

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1106 OF 2012**

Nandu Dada Survase

Age – 45 yrs., Occu. - Agriculturist,

R/o. Ranjani, Tal. - Pandharpur,

Dist. - Solapur.

At present in Sub-Jail, Pandharpur.

... Appellant

(Orig. Accused No.1)

V/s.

The State of Maharashtra

... Respondent

Ms. Shraddha Sawant, Appointed Advocate for the Appellant.

Ms. Veera Shinde, APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 3rd FEBRUARY 2022.

ORAL JUDGMENT :

1. The appellant herein is convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- (Five Thousand only), in default to suffer further RI for three months vide judgment and order passed by the learned Additional Sessions Judge, Pandharpur in Sessions Case No.83 of 2009 in Crime No.232 of 2009. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as under :-

(i) On 28th August 2009, at about 1.00 pm, Narayan Salunkhe lodged a report at Pandharpur Police Station alleging therein that his daughter Shakuntala (deceased) was married to the present appellant. The couple was blessed with two sons and a daughter who were studying in Ashram School. Due to famine 4 to 5 years prior to 28th August 2009, Shakuntala and Nandu had started residing at Anavali, Taluka Pandharpur along with their cattle. A discordant note had struck between the couple and thereafter, Shakuntala had started residing with her parents. She was working as a house-maid.

(ii) On 27th August 2009, on occasion of Gauri Ganpati Festival, Shakuntala had gone to village Ranjani to meet her sister Rajabai.

(iii) On 28th August 2009 at about 9.30 am, Rajabai, sister of the deceased had rushed home and informed P.W.5 that on that day at about 8.00 am when Shakuntala was at the bus stop the husband of Shakuntala i.e. the present appellant approached her, abused her and assaulted her. They rushed to the bus stop and noticed that Shakuntala had sustained incised wound on her neck and she had succumbed to the said injuries.

(iv) On the basis of the said report, Crime No.232 of 2009 was registered at Pandharpur Taluka Police Station for the offence punishable under section 302 of the IPC.

(v) At the trial, the prosecution examined as many as 11 witnesses to bring home the guilt of the accused. The case of the prosecution rests on the evidence of P.W.5 – Narayan Salunkhe, the complainant, P.W.6 – Mahadeo Salunkhe, brother of the deceased, P.W.7 – Anand More, eye-witness to the incident and P.W.8 – Rajabai, eye-witness to the incident - sister of the deceased.

3. P.W.5 – Narayan Salunkhe, the complainant has proved the contents of the FIR. He has stated before the Court that his daughter Shakuntala was being harassed and ill-treated at the hands of the accused since he suspected her chastity. That, he used to abuse and assault her under the influence of alcohol. It is in these circumstances that she had withdrawn herself from the society of her husband and had started working as an agricultural labour. In the course of working as an agricultural labour, on one occasion, her left hand was fractured. She was unable to work and therefore, she had started working as a maid. She was residing at Karad Naka and her children were studying

in Ashram School. However, her children visited her during the vacation. That, on the eve of Gauri Ganapati, his daughter Shakuntala had been to the house of Rajabai with idols of Laxmi. When she was at the bus stop near Gandage vasti her husband gave her blow of scythe on her neck, despite her cry for help nobody had rescued her.

4. It is admitted by P.W.5 that by the time he reached the spot of incident the police had arrived and people had gathered around.

5. P.W.6- Mahadeo Salunkhe happens to be brother of the deceased. His evidence corroborates the evidence of P.W.5. The witness was confronted with his brother's statement and he has denied to have stated that he had disclosed to the police that Dnyanoba Ligade and Ananda More have witnessed the prelude to the incident and assault. He has denied the suggestion that when accused was on his way to the work, the deceased had obstructed him by pulling his shirt and shouting at him by alleging that he had stolen the money from his house and that he is impotent and therefore, she was distracted and was going out of the house. She had abused him. He has denied to have stated that the independent witnesses had informed him that the accused was trying to go away from the scene of offence but was

obstructed and abused by the deceased by referring to him as impotent, thief and all sorts of abuses. She was trying to snatch bags from the bicycle and had repeated that he should not bother even if she maintains illicit relations with others as that was none of his business.

6. PW.7 – Ananda More is an independent eye-witness who was declared hostile by the prosecution. It is elicited in the cross-examination that four to five years prior to the incident, Solapur District was stricken by famine, hence, the Government had opened cattle camps at village Anavali. He was confronted with his previous statement and he has denied to have said the same. His statement is a part of records and proceedings and the contradictions are marked at **Exh.A** which read thus:-

“That at about 8.30 am, the deceased Shakuntala was at the bus stop. Her husband was proceeding for work. The deceased obstructed his way by catching hold of his shirt and questioned him as to why he had stolen money from her house. She referred to him as impotent and started abusing him. The accused had attempted to leave from the spot but she continued to obstruct him by pulling the bag hanged to the handle of his bicycle. Thereafter, the accused removed the scythe from his bag and started assaulting his wife with the scythe. The witness had tried to intervene. That, witness had rushed to the village and informed the police patil as well as Sarpanch Bhivaji Dandge and then left for work.”

7. PW.8 – Rajabai Ligade is an eye-witness to the incident. She has reiterated that the deceased was harassed by the accused since he suspected her character. Therefore, she was constrained to leave her matrimonial abode and had started residing with her father. Initially, she was working as an agricultural labour and thereafter, she started working as a maid in Manisha Nagar, Pandharpur. She was also selling vegetables. The deceased had visited her house, thereafter, she wanted to go to Pandharpur and therefore, was waiting at the bus-stop just near the vasti of Ananda More – PW.-7. She had forgotten her purse and therefore, P.W.8 rushed to the bus-stop to hand over the said purse and when she was near the vasti of Ananda More she saw that her sister was being assaulted by the accused. She saw that her sister had sustained injuries on her neck, face and hands. She, therefore, informed her father that her sister was lying dead at the said spot.

8. PW.9 – Shankar Jirage happens to be the investigating officer. He has deposed before the Court the steps taken by him in the course of investigation. He has proved the omissions and contradictions in the evidence of PW.6, PW.7 and PW.8. The learned counsel for the appellant has submitted before this Court that there is no denial of the fact that the said incident had occurred. She has urged

before the Court to take into consideration the circumstances in which the said incident has occurred. According to her, the accused was passing by the road on his own. He was working as an agricultural labour and was engaged for cutting sugarcane. He was obstructed by the deceased and she had levelled scathing remarks against his honour. He had tried to proceed quietly, however, she continued to abuse him in public and therefore, there was grave and sudden provocation due to which the said incident had occurred and therefore, according to the learned counsel, the offence committed by the appellant does not fall under section 302 of IPC.

9. Per contra, the learned APP has submitted that no doubt there was grave and sudden provocation, but at the same time, the accused should have had self-restraint. The learned APP has drawn our attention to the column no.17 of the post-mortem notes which clearly shows that the deceased had sustained as many as 10 injuries in the nature of chop wounds. The injuries were so grave that the oesophagus and trachea were also seen cut. It is therefore prayed that the judgment of the trial Court does not call for any interference.

10. With the help of the learned counsel for the accused and the learned APP, we have gone through the records and proceedings. We agree with the learned counsel for the accused that it is necessary to take into consideration the circumstances in which the said incident had occurred. In fact, the couple was married for almost more than 15 years. The appellant was the father of three grown up children who were staying in the Ashram School. Almost four years prior to the incident, the couple had parted their ways and had started living independently without interfering into each other's life and in this background, on the unfateful day, suddenly upon seeing the accused by chance, the deceased had not just obstructed his way by holding his neck, by pulling his shirt but had started hurling abuses and had levelled scathing remarks by which self-esteem of the accused was not only lowered in his own eyes but in public. The incident had occurred on a busy road near the residential house of Ananda More. The loud allegations made by the deceased were heard by one and all. It was quite natural for the man to feel ashamed upon being referred as impotent.

11. The appellant was the father of three children. Despite that the deceased had not only stopped upon referring to him as impotent

but had given it as an excuse for having illicit relations. She had further stated that it is none of his concern as to how she lives her life. There is no material to show that after parting ways the accused had ever interfered with the lifestyle of the deceased.

12. It is true that the incident of assault is outcome of a grave and sudden provocation. The accused was deprived of his self-control and hence, he could not have any restraint upon himself while mounting assault. It was not a pre-meditated act. He was on his way for work and therefore, was carrying a sickle in his bag. The offence committed by the accused falls under Exception 4 to Section 300 which reads thus:-

“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.”

13. The accused has been in custody since 2009. He has almost undergone 12 years imprisonment. In view of this and the observations made hereinabove, the appellant deserves to be convicted for the offence punishable under section 304(II) of IPC which would serve the ends of justice. Hence, we pass the following order :-

ORDER

- (i) The appeal is partly allowed;
- (ii) The conviction of the appellant for the offence punishable under section 302 of IPC vide judgment and order dated 28th June 2012 passed by the Additional Sessions Judge, Pandharpur is hereby quashed and set aside;
- (iii) The appellant is convicted for the offence punishable under section 304 (II) of the IPC and is sentenced to the period already undergone;
- (iv) The appellant be released forthwith, if not required in any other offence;
- (v) The learned counsel Ms. Shraddha Sawant has assisted the Court to the best of her capacity and she is entitled to the professional fees;
- (vi) Appeal is disposed of.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)