

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 111 OF 2014**

Ravi Subhash Naik.
Age about 30 years, Occupation-labourer,
Residing at Kamare Dairy, Taluka
Palghar, District Thane.
(presently lodged in Thane Central Jail) ... Appellant.

v/s.

The State of Maharashtra.
(Through Saphala Police Station
C.R. No. 23/2012) ... Respondent.

Mr. Gautam T. Kanchanpurkar a/w. Ms. Priya D. Patil a/w. Ms. Pooja
D. Kale, advocate for appellant.

Ms. S.V. Sonawane, APP for State.

Mr. Ravi Subhash Naik, accused present in court.

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

RESERVED ON : JANUARY 27, 2022.

PRONOUNCED ON : FEBRUARY 15 , 2022.

JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 The appellant herein stands convicted for the offence
punishable under section 302 of Indian Penal Code and sentenced to
suffer Rigorous Imprisonment for life and to pay fine of Rs. 5000/- i.d.

to suffer R.I. for six months. The appellant is also convicted for the offence punishable under section 315 of Indian Penal Code and sentenced to suffer R.I. for 3 years by Additional Sessions Judge, Palghar in Sessions Case No. 68 of 2012 vide Judgment and Order dated 31/10/2013. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) The appellant herein was married to Surekha 13 years prior to 20/4/2012. The couple was blessed with two daughters namely, Shweta and Neha. That 3 months prior to 20/4/2012 Surekha had disclosed to her sister-in-law that she has seen her husband engaged in long conversation with a lady on his phone. She suspected that he was in an extra marital relationship with the said lady. Her suspicion was strengthened because when she enquired about it, she was assaulted by her husband.

(ii) In the night intervening 19/4/2012 and 20/4/2012 Daksha informed brother of Surekha that a quarrel has taken place between Surekha and her husband at about 9.30 p.m. Her husband had

assaulted her and thereafter, her husband and his friend had taken her to Hospital at Palghar and that they were accompanied by other relatives also.

(iii) Surekha was examined by Dr. Pankaj Thakare (PW.11), Medical officer at Rural Hospital, Palghar. He found her to be disoriented. The doctor had noticed an abrasion over great-toe of left foot and a contused lacerated wound over scalp, left parietal region measuring 5 x 2 cm. It appeared to be a simple injury caused by hard and blunt object.

(iv) Upon enquiry, husband of the injured informed the doctor that a steel pot had fallen on her head. The patient was referred to higher center for further investigation and management. The injury certificate issued by PW. 11 is at Exh. 33.

(v) Her mother and other family members had upon enquiry learnt that she was taken to Dhavale Hospital and the doctor had advised them to take her to Bombay.

(vi) Pursuant to medical advise, she was admitted in Nair hospital at Bombay. Surekha succumbed to the injury in Nair Hospital on 27/4/2012 at about midnight. The mother of deceased Surekha

lodged a report at the police station on 29/4/2012.

(vii) It is alleged in the said FIR that at Nair hospital, the son of the first informant namely, Manoj enquired with the accused and at that time, the accused had disclosed that there was a quarrel between Surekha and him and in the course of quarreling he had assaulted Surekha with a stick on her head. He regrets for the same. He also informed Manoj that to escape from a criminal case, he had disclosed that a steel box had fallen on her head.

(viii) Neha, daughter of deceased and accused also informed all concerned, that her father had assaulted her mother with a stick. On 27/4/2012 A.D. NO. 15 of 2012 was registered under section 174 of the Code of Criminal Procedure, 1973. The scene of offence panchanama, the inquest panchanama was conducted in A.D. Enquiry.

(ix) On 29/4/2012 Crime No. 23 of 2012 was registered against the accused for the offence punishable under section 302 of the Indian Penal Code.

3 At the trial, prosecution examined as many as 13 witnesses to bring home the guilt of the accused.

4 PW.1 Smt. Jassu Babu Dubla happens to be the mother of the deceased. She has proved the contents of the FIR, which is marked at Exh. 11. It is elicited in her cross-examination that after death of her daughter, she had gone to Saphala Police Station after 12 days. It is admitted that her son and his friend had narrated the incident to the police and she had only put her thumb impression on the same.

5 The daughter of the deceased Neha has been examined by the prosecution as P.W. 2. She has deposed before the court that her father had assaulted her mother with a stick in her presence. She has even identified the wooden stick with which her mother was assaulted. The child has been cross-examined and she has admitted that she was disappointed with P.W. 1 for taking her away from her house to live with P.W.1. It is also admitted that they used to tell her that her father is the author of the injury due to which her mother had died. They had even tutored her to disclose before the court that her father had assaulted her mother.

6 PW.3 Manoj Dubala happens to be the brother of the deceased, to whom Deepak had disclosed that the hospitals were not admitting the injured and had referred to Mumbai. He has deposed before the court that the accused had an extra marital affair with some lady with whom he used to converse regularly. Whenever she enquired about the same, he used to assault her. She had disclosed about the same to his wife Shobha to convey the same to P.W. 3.

7 On 19/4/2012 he had received a call from Daksha, the neighbor of the accused. Daksha had informed P.W. 3 that the accused had assaulted his wife and that she was being admitted in hospital. According to him, he had made telephone call to Deepak who was accompanying the injured and the accused to facilitate the admission of the injured in the hospital. Deepak had further disclosed that rural hospital, Palghar did not admit the injured. Similarly, the doctor at Dhavale Hospital had also referred the patient to higher center at Bombay. Upon information by Deepak, P.W. 3 alongwith his mother and others had reached Nair hospital at Mumbai. When P.W. 3 reached the hospital, he noticed that there were black marks on her right arm. There was a bandage to her head and she was unconscious. P.W.3 then

enquired with the accused. On the first day, the accused informed that a tin box had fallen on her head. On next day, upon further enquiry, the accused disclosed that since the doctors were not ready to admit Surekha in the hospital, he had informed that a tin box had fallen on her head. But in fact, he had assaulted her with a wooden stick. The accused had also expressed apprehension that he was scared of being prosecuted. It is admitted that they had not approached the police station despite the fact that they had learnt from the accused himself as well as Neha that the accused was the author of the injury sustained by Surekha. That for the first time, he had gone to the police station on 29/4/2012 i.e. when the FIR was lodged. That there are material omissions in the evidence of P.W.3.

8 P.W. 4 Laxmi Dhodi happens to be neighbor of the accused. She claims to have heard the noise of crying from the house of accused Ravi. She rushed to his house. The accused had opened the door. She saw Surekha lying on a mat with a bleeding injury to her head. Surekha was conscious. P.W. 4 enquired with her and at that time, Surekha had disclosed that Ravi had assaulted her. Thereafter, Surekha became unconscious. Soon thereafter, the accused had brought Paresh

on Motor cycle and had taken Surekha to hospital. It is admitted in the cross-examination that on the day of incident, as usual both daughters of accused had gone to the house of the mother of accused for sleeping. It is further admitted that the injured was taken to the hospital by the accused even before P.W. 4 reached his house and therefore, she had no dialogue with Surekha.

9 P.W.5 Daksha who was the first person to communicate about the incident to P.W. 3 brother of the deceased is declared hostile.

10 P.W. 6, 7, 8 are the panch witnesses. Their evidence calls for no discussion as it is an admitted position that Surekha, the wife of the accused sustained injuries in her matrimonial home, her husband was present at the time of incident, she was taken to the hospital by the accused, she was unconscious and the history of accidental injury was given by the accused. The wooden stick was recovered at the instance of the accused on 1/5/2012. P.W.8 happens to be the panch to recovery of cell phone of the accused which was seized in the police station and the panchanama was allegedly drawn in the presence of P.W. 7, who

has admitted in the cross-examination that the contents of the panchanama were not reduced into writing in his presence.

11 PW. 9 PSI Ashok Waghmare was attached to Agripada Police Station. On 27/4/2012, he had received an information from Nair hospital regarding the death of Surekha wife of Ravi Naik. He had prepared the inquest panchanama which is at Exh. 27. He claims to have recorded the statement of the brother of the deceased. It is also admitted that on that day, the relatives of the deceased had not complained against anybody, but all that the brother had disclosed is that the neighbor of the accused had informed him telephonically that his sister was assaulted on the previous night. No case was made out for registration of offence and hence, initial investigation was done in A.D. Enquiry.

12 PW.10 Vaibhav Gharat is the panch for recording of the memorandum under section 27 of the Indian Evidence Act. Initially in the examination-in-chief, he has stated that the accused in the custody of the police had informed the police that he had assaulted his wife on

her head, but he has disowned to have signed the said memorandum. Hence, he is declared hostile.

13 Dr. Sachin Sonawane (PW. 12), Assistant Professor at Nair Hospital, Mumbai conducted autopsy on the dead body of Surekha. He noticed 2 sutured injuries on her head which was suggestive of craniotomy. Besides that, he noticed that contusions on her arms and shoulders, abrasions on her knee and laceration on left great-toe. On internal examination he had noticed surgical injuries as follows :

- (1) Oval shaped craniotomy flap of size 10 cm. x 6 cm of right parieto-temporal bone.
 - (2) Linear undisplaced fracture of length 5 cm. at left parietal extending from coronal suture to left lateral side.
 - (3) There was subdural hematoma of size 60 cc seen in inferior surface of right temporal and occipital lobe dura matter at right parieto-temporal region sutured with 8 stitches present.
 - (4) Subarchonoid haemorrhages seen over right cerebral region.
- Brain was congested and edematous.

It was also noticed that the deceased was pregnant. There was a

female foetus of 26 cms.. It appears that the deceased was pregnant of about 5 months amenoragic female. The cause of death was bronchopneumonia as complication of head injury. The post mortem notes are at Exh.42 and the same are proved by P.W.12.

14 P.W.13 Vinayak Patil is the investigating officer. He has deposed about the steps taken by him in the course of investigation. He has proved the omissions and the contradictions of the witnesses. According to him, the informant and her son had disclosed to P.W. 13 that Neha is the eye witness to the incident. The alleged statement of P.W.3 that he learnt from Deepak that the injured is being shifted to Bombay is in the nature of an omission.

15 Learned Counsel for the appellant submits that the prosecution had not proved its case beyond reasonable doubt in as much as there is no eye witness to the incident. That there is delay in lodging the FIR which goes to the root of the matter. That there was no motive to kill the deceased. Lastly, that it is a case of grave and sudden provocation. The accused had given just one blow on the head of the

deceased and therefore, it cannot be said that the accused had an intention to kill the deceased.

16 Per contra, learned APP has submitted that it is a case of custodial death. The wife of the accused had sustained injury when she was at home in the custody of her husband and therefore, it is incumbent upon the accused to put forth the circumstances in which the incident must have occurred as the incident is within the special knowledge of the accused. There is no plausible explanation offered in his statement under section 313 of the Code of Criminal Procedure, 1973. A false defence is taken and therefore, an adverse inference needs to be drawn and the conviction for the offence punishable under section 302 of the Indian Penal Code deserves to be maintained.

17 The evidence led by the prosecution is threefold. Firstly, that there is an eyewitness to the incident. Secondly, there is an oral dying declaration, Thirdly, there is an extra judicial confession. Fourthly, that the deceased was carrying pregnancy of five months at the time of her death. Fifthly, that it is a case of custodial death.

18 The first aspect to be considered is the evidence in the nature of dying declaration. According to P.W. 4, the deceased had disclosed to her that she was assaulted by her husband. However, it is categorically admitted in the cross-examination that the accused had taken Surekha to the hospital even before the arrival of P.W. 4. In view of this, there was no occasion for the injured to make any dying declaration to P.W. 4 and hence, the said evidence does not deserve to be considered.

19 As far as the evidence that Neha was an eye-witness to the incident of assault, it needs to be appreciated that P.W. 4 has categorically stated that the daughters of the accused and deceased had gone to the house of the mother of the accused for sleeping as usual. Moreover, Neha had informed her grand-mother and her maternal uncle on the very next day of the incident that her mother was assaulted by her father in her presence. In that eventuality, no steps were taken by the first informant or P.W. 3 to lodge a report. That Neha has also admitted that her grand-mother and her maternal uncle

had impressed upon her and tutored her to say that her mother had sustained the fatal blow at the hands of her father. And therefore, the evidence of Neha cannot be considered as a sterling testimony.

20 It is the case of the prosecution that there was an extra judicial confession made by the accused to his brother in law within two days from the incident. However, no steps were taken by P.W.3 to report to the police. Besides, there is an apparent delay in lodging the FIR even after the death of Surekha. P.W.9 has categorically stated that the statements of the relatives was recorded in A.D. Enquiry and there was no complaint against the accused. To add to it, P.W. 1 and P.W. 3 have stated before the court that they had approached Saphala police station 12 days after the incident. An inference would have to be drawn that the first information report is anti-dated. In any case, the first informant has also stated that in fact, the incident was narrated by P.W. 3 Manoj and his brother Sanjay.

21 The fact that Surekha was carrying pregnancy of 5 months is proved by P.W. 11, who had performed the autopsy on the dead body

of Surekha. It is a female fetus. It is pertinent to note that neither P.W. 1 or P.W. 3 have stated that Surekha was carrying pregnancy of five months.

22 There is no evidence to show that the accused was involved in any extra marital relation. The possibility that the deceased had nurtured a suspicion cannot be ruled out.

23 It is a matter of fact that the wife of the accused had sustained injury in her matrimonial house. The accused was present when the incident occurred. And this fact is established by the very conduct of the accused that he had rushed her to the hospital within no time. Had there been an intention to do away with the life of the deceased, nothing prevented him from making a second assault to ensure her death. He had given one blow of the stick, realized his mistake when she failed down and rushed to hospital immediately. The accused had not taken undue advantage of the situation.

24 The fact that the stick was used as a weapon of assault is proved by the fact that there were blood stains on the stick. In the words of

P.W. 3, the accused had admitted that in the eventuality it had come to light that it is a medico legal case, then Surekha would not have been treated by the doctors, also needs to be taken into consideration and no adverse inference can be drawn.

25 In the present case, the doctor has not stated that the injury sustained by the deceased was sufficient in the ordinary course of nature to cause death. In any case, the cause of death is “bronchopneumonia as complication of head injury”.

26 It would be trite to rely upon the judgment of the Supreme Court in the case of **Kesar Singh & anr. v/s. State of Haryana**¹. It is held that-

“The distinction between culpable homicide amounting to murder and not amounting to murder is well known. Culpable homicide is genus, murder is its specie. The culpable homicide, excluding the special characteristics of murder, would amount to culpable homicide not amounting to murder. The Code recognizes three degrees of culpable homicide. When a culpable homicide is of the first degree, it comes within the purview of the definition of

¹ (2008) 15 SCC 753.

[Section 300](#) and it will amount to murder. The second degree which becomes punishable in the first part of [Section 304](#) is culpable homicide of the second degree. Then there is culpable homicide of third degree which is the least side of culpable homicide and the punishment provided for is also the lowest among the punishments for the three grades. It is punishable under the second part of [Section 304](#).

12. The questions which are required to be posed are - (1) Whether the bodily injuries found on the deceased were intentionally inflicted by the accused; and if so, (2) Whether they were sufficient to cause death in the ordinary course of nature.”

27 It was incumbent upon the accused to have given a plausible explanation in his statement under section 313 of CR.P.C. The accused had only denied to have committed the offence. It is apparent on the face of the record that the accused had inflicted single blow on the head of the deceased. The appellant had not taken undue advantage of the situation, neither there was cruelty. However, the knowledge that the stick would cause injury on the head which would in all probabilities result into death cannot be ruled out. Hence, the present case would fall under section 304 part II of the Indian Penal

Code as no intention to commit murder can be attributed to the accused.

28 The learned Counsel submits that the accused was in jail since 2012 except for parole granted due to pandemic. The accused is present before the court at the time of hearing.

29 In view of the above observations, following order is passed:

ORDER

(I) The appeal is partly allowed.

(II) The conviction and sentence for offence punishable under section 302 of Indian Penal Code passed by Additional Sessions Judge, Palghar in Sessions Case No. 68 of 2012 vide Judgment and Order dated 31/10/2013 is hereby quashed and set aside.

(III) The appellant is convicted for the offence punishable under section 304 II of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 9 years and to pay fine of Rs. 5000/- i.d. to suffer R.I. for six months.

(IV) The conviction and sentence for the offence punishable under section 315 of Indian Penal Code is maintained.

(V) The appellant is hereby entitled to the set off for the period already undergone.

(VI) The appeal is disposed of on the above terms.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)