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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 263 OF 1998

Maruti Nathyabo Gophane,
Age – 26 yrs., Occ: Labourer,
R/o. Vanjarwadi, Tal. Baramati,
Dist. Pune. } ...Appellant
(Orig. Accused)

Versus

The State of Maharashtra } ...Respondent

Mr. Kuldeep Patil a/w Mr. Prashant S. Hagare for
Appellant.

Mr. Arfan Sait, APP for Respondent – State.

CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.

RESERVED ON : AUGUST 11, 2021.

PRONOUNCED ON : FEBRUARY 01, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Baramati, in Sessions Case No. 23/1996, dated 13th November, 1997, whereby Appellant herein (Original Accused) who was convicted for the offence punishable under Section 302 of the Indian Penal Code (for short "IPC"), and sentenced to suffer imprisonment for life and also to pay fine of Rs. 1,000/- in default to suffer further R.I. for one year, preferred the present

Appeal.

2. The case of prosecution, in brief, can be summarized as under:

Accused – Maruti and deceased Sukhdeo are the residents of village Vanjarwadi, Tq. Baramati, Dist. Pune. It is the case of prosecution that the appellant had erected a cattle shed nearby the residential house of deceased. Shantabai (PW 1) is the wife of deceased whereas, Vidya (PW 2) and Chaya (PW 5) are the married daughters of couple. It is the case of the prosecution that on the fateful day i.e., 25th January, 1996, there was a marriage of Sanjay Chaudhar, nephew of deceased Sukhdeo and Shantabai (PW 1). The said marriage was attended by the daughters of Sukhdeo and Shantabai (PW 1). In the night, Shantabai (PW 1) and daughters of Sukhdeo i.e., Vidya (PW 2) and Chaya (PW 5) were chitchatting on the platform in front of the house (known as 'Ota'). Then deceased told them to go to sleep as such, Vidya (PW 2) and Chaya (PW 5) proceeded nearby the cattle shed for easing themselves. Accused who got annoyed because of an act of Vidya (PW 2) and Chaya (PW 5), hurled stones at them. Vidya (PW 2) and

Chaya (PW 5) returned back to home and informed deceased about the act of the accused. Then deceased told his daughters that he will go to accused and asked why he has pelted stones.

3. Accordingly, deceased proceeded towards the cattle shed of accused. Then there was heated exchange of words between accused and deceased. Accused who was carrying weapon knife gave two blows on the right and left thighs of the deceased. Due to knife blows, deceased shouted 'melo' 'melo'. On hearing hue and cry of deceased, Shantabai, Vidya and Chaya rushed to the spot and found that deceased got injured and lying. One of the relatives namely, Bapu Chaudhar (PW 3) who was residing nearby the house of Sukhdeo reached the cattle shed on hearing hue and cry of Shantabai and her daughters. Then Shantabai told Bapu about the incident. Bapu made an attempt to caught-hold the accused by chasing him but, the accused who was carrying knife in his hand by giving threats of life fled away from the spot. Then Bapu returned back to the spot of incident. Meantime, some neighbourers and other villagers also gathered on the spot. Sukhdeo was carried to the ota of

one Dashrath Buva Chaudhar. A jeep was arranged so as to shift Sukhdeo to hospital. Sukhdeo was taken to a private hospital namely, Silver Jubilee Hospital, Baramati. Dr. Mahadeo Swami (PW 7), who was attached to the said hospital at the relevant time admitted Sukhdeo in the hospital. Dr. Swami found that Sukhdeo had suffered stab injuries on his right and left thighs and was unconscious, forwarded an information about the admission of Sukhdeo to police station. On receipt of information, PI attached to Baramati Police Station deputed PI Pradeep Chavan (PW 8) to visit hospital and to take stock of situation. On reaching Silver Jubilee Hospital PI Chavan (PW 8) found that Sukhdeo was unconscious and as such, he was unable to record the statement but he recorded the statement of Shantabai (PW 1). The said statement of Shantabi was forwarded to police station and the said statement of Shantabai was treated as first information report.

4. One head constable Jawale registered an offence on the basis of first information report. On lodgment of report and on registration of an offence, the investigating agency was set in motion. In that

process of investigation PI Chavan made an attempt to locate the accused but the accused was untraceable. Therefore, PI Chavan deployed a party of armed personnel to trace accused and effect his arrest. In the intervening night of 25th and 26th January, 1996 at about 1.15 pm Sukhdeo succumbed to his injuries. In view of death of Sukhdeo the offence attracted against the accused was altered into an offence under Section 302 of IPC. Meantime, the investigating agency collected evidence by recording statement of witnesses, by collecting the earth, blood stained as well as simple earth and drawn various panchnamas. The armed party deployed by PI Chavan was successful in effecting arrest of accused in the morning of 26th January, 1996. Clothes of the deceased under panchnama were seized. The accused was subjected to medical examination. During the course of interrogation the accused made disclosure of keeping the weapon knife at a particular place and by drawing necessary panchnama the weapon knife was recovered at the instance of accused. Necessary material collected during the course of investigation was subjected to scientific scrutiny such

as, CA etc. Then CA report was obtained from the laboratory.

5. On collection of evidence, charge-sheet came to be filed in the Court of JMFC, Baramati. The accused was subjected to trial by Court of Session. On reading charge and explaining the same to the accused, the accused pleaded not guilty. In his defence the accused though admit his presence on the spot, he submitted that deceased reached the spot with a weapon knife with an intention to teach lesson and in heat of anger laid an attack over him and was successful in saving himself. In that process Sukhdeo himself received injuries and accused was falsely implicated in the present crime. An attempt was also made to submit before the Court below that on raising an objection for urinating in the cattle shed by the daughters of deceased, the deceased felt insulted and told him that the he has erected cattle shed on Government land and as it is not his private land, he should not have raised any objection in the act of his daughters. Thus, it was submitted by the accused before the Court below that the accused had not committed any crime and the

injury suffered by the Sukhdeo were due to his own act as such, no criminal liability can be fasten on the Appellant.

6. On appreciation of evidence, learned Sessions Judge, convicted the accused for the offence punishable under Section 302 of IPC and directed to suffer RI for life. Hence, this present Appeal.

7. Learned Counsel for the Appellant vehemently submitted that the case of prosecution stands only on circumstantial evidence. Even if the witnesses are cited by the prosecution as eye witnesses, they reached on the spot after the alleged incident was over and the witnesses have not seen the actual incident. Learned Counsel for the Appellant further submitted that the deceased Sukhdeo himself was an aggressor and Sukhdeo was carrying weapon in his hand. It is submitted by learned Counsel for the Appellant that Sukhdeo with an intention to teach lesson to the Appellant reached the spot carrying weapon in his hand as such, it is a case of contra material against Appellant. It is also submitted by learned Counsel for Appellant that, even

considering the material against the accused as it is, it will not bring the case of prosecution against the accused for commission of offence under Section 302 of IPC. Learned Counsel for the Appellant submitted that the medical evidence is not at all supporting the case of prosecution but, it supports the case of Appellant. It is also submitted by learned Counsel for Appellant that the so called eye witnesses are interested witnesses because they are the family members of deceased.

8. Learned Counsel for the Appellant further submitted that considering the evidence brought by the prosecution the case against the Appellant would fall under Section 304-I or 304-II of IPC. Hence, learned Counsel for Appellant prayed for an allowing the appeal by setting aside the judgment and order of conviction. In support of his submissions, learned Counsel for Appellant, placed heavy reliance on following judgments: Gurmail Singh & Ors vs. State of Punjab¹, Hem Raj vs. State (Delhi Admn.)², Masumsha Hasansha Musalman

1 (1982) 3 SCC 185

2 1990 SCC (Cri) 713

vs. State of Maharashtra³, Thankchan vs. State of Kerala⁴, Pappu vs. State of M.P.⁵, Noor alias Nooruddin vs. State of Karnataka⁶, State of Madhya Pradesh vs. Sughar Singh and Others⁷, Satish Kumar vs. State of Haryana⁸, Govind Singh vs. State of Chattisgarh⁹, Mahesh s/o Rajaram Gondare vs. The State of Maharashtra¹⁰, Krishnegowda and Ors V. State of Karnataka¹¹, State vs. Manikandan¹².

9. *Per contra*, learned APP vehemently submitted that the evidence brought on record by the prosecution is trustworthy and reliable and the statement of witnesses are immediately recorded. It is also submitted by learned APP that apart from the family members of deceased, the other witnesses are independent and they have supported the case of prosecution fully. Learned APP further submitted that the deceased Sukhdeo was not carrying any weapon and proceeded the cattle shed for asking as to why he had

3 (2000) 3 SCC 557

4 (2005) 11 SCC 536

5 (2006) 7 SCC 391

6 (2007) 12 SCC 84

7 (2008) 15 SCC 442

8 (2019) 9 SCC 529

9 (2019) 17 SCC 812

10 2019 ALL MR (Cri) 4111

11 AIR 2017 SC 1657

12 2015 ALL MR (Cri) 2473 (S.C.)

pelted stones over his daughters. It is also submitted by learned APP that the evidence in the form of recovery of weapon from the accused clearly establishes the fact that the accused is the author of the crime. Learned APP then submitted that as the learned Trial Judge committed no error in appreciating the evidence and recorded the judgment and order of conviction to the Appellant, the Appeal sans merit and same be dismissed.

10. With the assistance of both the learned Counsel appearing for respective parties, we have gone through the evidence and material placed on record.

11. The prosecution in support of its case examined as many as 9 witnesses.

12. In so far as the issue involved in the present Appeal is concerned, whether the death of deceased is homicidal one, the prosecution heavily relied on the evidence of Dr. Swami (PW 7) as such, we may refer to the evidence of Dr. Mahadeo Swami (PW 7), firstly.

13. Dr. Mahadeo Vishwanath Swami (PW 7), is the

Chief Medical Officer at Silver Jubilee Hospital, Baramati. This witness, in examination-in-chief, deposed that On 25.01.1996 at about 09.45 pm injured Sukhdeo was brought to the hospital in serious condition. This witness examined him. He was pulseless, in shock and unconscious. Then this witness admitted him in the hospital and started medical treatment. While giving treatment Sukhdeo died on 26.01.1996 at 01.15 a.m. Then this witness informed the death of Sukhdeo to police. Sukhdeo had two injuries. This witness found following injuries on his person:

1. Stab injury of 4.5cm x 2.5cm x 15cm at antero-medical aspect of distal 1/3rd of right thigh.
2. Stab injury 4cm x 2cm x 12cm at lateral aspect of distal 1/3rd of left thigh.

This witness opined as cause of injuries was sharp cutting pointed object.

14. This witness performed the postmortem examination of Sukhdeo on 26.01.1996 between 09.25 am to 10.55 am. On internal examination, he found that all viscera was pale. As per his opinion, the probable

cause of death was due to hemorrhagic shock due to injuries over the thighs. The injuries on the person of injured were sufficient in the ordinary course of nature to cause death. The injury is possible by knife.

In the cross-examination, this witness stated that when Sukhdeo was brought in the hospital he was in irreversible shock. In case of excessive blood loss, if the blood is supplied to patient, the patient would have survived. Both the injuries on the person of Sukhdeo are an anterior part of the body. There was no injury on the posterio part of Sukhdeo. This witness further stated that if such person is assaulted on back side such type of injury is not possible. Such type of injury on the person of Sukhdeo is not possible. If the knife is in the hand of Sukhdeo and the accused wanted to remove that knife, and if the accused holds Sukhdeo from back side and Sukhdeo bent down, both the injuries are possible. This witness stated that thigh is not vital part of the body.

15. Considering the above referred evidence of Dr. Swami (PW 7), we are of the opinion, that the prosecution was successful in proving its case that

deceased Sukhdeo died homicidal death.

16. Now considering the other important aspect of the matter i.e., as to the authorship of the crime and whether the Court below was justified in holding the accused guilty for commission of offence under Section 302 of IPC. It may be useful for us to refer to other evidence i.e. eye witnesses, panch witnesses and investigating officer.

17. Smt. Shantabai Sukhdeo Chaudhar (PW 1), is the wife of deceased Sukhdeo. In examination-in-chief, this witness deposed that her two daughters are Vidya and Chaya and they are married. House of accused is at a distance of 500 ft away from their house. Accused had constructed cattle shed about one year prior to the incident. The land over which accused constructed cattle shed is Government land. This witness further deposed that on the date of incident, there was marriage of Sanjay Maruti Chaudhar, her nephew. The marriage was held at 02.30 pm. Her both daughters Vidya Pansare and Chaya Dhole had come to attend the said marriage. After marriage, on the same day in the

evening, her daughters stayed with her. In the evening, they all took meals, and after meals were over this witness, her husband and her two daughters were chitchatting by sitting on the Ota of their house. They were chitchatting upto 09.30 pm. At 09.30 pm her husband asked the daughters to go to sleep. This witness further deposed that before going to sleep her both daughters went towards the cattle shed of the accused, which was the usual place of her daughters to ease themselves. Accused Maruti pelted a stone at the direction of her daughters. Thereafter, her both daughters returned home and told the incident to her husband. Then her husband asked her daughter, if any of them was hit by the stone pelted by the accused. They answered in the negative. Then this witness deposed that thereafter her husband stated that he would go to the house of accused to question him why he had pelted stone at Vidya and Chaya. Then deceased went towards the cattle shed of accused. Deceased was standing near the cattle shed. Then this witness and her daughters continued to sit on the Ota of their house. This witness further deposed that from the Ota of their

house, they could see the cattle shed and adjoining area belonging to the accused. Her husband asked accused why he had pelted stone at his daughters. He told that daughters were urinating in his cattle shed and he could not tolerate, because they were spoiling cattle shed. Thereupon, her husband told the accused that it was Government land and there is no concern of the accused.

18. This witness further deposed that her husband told the accused that the matter would be settled following morning, after calling his brother. When her husband turned himself to come back home, at that very moment accused gave blows with knife on both the thighs from back side. Then deceased shouted aloud as melo, melo and further shouted that accused Maruti had assaulted him with knife. Then they immediately went together near the cattle shed of the accused where her husband was assaulted. By that time, her nephew Bapu Raghunath Chaudhar came on the spot. He asked her what had happened, this witness told that incident that had happened. Then this witness showed accused Maruti walking from the middle lane of Dasharath Buva and

Pandurang Namdeo. Then Bapu rushed after him through the said lane. Then this witness reiterated the prosecution story.

19. In the cross-examination, a suggestion was given to this witness that her husband used to erect shed of Goenka Company of Baramati, this suggestion was denied. This witness further stated that when her husband went at the cattle shed of the accused, his verbal exchange lasted for only two minutes. After she heard shouts of her husband, her husband fell down on the ground. When her husband fell down accused started walking briskly towards the lane. The moment her husband shouted aloud as melo, melo, they ran towards the spot of offence. Her daughters also came along with her to the spot. Her husband was lying injured near the cattle shed of the accused. Seeing the bleeding injury of her husband, they started shouting. This witness further stated that immediately Bapu Chaudhar came on the spot. This witness stated that in her police statement, she did not tell police that as usual towards the cattle shed of the accused her daughters had gone for urination. In her FIR and statement she

did not mention that there was street lamp posts near their house. This witness further stated that as she was frightened she did not tell police in her FIR that her husband was saying that Maruti Ghophane had assaulted him with a knife. This witness admitted that at the time of incident her daughters on returning home, in the courtyards told her that Maruti had objected to their urination. Then this witness stated that there was scuffle between her husband and accused. Both of them were simply speaking with each others. Then certain suggestions were given to the effect that she had not seen accused assaulting her husband with knife, she is falsely telling that accused had pelted stone at her daughters who had gone to urinate near the cattle shed of the accused, his knife was in the hand of her husband, in the incident there was scuffle between her husband and accused Maruti, all these suggestions were denied.

20. Sau. Vidya Pansare (PW 2), is the daughter of deceased Sukhdeo and Shantabai (PW 1). This witness deposed before the Court that incident took place about one year back. On the date of incident, there was

marriage of her cousin. Then this witness reiterate the facts stated by Shantabai (PW 1).

In the cross-examination, this witness stated that her father was lying in usual condition in between the cattle shed of the accused and heap of cow dung. This witness admitted that they had gone at the northern side towards the cattle shed of the accused for urination. When her father had gone to ask accused the explanation, this witness, her sister and Shantabai were sitting on the ota. There was verbal exchange of words going on between her father and accused which was audible to them. When her father shouted aloud, they all paid attention towards him. They went to the spot of offence to see what happened. Then this witness stated that she did not tell police that Bapu Chaudhar had come hearing the shouts of her father and he pursued the accused going in the lane. This witness stated that there was no scuffle between the accused and her father. There was physical touch between accused and her father, in the scuffle. In the scuffle of a sudden her father did not fall on the ground. Then certain suggestions were given that the knife was in

the hand of her father, accused was trying to snatch the knife from her father's hand, it got pierced into his thighs and therefore, he had sustained injuries, on that night, after consuming liquor, her father had gone to assault accused with a knife, accused Maruti had not pelted stone on them, accused assaulting her father with a knife and she deposed falsely, all these suggestions were denied.

21. Bapu Raghunath Chaudhar (PW 3), is the nephew of deceased Sukhdeo. This witness deposed that cattle shed of Maruti Gophane is at the northern side from the house of Sukhdeo. House of accused is at the southern side at about 500 ft away from Sukhdeo's house. This witness further deposed that on the date of incident there was marriage. Sukhdeo's married daughters Sau. Vidya and Chaya had come in his house to attend the marriage. At about 09.15 to 09.30 pm he was taking meals in the house. Then he heard crying of complainant and her daughters. Then he immediately went to Sukhdeo's house. From Sukhdeo's house he rushed towards cattle shed of accused. Sukhdeo was moaning and Shantabai and her two daughters were with Sukhdeo

crying aloud. Then this witness asked Shantabai what had happened. Shantabai told that Maruti Gophane had assaulted her husband with knife and asked this witness to see he was going in between the houses of Pandurang Chaudhar and Dhashrath Chaudhar. This witness saw accused going through their lane. Then this witness followed accused upto the wall of house of Pandurang Namdeo Chaudhar. He asked Maruti to stop he retorted moving towards him and showing knife of his hand that come near and I will finish you up. Then this witness reiterated the same facts referred by other witnesses.

In the cross-examination, this witness stated that when he came out of his house, he did not see many persons running towards the house of Sukhdeo. He had told police that some persons had gone towards the house of Sukhdeo. People were going but they reached after this witness reached on the spot. Then a omission was brought on record that in his presence police statement though he told police did not write down that he asked Shantabai w/o Sukhdeo Chaudhar, what had happened, and she told him that her husband was assaulted by accused and he was going there. This

witness further stated that he himself along with others had not personally gone to the house of Maruti. On that night, he had taken police to the house of Maruti Gophane, he was not found there.

22. Pandurang Namdeo Chaudhar (PW 4) is the neighbour of deceased Sukhdeo. This witness deposed before the Court that on the date of incident, which took place about 1 ½ years back, there was marriage in the family of Chaudhar. At about 09.30 pm he was sitting on the ota of his house after completing his meals. At the eastern side of his house, he heard commotion and cries of Sukhdeo. He further stated that Maruti Gophane was going in front of his house. He was having something in his hand and was concealing it and was being followed by Bapu Chaudhar. Maruti Gophane asked Bapu Chaudhar to come near him and he would finish him up.

In the cross-examination, this witness stated that police had come in their village at about 02.00 am after incident took place. He learnt that police had come in the village. On his own accord at 02.00 am or in the following morning, he did not tell anything to

police. He saw Maruti going from a distance of 15 ft from his house. Bapur Chaudhar was near the house of Dashrath Buva Chaudhar 50 ft away. Then Bapu had asked him where Maruti had gone to which he told that he was going ahead. Then a suggestion was given that he is falsely telling that accused had given threat to Bapu Chaudhar to come near him and he would finish him up, and Bapu and Maruti had not met on that night, these suggestions were denied.

23. Sau. Chaya Vilas Dhole (PW 5), is the daughter of deceased Sukhdeo and Shantabai (PW 1). This witness deposed before the Court that she know accused Maurti Gophane. On the date of incident, she had come to Vanjarwadi to attend marriage of her cousin brother. Her another sister, Sau. Vidya had also come to Vanjarwadi. This witness further deposed that on 25.01.1996 at 02.30 pm marriage was held. After marriage, in the evening they both sisters stayed at the house of their parents. After taking meals, they were chitchatting with parents by sitting on the ota of their house upto 09.00 to 09.30 pm. Then this witness reiterated the facts as stated by other witnesses.

In the cross-examination, this witness stated that at the western side of their house there is open space and the road. Then a suggestion was given that at that time, Maruti was not having knife in his hand, this suggestion was denied. This witness stated that there is no question of scuffle between her father and accused. This witness had told police that Bapu had asked her mother, what had happened, this statement came on record by way of an omission.

24. Shrirang Bhalerao Salunke (PW 6) is the panch witness to seizure panchnama. This witness deposed before the Court that on 27.01.1996 he had gone to Tahsil Kacheri. At about 04.15 pm Baramati City Police called in the police station. One another panch Bamne, police officer Chavan and accused Maruti Gophane were present in the police station. PSI Chavan asked him to listen what accused is going to tell. Then he asked accused what he wanted to tell. Then accused told that he was prepared to produce knife which he had used in commission of offence and which he had concealed in his own house. Accordingly, police wrote down the memorandum statement of the accused and then obtained

his signature.

25. Pradeep Chavan (PW 8), is the investigating officer. This witness deposed before the Court that on 25.01.1996, he was present in police station. PSO received the information from SJ Hospital, Baramati at about 10.25 pm that Sukhdeo was admitted in the hospital for treatment of injury his thigh. PI Baramati ordered him to go to the hospital. Then he went to the hospital. The injured Sukhdeo was not in a position to give statement. Therefore, he recorded the complaint of Shantabai wife of injured. Then he recorded the complaint in hospital and sent it for registration of offence to police. Then this witness states about the steps taken by him in the process of investigation such as, recording the statement of witnesses, taking entry in the station diary, drawing inquest panchnama, collecting PM report, sending samples for CA, obtaining CA report, drawing seizure panchnama, effecting arrest of accused, etc. Omissions in the statement of witnesses are proved through this witness.

26. Ganpat Chitrao (PW 9), is the PSO attached to

Baramati City Police Station at the relevant time. This witness deposed before the Court that the accused Maruti had come to police station. He was brought by police. He lodged complaint. This witness recorded his complaint as per his say. The complaint bears signature of the accused.

In the cross-examination, certain suggestion were given to the effect that accused has not given the information stated in Exh. 38, this suggestion was denied.

27. Considering the evidence of above referred witnesses and the distance between the spot of incident and the house of accused, it can safely be said that these three witnesses namely, Shanatabai (PW 1), Vidya (PW 2) & Chaya (PW 5) immediately rushed to the spot on hearing the shouts of deceased Sukhdeo. In our opinion, thus, the prosecution was successful in establishing the factum of presence of accused and accused was armed with weapon knife and Sukhdeo was subjected to assault by knife.

28. The evidence of Dr. Swami (PW 7) also supports

the case of prosecution and falsifies the defence of the Appellant that it was the deceased Sukhdeo who gave blows to the accused and the accused in self defence made an attempt to save himself from blows and in that process the deceased was injured. Thus, the submission that it was the self inflicted injuries, cannot be accepted.

29. Considering the above referred evidence, we are of the opinion, that the prosecution was successful in establishing its case about the death of deceased being homicidal one and the prosecution was also successful in establishing the authorship of the crime i.e. Appellant is the author of the crime.

30. There is, however, considerable merit in the submission of learned Counsel for the Appellant that it was an sudden provocation by the act of deceased Sukhdeo. It was also the submission of learned Counsel for the Appellant that the case of accused would fall under the exceptions to Section 300 of IPC.

31. To consider the above submission, for our ready reference, we may reproduce the Section 300 of

IPC and exceptions as under:-

300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly -If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly -If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly -If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. When culpable homicide is not murder

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden

provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First -That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly -That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly -That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation: Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 : Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without

premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3 : Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

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.

Exception 5 : Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

32. It may be useful for our purposes to refer to

the observations in the judgment of the Hon'ble the Apex Court in the case of K.M. Nanavati vs. State of Maharashtra¹³ While dealing with the term sudden and grave provocation, the Hon'ble the Apex Court observed in para 84 & 85 as under:

(84) Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc. in short, the cultural, social and emotional background of the society to which an accused belongs.....

(85) The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also under certain circumstances, cause grave and sudden provocation to an accused so as to bring

13 AIR 1962 SC 605

his act within the first Exception to section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time or otherwise, giving room and scope for premeditation and calculation. (Emphasis supplied).

33. Bearing these principles in mind, now we refer to the facts of the present case at hand. The deceased on an information received by him through his daughters went towards the cattle shed of the accused, there was an heated exchange of words followed by an assault over the deceased by accused, the attack of the accused is not on the vital part of body, in our opinion, the offence committed by the Appellant would not fall under Section 302 of IPC but would fall under Section 304-I of IPC.

34. It may be useful for our purposes to refer to

the observations of this Court, in the matter of Mahesh Gondare (supra), in paragraph 24 and 25 observed thus:

24. In my view, had there been an intention on the part of the appellant to cause death when opportunity was available with him, in the sense, he was armed with deadly weapon, he could have chose a vital part(sic) of the body of deceased Gautam.

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35. In view of the judgments above referred and more particularly, the judgment of this Court in the matter of Mahesh Gondare (supra), we are of the opinion that the case of prosecution against the accused would fall under Section 304 (I) and not in Section 302 of IPC. Hence, we pass the following order:

:ORDER:

1. Criminal Appeal is partly allowed.
2. The conviction recorded by learned Additional Sessions Judge, Baramati by his judgment order dated 13th November, 1997 in Sessions Case No. 23 of 1996 is altered from Section 302 of IPC to Section 304(I)

of the IPC.

3. The Appellant – Maruti Nathyaba Gophane is held guilty for the offence punishable under Section 304(I) of IPC and sentenced to suffer rigorous imprisonment of 10 years. The order of the learned Sessions Judge in respect of fine and, in default of payment of fine amount, is confirmed.

(N.R. BORKAR,J.)

(PRASANNA B. VARALE,J.)