

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1288 OF 2011

SHRI ARUN APPASO DANGE)
Aged about 43 years, Residing at Bhairavwadi)
Kurundwadi, Taluka Shirol, District Kolhapur)
(At present lodged at Kolhapur Central Prison)...APPELLANT

Vs.

1) THE STATE OF MAHARASHTRA)
(At the instance of Kurundwad, Taluka)
Shirol, District Kolhapur)
)
2) VIVEK DANGE)
)
3) DNYANESH DANGE)
Both minors, Residing at Bhairavwadi)
Kurundwadi, Tal : Shirol, District Kolhapur)...RESPONDENTS

WITH

CRIMINAL APPEAL NO. 654 OF 2012

AVINASH SHANKAR MANE)
Age 45 years, R/a. Jath, Tal Jath, Dist. Sangli)...APPELLANT

V/s.

1) SHRI. ARUN APPASO DANGE)
Age 40 years, Occupation : Agriculture)
)
2) SOU. PRABHAWATI APPASO DANGE)
Age 55 years, Occupation : Household)

Both R/o. Bhairavwadi, Kurudwadi,)
 Taluka Shirol, District Kolhapur)
)
 3) THE STATE OF MAHARASHTRA)
 Kurudwadi Police Station, Dist. Kolhapur)...RESPONDENTS

Mr. Amit Mane, Appointed Advocate for the Appellant in Appeal No.1288 of 2011.

Ms. Rui Danawala i/by. Mr. Umesh Mankapure, Advocate for the Appellant in Appeal No.654 of 2012 and Respondent No.2 and 3 in Appeal No.1288 of 2011.

Mr. V. B. Konde Deshmukh, APP for the Respondent - State.

**CORAM : REVATI MOHITE DERE &
 V. G. BISHT, JJ.**

DATE : 7th JUNE 2022

JUDGMENT : (PER : V. G. BISHT, J.)

1 The appellant – original accused Arun Appaso Dange has preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) challenging the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Jaisingpur, in Sessions Case No.16 of

2008 dated 7th September 2011 by which the learned Additional Sessions Judge convicted the appellant for the offences punishable under Sections 302 of the Indian Penal Code, 1860 (IPC for short) and sentenced him life imprisonment with a fine of Rs.20,000/- and in default to deposit the amount of fine, ordered to undergo further rigorous imprisonment for a period of six months. The trial Court was, however, pleased to acquit the appellant and another accused, namely, Sou. Prabhavati Appasaheb Dange of the offences punishable under Sections 302, 498A, 323, 504 read with 34 of the IPC. This acquittal is challenged by the complainant Avinash Mane by filing Appeal No.654 of 2012. Therefore, both these appeals are disposed of by this common judgment.

2 Briefly stated, the prosecution case is that informant, namely, Avinash Shankar Mane, is uncle of deceased Vidya @ Sushma (deceased for short). The deceased was married to appellant. Out of the said wedlock, the appellant has two sons, namely, Vivek and Dnyanesh. Another accused Prabhavati is

mother-in-law of the deceased. Initially, for some years, the deceased was treated well. The appellant, however, used to take handloan from time to time from the brother of the informant. The prosecution alleges that since a year prior to lodging of the report, the appellant started abusing and beating the deceased on the ground of demand of monies. The deceased used to narrate her sufferings whenever she used to visit her matrimonial home. Therefore, at times, the deceased along with her sons used to reside with her parents. However, on an assurance given by the appellant that he would treat the deceased well, the appellant used to take back the deceased.

3 According to the prosecution, on 16th April 2008, at about 7.05 p.m., nephew of informant, namely, Bhushan Vilas, rang him on his mobile and told that he had received a phone call from Vivek i.e. the son of the deceased informing him that the appellant had assaulted the deceased on her head and that the deceased is lying in a pool of blood. The informant and others rushed to the house of the appellant. They found the deceased

lying in a pool of blood and was dead.

4 The First Information Report (FIR) was registered vide Crime No.42 of 2008 with Kurudwadi Police Station, Kolhapur, for the offences punishable under Sections 302 read with 34 of the IPC. The investigation was taken up by the Investigating Officer (PW11) who prepared Spot panchnama, Seizure panchnama of various articles seized from the spot and recorded statements of witnesses.

5 PW7 Police Constable Sandeep Gaikwad carried the muddemal property to the Forensic Science Laboratory, Pune.

6 PW10 Dr. Nagnath Chougule conducted autopsy on the body of the deceased and noted external and internal injuries and opined that the deceased had died due to shock due to intracerebral hemorrhage with fracture skull due to hard and sharp weapon.

7 On completion of investigation, police filed chargesheet against the appellant and the accused (acquitted) under Sections 302, 498A, 323, 504 read with 34 of the IPC and committed the case to the Additional Sessions Judge, Jaisingpur, District Kolhapur.

8 To substantiate the charge against the accused, the prosecution has examined as many as eleven witnesses and exhibited number of documents. The appellant was questioned under Section 313 of the Cr.P.C. about the incriminating evidence and circumstances and the appellant denied all of them as false. According to him, he had not committed any offence and at the relevant time was not present in the house. Similarly, acquitted accused, namely, Prabhavati also denied the incriminating evidence appearing against her as false and that she has been arrested on false charge and was residing with her younger son.

9 Upon appreciation of oral evidence and circumstances, the learned Additional Sessions Judge convicted the appellant for the offence punishable under Section 302 of the IPC and sentenced

him in the manner stated hereinabove. However, learned Additional Sessions Judge was pleased to acquit the appellant and another accused Prabhavati of the charges punishable under Sections 498A, 323, 504 read with 34 of the IPC. Therefore, the present appeals.

10 Mr. Amit Mane, learned counsel for the appellant, submits that the whole incident took place in a spur of moment and that there was no premeditation on the part of the appellant to assault the deceased. According to the learned counsel, even if the accusations of the prosecution are accepted in toto, a case under Section 302 of the IPC is not made out and since the assault was made in the course of a quarrel, the learned trial Court committed an error in law by awarding conviction under Section 302 of the IPC. According to the learned counsel, Exception 4 to Section 300 of the IPC is applicable in the facts and circumstances of the case. To substantiate his submission, the learned counsel also took us through the evidence of prosecution witnesses.

11 Per contra, Mr. Konde Deshmukh, learned APP, on the other hand, vehemently and vociferously opposed the submissions advanced by the learned counsel for the appellant in Appeal No.1288 of 2011. The learned APP also took us through the evidence of material witnesses and as also the medical evidence and pointed out that since the life threatening injury was inflicted on the prominent part of the body, the intention was clear on the part of the appellant to commit the murder of the deceased. According to the learned APP, the learned trial Court has not committed any error while appreciating the prosecution evidence on record and has correctly applied the law. There being no merit in the appeal, the same is liable to be dismissed, argued learned APP.

12 The learned APP then next submits that the learned trial Court committed an error in law and facts by acquitting the appellant and the other accused, namely, Prabhavati of the charges punishable under Sections 498A, 323, 504 read with 34 of the IPC. The learned APP submits that there is sufficient

evidence on record to prove that the acquitted accused was also equally liable for the cruelty and the death of the deceased. This being so, the appellant and the acquitted accused need to be punished suitably, urged learned APP.

13 As against above, learned counsel for the appellant and acquitted accused supported the impugned judgment acquitting the appellant and accused Prabhavati of the offences punishable under Sections 498A, 323, 504 read with 34 of the IPC. There being no merit in the appeal, the same is liable to be dismissed, argued learned counsel.

14 At the very outset, we would like to make it clear that the present appeal is argued by the learned counsel for the appellant only on the point of sentence. The conviction is not disputed in any manner. According to the learned counsel, having regard to the facts and circumstances of the present case, the accused ought to have been given the benefit of Exception 4 to Section 300 of the IPC.

15 Section 299 of the IPC explains culpable homicide as causing 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 the act complained of is likely to cause death. The first two categories require the intention to cause death or the likelihood of causing death while the third category confines itself to the knowledge that the act complained of is likely to cause death.

16 Section 300 of the IPC declares that except in those cases which are specifically excepted culpable homicide is murder in situations which have been specifically laid down. These are commonly referred to as firstly, secondly, thirdly and fourthly under Section 300 of the IPC. The Hon'ble Apex Court in the judgment in **State of Andhra Pradesh vs. Rayavarapu Punnayya and Another**¹ inter alia held as follows :

“21 From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is ‘murder’ or ‘culpable

¹ 1976 (4) SCC 382 : (AIR 1977 SC 45)

homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be

“culpable homicide not amounting to murder”, punishable under the first part of Section 304, of the Penal Code”.

17 It is also relevant to note that Exception 4 to Section 300 of the IPC which reads as under :

“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.

Explanation .- It is immaterial in such cases which party offers the provocation or commits the first assault”.

18 In **Surinder Kumar vs. Union Territory, Chandigarh**² the Hon’ble Apex Court held that to invoke Exception 4 to Section 300 of the IPC, 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.

² (1989) 2 Supreme Court Cases 217

19 Further, in **Arumugam vs. State**³, in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

“9..... 18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight ; (c) without the offender’s having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden

3 (2008) 15 SCC 590

or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

20 The question before us, in the light of submissions advanced by either side, is whether in facts and circumstances of the case the appellant- original accused has been rightly convicted for the capital offence and if not whether the act attributed to him would constitute a lesser offence like culpable homicide not amounting to murder punishable under Section 304, Part I or II of the IPC.

21 We have given our thoughtful consideration to the submissions of the learned counsel for both the parties. We have also carefully gone through the prosecution evidence made available on record. We are clear in our mind that the act

committed by appellant amounts to culpable homicide. We find no merit in the contention advanced before us by the learned counsel for the appellant that the case of the appellant is purely covered under Exception 4 to Section 300 of the IPC. We propose to qualify this with reasons.

22 Admittedly, PW3 informant is a formal complainant who had no occasion to witness the incident in question. The material witnesses for our purpose are PW9 Vivek Arun Dange i.e. son of the deceased and PW10 Dr. Nagnath Chougule who performed an autopsy over the dead body of the deceased.

23 PW9 Vivek Dange, son of the deceased, states in his evidence (Exh. 76) that on 16th April 2008 after finishing his last paper of English subject, he along with his parents and brother Dnyanesh and maternal uncle started for Kurundwad. They reached Kurundwad at about 5.00 p.m. After having tea etc. his grandfather and maternal uncle started returning to Jath. There were quarrels between his father and mother. It is his further evidence that while his mother was preparing food in the kitchen

and he was eating, at that time, his father came inside the kitchen and hit his mother with a sickle over her head. Thereupon his mother shouted as “Aai ga” and fell down. Thereafter his father put on his clothes and ran away from the back door on his motorcycle.

24 The cross-examination of this witness is also material which throws light to the relations between his father and mother. It is his specific evidence that ever since he started understanding the things, he was seeing that his father was asking his mother to bring monies from her father’s house and on her refusal, used to beat his mother. His cross-examination further shows that before the actual incident, there were quarrels between his father and mother on the point of money and his mother had said to his father as to why he is constantly demanding monies.

25 According to learned counsel for the appellant, since a single blow was given and that too because of quarrel between the appellant and deceased, it cannot be said that the appellant

intentionally committed the murder of the deceased.

26 What is pertinent to note here is that the appellant was in a habit of beating the deceased on the ground of monies. Even on the day of incident, a quarrel took place over the demand of monies and as per version of this witness, even the deceased confronted the appellant as to why he was constantly demanding monies from her. It is essentially in this background the genesis of the incident took place leading to the death of the deceased.

27 We are not oblivious of the fact that the deceased, at the relevant time, was preparing food and was defenceless. On the other hand, the appellant came armed with a sickle and gave a blow of the same from behind on her head, as a result of which, the deceased fell down and died. Here the conduct of the appellant also assumes significance. We say so because immediately after assaulting the deceased, the appellant put on his clothes and ran away from back door on his motorcycle.

28 What is strikingly apparent is that there was no such serious provocation to the appellant which would have enabled him to take recourse of violence and use lethal weapon like sickle. The evidence or rather cross-examination nowhere even remotely suggests that the provocation from the side of deceased was so grave and menacing that the appellant was left with no alternative but to hit and inflict the blow by means of a sickle.

29 There is also no dispute that the death was instantaneous. The evidence on record gives a very clear and crystal picture that the occurrence had not taken place on account of a sudden and unpremeditated fight. Rather, the deceased was assaulted from behind on her head when she was in a helpless condition. This speaks in volumes about the intention of the appellant.

30 Incidentally, what flashes in our mind is the submission of the learned counsel for the appellant that it being a case of single blow, Section 302 of the IPC shall not be attracted.

31 We may profitably refer to the observations of the Hon'ble Apex Court at paragraph 7.2 in case of **Stalin vs. State**⁴ which are as under :

“7.2 From the above stated decisions, it emerges that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case, more particularly, under the circumstances narrated hereinabove, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence.”

4 (2020) 9 Supreme Court Cases 524

32 In the instant case, we have already noted that the appellant assaulted the deceased from behind and that too on the vital part of the body i.e. head by means of a sickle, which in itself is a dangerous weapon. We are inclined to the view that in the facts and circumstances of the present case, it can be said that the appellant had an intention of causing death of the deceased when he committed the act in question. The incident was not a fall out of sudden and grave provocation. This being so, in our considered view, the appellant will not be entitled to the benefit of Exception 4 to Section 300 of the IPC.

33 We also would like to touch and rely the evidence adduced by PW10 Dr. Nagnath Chougule (Exh. 79) who upon external and internal examination of the dead body of the deceased noted three injuries each externally and internally and according to him, all the injuries noted by him were sufficient in ordinary course of nature to cause death. Thus, the medical evidence also furthers the case of the prosecution.

34 At the cost of repetition, the facts of this case clearly show that the appellant inflicted injury on the person of the deceased leading to her death. None of the exceptions to Section 300 of the IPC are attracted. The act amounts to murder within the meaning of Section 302 of the IPC. We, therefore, see no reason to interfere with the impugned judgment as against the present appellant.

35 As far as the charges against another accused Prabhavati and appellant under Sections 302, 498A, 323, 504 read with 34 of the IPC are concerned, we have carefully gone through the evidence of prosecution witnesses. It would not be out of place to mention that as far as the death of deceased is concerned, there is only evidence of PW9 Vivek who nowhere has attributed any act on the part of accused Prabhavati. Therefore, sharing of common intention along with the appellant's son by the said accused is ruled out.

36 So far as the accusation of cruelty is concerned, there is

quite vague evidence of the prosecution witnesses. The evidence of PW3 informant is quite vague and a general statement is made that the accused Prabhavati used to help her son in ill-treating the deceased. We also note from the record that the appellant herein was residing separately along with his deceased wife and children and accused Prabhavati i.e. mother of the appellant was residing with her another son by name Suresh. On this count also, it is farfetched to say and assume in the absence of cogent and convincing evidence that accused Prabhavati shared a common intention to do away with the deceased and that she subjected the deceased to cruelty within the meaning of Section 498A of the IPC.

37 In our studied view, the learned Additional Sessions Judge has properly appreciated the evidence qua the accused Prabhavati and rightly acquitted her. Similarly, the present appellant was also rightly acquitted of the offences punishable under Sections 498A, 323 and 504 of the IPC. We do not find merit in the appeal preferred by the State.

38 In view of above and for the reasons stated above, we pass the following order :

ORDER

Appeal No.1288 of 2011 and Appeal No.654 of 2012 are dismissed.

(V. G. BISHT, J.)

(REVATI MOHITE DERE, J.)