

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.978 OF 2012

Pravin Khimji Chauhan

Age 36 years, Occupation : Service,

Residing at "Matoshri" Apartment

Room No.N.D-104, Plot No.37,

Sector 6, Kamotha Colony,

Tal. Panvel, Dist. Raigad, Originally

Resident of Damala Tal. Palitana,

Dist. Bhavnagar Gujarath.

(At present in judicial custody and lodged
at Kolhapur Central Prison)

... Appellant
(Orig. Accused)

V/s.

The State of Maharashtra

(At the instance of Kalamboli Police

Station in their C.R.NO. 229/2011

... Respondent

Ms. Farhana Shah, Advocate for the Appellant.

Mr. Arfan Sait, APP for the Respondent - State.

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

JUDGMENT RESERVED ON : 8th DECEMBER, 2021.

JUDGMENT PRONOUNCED ON : 15th FEBRUARY, 2022.

JUDGMENT : (Per Smt. Sadhana S. Jadhav, J.)

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 fine of Rs.1,000/- in default to suffer simple imprisonment for 3 months by the learned Sessions Judge, Raigad, Alibaug in Sessions Case No.102 of 2011 vide judgment and order dated 5th April 2012. Hence, this appeal.

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

(i) On 24th April 2011 at about 4.00 am, Pravin Khimji Chavan visited Kalamboli Police Station with blood stained clothes on his person and informed PSI – Dattatray Shankar Khade (P.W.2) that he suspected the character of his wife. There was a quarrel on that count at about 12.30 midnight, after which he killed her by assaulting her with a knife. First information was recorded in the station diary. The said information was further conveyed to the patrolling officers of the said area. The informant led the police to his house. Upon entering the house they saw the dead body of his wife Renu in a pool of blood. There were injuries all over her body.

(ii) On the basis of the said report, Crime No. 229 of 2011 was registered. At the trial, the prosecution has examined as many as 11 witnesses to bring home the guilt of the accused. The prosecution rests

upon the statement of the accused recorded by P.W.2 – Mr. Dattatray Khade, P.W.4 – Narayan Air, watchman of Matoshri Apartments where the accused and the deceased lived in Room No.D-103, P.W5. - Vinod Koli, father of the deceased and P.W.11 – Gulabrao Patil, Investigating Officer.

3. The statement of the accused was recorded by the Police on 28th April 2011 to ascertain the background in which the accused had committed the offence. The accused had disclosed as follows :-

(I) That, he was working in Bombay Municipal Corporation as a Labour. He was residing in “Matoshree” Apartment since 2007.

(II) That, on 7th May 1999 he got married to one Deena. That, she had expressed her displeasure in marrying him and disclosed that she was forced to marry him. Thereafter, their marriage was dissolved before the Caste Panchayat.

(III) In the year 1999, he got married to one Aruna Khadotra. She was unable to conceive. Upon clinical examination, the gynaecologist had opined that Aruna was incapable of becoming a mother. Once again, the marriage was dissolved before the Caste Panchayat. Thereafter, he had got married to Renu (deceased). Her

marriage had also failed on two occasions prior to her marriage with the accused. In 2008, they were blessed with a daughter. In 2009, they were blessed with second daughter.

(IV) One fine day, he had used the cell phone of his wife since his own cell phone was not in working condition. He had inserted his own sim card in her handset and had accidentally come across inappropriate messages which were exchanged prior to their marriage. Upon inquiry, she had given evasive answers. He had then gifted her another handset. It was an understanding between the couple that whenever she wanted to talk to him, she would give him a missed call and he would call upon her. He had noticed that he had to recharge the phone quite often. The phone was recharged by the accused and therefore, he had questioned her about the same. His objection was not comprehended by the deceased and therefore, there used to be frequent quarrels between them. She had started deleting the calls and messages made by her or received by her.

(V) On 23rd April 2011, at about 8.00 pm when he was ascending the staircase leading to his house, he saw a stranger leaving his house hurriedly. He inquired with the deceased about the same. She lost her temper and started abusing him and making indecent

gestures. She had not cooked food. They had ordered food from restaurant. Thereafter, they both had consumed alcohol to large extent. She had lost her control and had started babbling and hurling abuses at him, at his mother and other family members. She referred to him as a transgender and pimp. He had tried to maintain his mental balance since his daughters were present. He then fed his daughters and put them to sleep.

(VI) In the meanwhile, Renu had become extremely aggressive. She created a ruckus, went into the kitchen and brought a kitchen knife, directed towards her husband. She reiterated her slang abuses in reference to his mother and offered him the knife challenging him to show as to whether he had the courage to assault her. It was at this juncture that he lost his mental balance and being totally deprived of his self-control, he mounted assault with the same knife and ventilated his anger by stabbing her about 20 to 25 times. He washed the knife and the blood that had spurted on his face and went into the room to put his children to sleep. He switched on the television to put his children to sleep. After the children slept he called upon the father of Renu. However, the call was not replied. He also called upon the elder sister of Renu but there was no response. Finally, he called his sister

and informed her about the whole episode. His sister and her husband visited the building after an hour, but he did not allow them to come to his house and met them in the premises of the building. Thereafter, he went to the Police and divulged the whole episode.

4. PW.2 – Khade is the complainant. He has deposed before the Court that the accused had approached the Police Station at about 4.00 am in blood stained clothes and admitted his guilt voluntarily. The accused led the police to his house. He then identified the dead body to be that of his wife. Thereafter, the accused led the Police to the house of the parents of the deceased at Kamothe. The Police informed the father-in-law of the accused about the death of his daughter. The parents of Renu accompanied the Police to Matoshree Apartment. They were in no mood of visiting the Police Station and lodge a report and therefore, P.W.2 lodged the report on behalf of them. He has proved the contents of the said FIR which is marked at **Exh.25**. It is categorically admitted in the cross-examination that the knife with which the accused had assaulted his wife was lying on the spot. It is also admitted that the crime was registered on the basis of the disclosure statement made by the accused. The station diary entry is at **Exh.26**.

5. PW.4 – Narayan Kumar Navasir Air was working as a watchman in Matoshree Apartment, Kamothe for about more than 9 months. He was therefore, acquainted with the accused and his wife. According to him, he was on night duty on the day of incident. At about 3.00 am, the sister, brother-in-law and paternal aunt of accused had visited the building. They expressed their desire to visit the house of the accused, however, the aunt of the accused was unable to climb the staircase and therefore, she did not go to his house. The sister and brother-in-law had been to the house of the accused, however, after 10 minutes all of them descended the staircase and went outside the building. The accused then requested PW.4 to open the gate and then proceeded on his motorcycle, wearing blood stained clothes. After half an hour, Police had visited the building. Being the watchman, he reiterated the said fact to the Secretary of the building. There is no material omission or contradiction in his depositions.

6. PW.5 – Vinod Koli happens to be the father of the deceased. He has admitted that he learnt about the death of his daughter at 4.00 am when the Police accompanied by the accused visited his house and

informed him about the same. After post-mortem, the dead body was handed over to the father of the deceased to perform last rites upon the deceased. He has admitted that there were disputes between his daughter and his son-in-law.

7. PW.6 – Dr. Basavraj Lohare had performed autopsy on the dead body of Renu. He had noticed 26 incised and stab wounds. The cause of death was “multiple stab injuries with injury to both lungs, liver and spleen”. The accused was examined on 24th April 2011 by PW.6 at about 10.45 am at Rural Hospital, Panvel. It is pertinent to note that the accused had also sustained incised wounds on his right hand palmer aspect ulnar border, right hand dorsal aspect over thenar eminence and between the web spaces of thumb and index finger. The said certificate is at Exh.36 and the post-mortem notes of Renu are at Exh.37.

8. The learned counsel for the appellant has submitted that in fact, the act committed by the accused was not premeditated and he was provoked by his wife and therefore, he had lost his self-control and amounted assault upon her and the same shall be considered with a

sympathetic view. It is also submitted that the deceased had pointed the knife towards the accused, in the course of avoiding the attack, he had sustained injuries on his palmer aspect. Therefore, it can be said that the act was committed in self-defence.

9. Per contra, the learned APP has submitted that the number of injuries caused to the deceased by themselves would show the brutality and the violent mind of the accused who deserves no sympathy. It is submitted that the defence of the accused is an afterthought and requires no consideration.

10. With the help of the learned counsel for the appellant and the learned APP, we have gone through the papers meticulously. The first and foremost observation is that the incident has been brought to light by none other than the accused himself who had gone to the Police Station and set the law into motion because the reality was staring at his face and he was sure that there was no escape. The accused is indeed the author of the 26 injuries caused to Renu. It is surprising that at the trial, the accused has pleaded not guilty and his contention in his statement under section 313 of Cr.P.C. is that he has

been falsely implicated. In the facts of the case, the said defence would recede into background. It is surprising that the Investigating Agency has made no efforts to get the statement of the accused recorded under section 164 of Cr.P.C. It is also not known as to how the prosecution has not recorded the substantive evidence of the sister and brother-in-law of the accused. In fact, the statement made to his sister would amount to extra-judicial confession and therefore, it was necessary to examine the sister of the accused. The accused had set the law into motion. It was a case of custodial death. He had even led the Police to the house of his father-in-law and had disclosed about the death of his wife at his hands.

11. Now coming to the circumstances in which the incident had occurred, it would be necessary to see that in fact the marriage of the accused as well as the deceased had failed on two occasions before they got married to each other. After examining the phone call records he had started suspecting the honesty of his wife in their marital relationship. At the time of incident, the accused as well as the deceased had consumed alcohol. It is true that the Police has not investigated this statement made by the accused, as if to say that it was

an open and shut case. That, at the time of incident, they were quarreling. The tempers were high. It is the case of the accused that the conduct of his wife at the relevant time was beyond reproach. According to him, he had maintained his cool for quite sometime. However, he lost it when she brought the knife from the kitchen and provoked him to hurt her if he could. Probably, the chauvinism in him has arisen. She had expressed disgust and abhorrence at his very manliness and had forgotten for a moment that he is a father of their two daughters.

12. It is rightly said that **“if you are patient in one moment of anger, you will escape hundred days of sorrow”**. Anger is that element of human psychology that may express itself in many ways. The demon in you may awake for a single moment or then you may have reached that penultimate stage where you can ignore and forgive. The statement of the accused recorded by the police would show that he was left with a feeling of mortification. According to him, he was left with a wounded pride, which resulted in the brutal death of his wife.

13. At the same time, it is necessary to consider the submission

of the learned APP. The number of injuries inflicted on the deceased were as many as 26 blows. In every alternative case, where we are dealing with a murder of the wife at the hands of her husband in a moment of grave and sudden provocation by the wife, the husband violently attacks his wife. There is physical violence, there is sexual violence, however, this sort of physical violence is less seen amongst women even in a moment of anger and in all probabilities, it is the mother in a woman which supersedes her element of physical violence. There could be psychological violence by women. In the present case, in that moment of anger, both the spouses had almost forgotten the two children who were hardly three year and 1½ year old at the time of incident. The mother died and the father was thrown to the gallows by his own act.

14 The Indian Penal Code would define such an act in the given circumstances not as murder but as culpable homicide not amounting to murder. The offence was committed in a heat of passion but the accused had acted in a cruel and unusual manner.

15 The statement of the accused given to the Police before

registration of crime inspires the confidence of the Court and the circumstances spelt out by him in which the incident has occurred needs to be taken into consideration.

16 Section 304 part I of the Indian Penal Code reads as under :

304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

17 The fact that the accused has sustained incised injury on his right palmer aspect would show that he had indeed held the knif on the sharper side, when there was an attempt to attack him. A defence injury cannot be ruled out.

18 The conduct of the accused also needs to be appreciated under section 8 of the Indian Evidence Act. He had made no attempt to cause disappearance of evidence. He had called upon the father and sister of the deceased. He has also called upon his aunt, sister and brother-in-law and admitted the guilt before he approached the police station.

19 Taking into consideration the circumstances in which the incident has occurred, it cannot be said that it is a case of murder but it is a case of culpable homicidal and actual imprisonment for 10 years would meet 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 the IPC passed by the learned Sessions Judge, Raigad, Alibaug in Sessions Case No.102 of 2011 vide judgment and order dated 5th April 2012 is quashed and set aside;
- (iii) The appellant is convicted for the offence punishable under

section 304(I) of the Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for 10 years. Fine is maintained.

(iv) The appellant is entitled to set off for the period already undergone;

(v) Appeal is disposed of on above terms.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)

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