

Kanchan Dhuri

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 540 OF 2016**

Yogesh Mahadev Dabhade]
Age : 29 years, R/at : Fule Nagar, Nashik.]
(at present, Nashik District Jail, Nashik)] ...
Appellant

Versus

The State of Maharashtra]
(At the instance of Dindori Police]
Station, District – Nashik]
Vide C.R.No.28 of 2010.)] ...
Respondent

.....

Mr. Aniket U. Nikam, Advocate *for the Appellant.*

Ms. P.P. Shinde, APP *for the Respondent-State.*

.....

**CORAM : M.S. SONAK &
N.R. BORKAR, JJ.**

DATED : 14th September 2022

JUDGMENT (Per : N.R. Borkar, J.) :

1. This Appeal takes exception to the Judgment and Order dated 14th July, 2016 passed by the District Judge - 8 & Additional Sessions Judge, Nashik in Sessions Case No.109 of 2010.

2. The Appellant, who was accused No.1 before the trial court, was tried for the offences punishable under Sections 498A and 302 of Indian Penal Code (IPC). By the impugned Judgment and Order, the trial court convicted the Appellant for the offence punishable under Section 302 of Indian Penal Code and sentenced to suffer life imprisonment and to pay a fine of Rs.1000/- in default of payment of fine to suffer simple imprisonment for one month. The trial court however, acquitted the Appellant of the charge for the offence punishable under Section 498A of the IPC. Two more accused were tried with the Appellant for the offence punishable under Section 498A of the IPC. The trial court acquitted them of the said charge.

3. The deceased Sonali was the wife of present Appellant. The Appellant and the deceased were married for five to six years prior to the occurrence of the alleged incident, which took place on 30th March, 2010.

4. According to the prosecution, the Appellant and other accused were insisting the deceased to bring Rs.50,000/- from her parents to augment their hotel business. They were subjecting her to mental and physical cruelty, to coerce her to fulfill their unlawful demand.

5. On 26th March 2010, the Appellant and other accused left the deceased at her parents' house and she was told that they would not let her to come to their house without Rs.50,000/-.

6. According to the prosecution, on the day of incident i.e., on 30th March 2010, the Appellant alone

came to the house of parents of the deceased. He told PW-1 Hiranman Ganore, the father of the deceased and other family members that he had come to talk to the deceased. He further told them that he would not be able to talk with the deceased in their presence and told them to go out of the house. Accordingly, to allow the accused No.1 to talk with the deceased, they came out and stayed nearby the house. According to the prosecution, after some time they heard cries of the deceased and she was desperately calling PW-1. Thus, they went inside the house and saw that Appellant was assaulting the deceased with knife. They also found that there were multiple injuries on the person of the deceased. According to the prosecution, Appellant after assaulting the deceased, tried to run away but he was apprehended. Due to assault the deceased died at the spot itself.

7. The trial court to convict the Appellant has primarily relied upon the evidence of PW-1 Hiranman Ganore, the father of the deceased, PW-3 Ashok

Ganore, the uncle of the deceased and PW-5 Sangita Ganore, the mother of the deceased, who according to the prosecution are eye witnesses to the incident in question.

8. We have heard the learned Counsel for the Appellant and the learned APP for the Respondent-State.

9. The learned Counsel for the Appellant submits that the trial court erred in relying upon the evidence of PW-1, PW-3 and PW-5 to connect the accused No.1 with the alleged crime. It is submitted that PW-5 has admitted in her cross-examination that when she came inside the house, the deceased was lying on the floor and there were multiple injuries on her person. She has further admitted that she was first to come inside the house. The learned Counsel for the Appellant thus submits that when PW-5 came inside the house, the deceased was already lying on the floor in the injured condition, and thus it is

apparent that PW-5 had not witnessed the alleged assault by the Appellant. It is submitted that PW-1 and PW-3 who came inside the house after PW-5, therefore cannot be relied upon as eye-witnesses to the alleged incident and therefore, the trial court erred in relying upon the evidence of PW-1, PW-3 and PW-5 as eye witnesses to the alleged incident and convicting the Appellant on the basis of their evidence. The learned Counsel for the Appellant submits that, the evidence on record and more particularly, medical evidence would show that injuries sustained by the deceased were on easily accessible part of her body and therefore, possibility of self inflicted injuries cannot be ruled out. In the alternative, it is submitted that considering the facts and circumstances of the case, benefit of exception 4 to Section 300 of the IPC needs to be extended to the Appellant and at the most the Appellant can be said to have committed the offence punishable under Section 304 - Part-II of the IPC.

10. On the other hand, the learned APP

supported the impugned Judgment and Order. The learned APP submits that PW-1, PW-3 and PW-5 have in unequivocal terms stated that the present Appellant assaulted the deceased by knife and their evidence cannot be doubted just because they are relatives of the deceased. It is further submitted that considering the facts and circumstances the benefit of exception 4 to Section 300 may not be extended to the Appellant.

11. We have perused the evidence of PW-1, PW-3 and PW-5. They have deposed that when they came inside the house, the deceased was lying on the floor and the Appellant was assaulting her by knife. The alleged admission in the cross-examination of PW-5 that when she came inside the house the deceased was lying on floor, therefore will have to be read in the context of her evidence in examination-in-chief and not in isolation, wherein she has deposed that when she came inside the house the deceased was lying on the floor but in the same breath she deposed that

accused was assaulting her. The submission of the learned Counsel for the Appellant that PW-5 had not witnessed the actual assault therefore, cannot be accepted. In our view, the evidence of PW-1, PW-3 and PW-5 cannot be doubted just because they are the relatives of the deceased and especially when their evidence remained unshaken in cross-examination. It is well settled law that the relatives of the deceased cannot be termed as interested witnesses. A witness who is natural one and is the only possible eye-witness in the circumstances, cannot be said to be interested witness. The trial court was therefore justified in relying upon the evidence of PW-1, PW-3 and PW-5 and arriving at the finding that it was Appellant only who assaulted the deceased.

12. As regards the submission that the injuries were self inflicted, the same cannot be accepted in view of specific denial of suggestion to that effect by PW-9 Dr. Abhay Bangal who conducted the post-mortem examination of the deceased. There is no

other evidence on record to draw such inference.

13. We, however, find merit in the alternative submission of the learned Counsel for the Appellant in relation to extending the benefit of exception 4 to Section 300 of the IPC. There is no evidence on record that when the Appellant came to the house of the parents of the deceased, he was carrying any weapon. PW-5 in her evidence has admitted that the Appellant and the deceased talked with each other for about 5 to 10 minutes. The Appellant on the day of incident came to their house to persuade the deceased and to resolve the issue. She has further admitted that after the alleged incident, the Appellant tried to end his life by inflicting injuries to himself. The marital life of the Appellant and the deceased was going well except the incident in question. She has further admitted that had they not prevented the Appellant from inflicting the injuries to himself he would have ended his life.

14. The Hon'ble Supreme Court in *Surinder Kumar v.*

*Union Territory, Chandigarh*¹ has held :

“To invoke Exception 4 to Section 300 I.P.C. 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. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger.

Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly.”

15. In the present case also the evidence on record and more particularly the evidence of PW-5 who has admitted that on the day of incident the Appellant came to their house to persuade the deceased and to resolve the issue would show that there was no premeditation and in a sudden quarrel, the Appellant

1 AIR 1989 SC 1094

assaulted the deceased. In our view the requirement of exception 4 to Section 300 of IPC are therefore satisfied in the present case.

16. As regards the submission that the Appellant at the most can be said to have committed offence punishable under Section 304 Part-II, the prosecution has proved that the Appellant assaulted the deceased by knife and one of the injuries is on the vital part of the body. It is well settled that if death is caused either with intention to cause death or with the intention of causing such bodily injury as was likely to cause death the accused would be guilty of Part-I. Whereas the act was done with, the knowledge that it was likely to cause death but without any intention to cause it or without intention to cause such bodily injuries as likely to cause death the accused would be guilty of Part-II. The Hon'ble Supreme Court in *Aradadi Ramudu @ Aggiramudu v. State*² has held that for modification of conviction from Section 302 of the IPC to Part-II of Section 304 of the IPC not only should

² (2012) 5 SCC 134

there be an absence of intention to cause death but also an absence of intention to cause such bodily injury that in the ordinary course of things is likely to cause death. Considering the nature of weapon used and as one of the injuries was caused on the vital part, which according to PW-9 was sufficient in the ordinary course of nature to cause death, we are not inclined to accept the submission of the learned Counsel for the Appellant that it was a case of simplicitor knowledge and not that of intention. Considering the facts and circumstances, conviction of the Appellant is altered to the offence punishable under Section 304 – Part – I of the IPC.

17. In the result, following order is passed :

- (i) The Appeal is partly allowed.
- (ii) The Appellant's conviction under Section 302 of the Indian Penal Code is set aside and substituted by conviction under Section 304 – Part I of the Indian Penal Code.
- (iii) Accordingly, the sentence of life

imprisonment is hereby quashed and substituted with the sentence of 10 years rigorous imprisonment for conviction under Section 304 – Part I of the Indian Penal Code.

- (iv) The sentence of fine is maintained.
- (v) The impugned judgment and order is modified accordingly.

(N.R. BORKAR, J)

(M.S. SONAK, J)

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DHURI

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