANT**

VERSUS

State of Maharashtra,
through P.S.O., Chikhaldara.

.... **RESPONDENT**

Ms. Vidya Umale, Counsel for the appellant,
Mr. N.S. Rao, Addl.PP for the respondent/state.

CORAM : ROHIT B. DEO, J.
DATED : 22nd SEPTEMBER, 2021

ORAL JUDGMENT :

Appellant-Sanjay Dahikar (hereinafter referred to as the “accused”) is challenging the judgment and order dated 29-4-2010 rendered by the learned Additional Sessions Judge, Achalpur in Sessions Trial 37/2009 whereby the accused is convicted for offence punishable under Section 304 Part-II of the Indian Penal Code (IPC) and is sentenced to suffer rigorous imprisonment for seven years and to payment of fine of Rs.500/- and in default, to suffer rigorous imprisonment for three months.

2. Ratiram Baba Belsare, Police Patil of village Ambapati reported at the Chikhaldara Police Station that when he was present at his house at 11-00 p.m. on 03-12-2008, Ramesh Bapurao Mavaskar and Sk. Ahmad Sk. Karim resident of Girgoti came and informed that between 8-00 to 8-30 p.m. Pravin Dahikar, nephew of Ramesh Mavaskar, came to his house complaining stomach ache. Ramesh Mavaskar informed the Police Patil that he went searching for some conveyance to take Pravin Dahikar to the hospital, and by the time he returned, Pravin Dahikar had expired. On the basis of the said report, enquiry under Section 174 of the Criminal Procedure Code (Code) was initiated, inquest and spot panchanamas were drawn, the autopsy was conducted and the post-mortem report was obtained. On 05-12-2008 Ramesh Mavaskar lodged report at the Chikhaldara Police Station, alleging that between 8-00 to 8-30 p.m. on 03-12-2008, Bablu Bandokar escorted Pravin to his house, Pravin appeared frightened and he disclosed that the accused questioned him as to why he and Bablu were loitering near his house and further accused him of committing theft of soyaben. Pravin disclosed that the accused felled him down to the ground and kicked him on the stomach and he was in pain. Bablu corroborated Pravin's version. Ramesh Mavaskar alleged that he went searching for jeep to take Pravin to the hospital and when he returned, Pravin was no more. On the basis of report lodged by Ramesh Mavaskar, Crime 58/2008 for

offence punishable under Section 302 of the Indian Penal Code was registered, the investigation proceeded on the usual lines, the statements of witnesses were recorded, the accused was arrested and upon completion of the investigation, the charge-sheet was filed in the Court of the jurisdictional Magistrate, who committed the case to the Sessions Court.

3. The learned Sessions Judge framed Charge (Exhibit 4) under Section 302 of the Indian Penal Code. The accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial.

4. The prosecution examined eight witnesses. The accused did not adduce evidence in defence. The statement of the accused was recorded under Section 313 of the Code. The learned Sessions Judge, on consideration of the evidence on record, was pleased to convict the accused for offence punishable under Section 304 Part-II of the IPC on the premise that the accused did have the knowledge that by kicking Pravin on the stomach, he would cause death.

5. The learned Counsel Ms. Vidya Umale for the accused would submit that while the finding that the accused kicked Pravin on the stomach is not seriously questioned, the offence proved shall be under

Section 323 of the Indian Penal Code. The extension of the submission is, that no knowledge can be attributed to the accused that when he kicked Pravin, he knew that the act will likely result in death. The learned Additional Public Prosecutor Mr. N.S. Rao disagrees and submits that the reasons recorded by the learned Sessions Judge for convicting the accused under Section 304 Part-II of the IPC are unexceptionable.

6. PW 1-Ramesh Mavaskar is the informant, who states that Pravin disclosed to him that the accused gave a kick blow on his stomach. PW 1 denies the suggestion that Pravin was under the influence of liquor and that he suffered the injury due to a fall on the ground. PW 2-Mahadeo Bandokar is an eyewitness. PW 2 states that the accused quarreled with Pravin and Mahadeo and gave kick blows on Pravin's stomach which caused Pravin to fall down. PW 2 states in the cross-examination that although the altercation continued for forty-five minutes, not a single neighbour or any other person came to the spot of the incident. PW 2 states that he left the residence of Ramesh Mavaskar at 9-00 p.m. and when Pravin went to sleep, he left.

7. PW 3-Motilal Jamunkar escorted the parents of the deceased to the house of Ramesh Mavaskar. PW 3 admits in the cross-examination

that Pravin used to consume liquor. PW 4-Subhadrabai is the mother of the deceased, who has deposed on the basis of information received from Motilal. PW 5-Hirali Dahikar is the father of the deceased, who has also deposed on the basis of information received from Motilal and others. PW 6-Smt. Kimu has deposed that she saw witness Mahadeo assisting Pravin by holding his hand and when she enquired with witness Mahadeo, she was told that the accused gave a kick blow on Pravin's stomach. PW 7-Dr. Priya Hedau who conducted the autopsy, deposed that hemoperitoneum which she noticed in the post-mortem might have occurred due to rupture of the spleen and that the spleen appeared contused and ruptured near hilum. She has deposed that the injuries noticed can be caused by forceful fist blows and kick blows. In the cross-examination, the doctor admits that the injuries are possible due to fall on hard surface in intoxicated state. She further agrees that forceful kick blow on the abdomen may cause contusion type injury which would disappear within one or two hours of the blow. PW 8 is the Investigating Officer.

8. The evidence on record would suggest that it would be hazardous to conclude that repeated kick blows were delivered on the stomach. The eyewitness initially refers to a single blow and such is also the disclosure to the witnesses who are examined. While there is

sufficient material on record to hold that the accused did kick Pravin on the stomach, it would be difficult to hold that the knowledge can be attributed to the accused that he would, by delivering the kick, cause death, or cause such injury as would result in death or cause such injury as would in the natural course, result in death.

9. The learned Sessions Judge presumably proceeded on the premise that forceful multiple kick blows were inflicted and held that inference can be drawn that the accused knew that he was likely to cause death. While PW 2-Mahadeo refers to kick blows, in the examination-in-chief, at a later point, he states that Pravin told Ramesh Mavaskar that the accused had given kick blow.

10. Considering the blurred nature of the manner of assault, it would be hazardous not to give the benefit of the doubt to the accused. Even if it is assumed that more than one blow was struck, it is difficult to find, in the circumstances of the case, that the accused knew that death would be the result.

11. I am, therefore, inclined to allow the appeal partly by setting aside the conviction under Section 304 Part-II of the IPC and instead convicting the accused under Section 323 of the IPC. Since the accused

has already undergone 650 days of detention, which is more than the maximum sentence, the sentence is already undergone.

12. The appeal is partly allowed.

13. The conviction of the appellant for offence punishable under Section 304 Part-II of the IPC is set aside and instead the appellant is convicted for offence punishable under Section 323 of the IPC. Since the accused has already undergone 650 days of detention, which is more than the maximum sentence, the sentence is already undergone.

14. The bail bond of the accused shall stand discharged.

JUDGE

adgokar