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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 964 OF 2018
WITH
INTERIM APPLICATION NO. 3351 OF 2021

Santosh Dashrath Sanawane @ Khandya

Age : 40 years, Occu. Nil.

R/a. Sneh Sagar Society, Bld. No.4,

Room No. 403, Marol, Andheri Kurla Road,

Andheri (E), Sakinaka, Mumbai.

.. Appellant

(Orig. Accused)

Versus

The State of Maharashtra

(through MIDC Police Station,

vide their C.R. No.273/2014)

(Currently lodged in Nashik Road

Central Prison)

.. Respondent

-
- Ms. Rebecca Gonsalvez i/by Dr. Yug Mohit Chaudhry, Advocates for the Appellant
 - Ms. M.M. Deshmukh, APP for the Respondent - State
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**CORAM : SMT. SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

DATE : APRIL 20, 2022

JUDGMENT (PER : MILIND N. JADHAV, J.)

1. The learned Additional Sessions Judge, City Civil and Sessions Court, Mumbai ("**Trial Court**") by the judgment and order dated 21.04.2017 has convicted Santosh Dashrath Sonawane @ Khandya (**Original accused** - hereinafter referred to as "**the Appellant**") of the offences punishable under Sections 302, 504, 506(II) of the Indian Penal Code, 1860 ("**IPC**") and sentenced the Appellant to suffer

rigorous imprisonment for life and also to pay fine of Rs.25,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year. The Appellant is in appeal against the said judgment and order convicting him in Sessions Case No.805 of 2014. The Trial court has concluded that the offence under Section 302 IPC is proved beyond all reasonable doubt against the Appellant.

2. Before we advert to the submissions made by the respective parties and to the reappraisal of the evidence on record, it will be apposite to refer to the relevant facts briefly:

i. On 16.05.2014, the complainant Bhavesh Govind Aadhav filed a report with MIDC Police Station, alleging that on 13.05.2014 after he returned from work at about 10.30 p.m. in the night he parked his bicycle outside his door side and went inside. At that time, his mother Sangita Aadhav was cooking food inside the house. At about 10.45 p.m. he heard the noise of the fall of his bicycle and came out to check and saw that the Appellant was standing outside his door in an inebriated state alongwith his wife. When the complainant questioned the Appellant, the Appellant started abusing the complainant by raising his voice. The complainant pick his bicycle and in the meanwhile his mother on hearing commotion and abuses came outside the house and had an altercation with the Appellant and his wife. The mother warned the Appellant for abusing her son upon

which the Appellant removed his chappal and hit the mother on her face resulting in oozing of blood from her left ear. At that time both the Appellant and his wife quarreled with the mother Sangita and threatened her; thereafter the accused went to his house next doors and came back within 3 to 4 minutes with an axe in his hand and gave a blow of the axe on the head of Sangita. Sangita Aadhav fell down near the house and sustained severe bleeding injury on her head. The complainant and his friend Sunil Singh took Sangita to Seven Hills Hospital, Marol; she was examined by the Doctor on duty and thereafter she was taken to Cooper Hospital where she was admitted. After 6 days of taking treatment, Sangita Aadhav succumbed to the injury on 19.05.2014.

ii. The Investigation Officer ("IO") (PW-14) received a phone call from Cooper Hospital and visited the said hospital; Sangita Aadhav was not in a condition to talk and therefore inquiry was made with the complainant. The IO visited the spot of incident with panch witnesses and prepared the spot panchanama; the Appellant was arrested; the weapon i.e. axe was seized from the house of the Appellant; statement of the witnesses were recorded by ACP Dhumal (PW-15), inquest panchanama of the dead body and the postmortem report was collected.

iii. Based on the report lodged, the charge was framed

against the Appellant under Sections 302, 504, 506(II) IPC. Contents in the charge were read over and explained to the Appellant in vernacular to which he pleaded not guilty and claimed to be tried. The Appellant took the defence of total denial. The Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 ("**Cr.P.C.**").

3. To substantiate the guilt of the Appellant, the prosecution examined in all 16 witnesses. No defence witnesses were examined before the Trial court. The prosecution also relied upon the CA report dated 03.07.2014, panchanama dated 14.05.2014, spot panchanama, inquest panchanama, medical papers, ADR papers, postmortem report, original medical case papers of deceased alongwith the evidence of the prosecution witnesses. According to the prosecution, PW1 and PW-4 were the eye witnesses. The Trial court after recording evidence and hearing the parties passed the judgment dated 21.04.2017 convicting the Appellant of the offences punishable under Section 302, 504 and 506(II) IPC.

4. Ms. Gonsalvez, learned counsel appearing for the Appellant submits that the prosecution has failed to prove its case beyond reasonable doubt; that the learned Trial court erred in convicting the Appellant under Section 302 IPC since the evidence

relied upon by the prosecution shows that there was a sudden fight / altercation between the Appellant and his wife on the one hand and the complainant and his mother on the other hand over the parking of the complainant's bicycle; that the Appellant was drunk at the time of the incident; that the attack by the Appellant on the deceased Sangita Aadhav was in the heat of passion, it was without any premeditation and intention to cause her death. She submits that the wife of the Appellant after the quarrel registered a non-cognizable complaint against the deceased at 00.30 hrs. on 14.05.2014 at MIDC Police Station stating that there was an altercation between the parties over the parking of the bicycle following which the deceased Sangita got angry and assaulted the wife of the Appellant. She submits that the entire incident if looked at would show that there was no intention to cause death; that there was no previous enmity between the parties; that there was no repeated assault by the Appellant; that there was a singular blow leading to the causation of the head injury and hence the application of the provisions of Section 302 IPC convicting the Appellant is therefore not warranted in the facts and circumstances of the present case. She further submits that perusal of the medical papers of the deceased Sangita reveal that after the incident she was taken to Seven Hills Hospital on 13.05.2014 at 11.00 p.m.; though the treating doctor advised her to be admitted in the ICU, she was not admitted but taken to Cooper Hospital after a delay of 3 hours against

medical advise; and thereafter at 10.00 a.m. on the next morning she was taken to KEM Hospital. She submits that the deceased Sangita was conscious and oriented initially despite which her statement was not recorded by the police; that the description of the injury is differently explained in various documents; that the nature of the assault was not as such which instantly would result into the cause of death of Sangita Aadhav and in fact her death had occurred due the delay in getting her admitted in the hospital and provide her timely immediate treatment and further shifting her from one hospital to another led to severe blood loss resulting in her death 6 days later. She therefore submits that the Appellant be acquitted of all charges in the present matter.

5. *PER CONTRA*, Ms. M.M. Deshmukh, learned APP appearing on behalf of the Respondent - State supports the impugned judgment and order and submits that considering the evidence on record the Appellant has been convicted by the Trial Court. She submits that in the present case there is direct evidence in the form of eye witnesses i.e. PW-1 and PW-4, admittedly the weapon with which the crime was committed has been recovered from the house of the Appellant and there is no dispute about the scene of offence and the seizures done by the Investigating Agency; thus the evidence gathered and the evidence of the prosecution witnesses clearly prove that there

was a clear intention of the Appellant to kill Sangita Aadhav and therefore the Trial court's judgment deserves to be upheld. She submits that based on the evidence given by the prosecution witnesses, the case against the Appellant has been proved beyond reasonable doubt.

6. We shall now examine and consider the sufficiency and consistency of the evidence given by the prosecution witnesses based upon which the Trial court had come to its conclusion.

7. It is seen that PW-1 and PW-4 are the eye witnesses to the incident. PW-1 is the complainant - son of the deceased Sangita whereas PW-4 is a friend of the complainant. As seen, the complainant was present at the spot of the incident outside the door of his house. The altercation between the Appellant's wife and the complainant's mother was going on when the first blow of the chappal was inflicted on the deceased Sangita by the Appellant near the right side of her eye; the quarrel continued thereafter between the wife of the complainant and the deceased but after 3 to 4 minutes the Appellant came back with an axe and while the quarrel was going on, inflicted the blow of the axe from the blunt side on the head of Sangita. Sangita sustained a severe head injury. It is seen that the fact that the blunt side of axe was used by the Appellant. Had there being a clear

intention and premeditation to murder and kill Sangita the Appellant would have used the sharp side of the axe and hacked Sangita. It is also an admitted position that the Appellant was drunk at the time of the incident. The prelude to the incident was the quarrel between the parties on the issue of parking of the complainant's bicycle. Admittedly two blows were inflicted on the deceased, firstly by the chappal and secondly by the axe. The reason and provocation was the abusing and the quarrel which was taking place between the two ladies. Hence no other reason or premeditation can be attributable to the Appellant seeking to commit a pre-planned murder of Sangita. There is no evidence on record, save and except the altercation and abusing between the parties leading to the incident. PW-4 - Sachin Raghunath Shinde, a friend of the complainant in his evidence as the eye witness has clearly testified that the quarrel going on between the parties was on account of parking of the bicycle and the two blows inflicted on Sangita were during the said quarrel itself. He has also testified that the complainant was pulling away his mother deceased Sangita inside the house when the verbal altercation and quarrel was taking place which shows that the deceased Sangita was also involved in the quarrel with the Appellant and his wife. He has testified that the Appellant was under the influence of liquor at that time. PW-1 the complainant is the son of the deceased; he has also testified on similar lines as that of the testimony of PW-4. From the evidence of these two

eye witnesses it is clear that there is no premeditation for committing the offence.

8. PW-3 is another friend of the complainant who was summoned by the complainant after the incident and helped the complainant in taking the deceased Sangita to the hospital. PW-2, PW-5, PW-6, PW-7, PW-8 and PW-9 are pancha witnesses and there is no serious dispute about their evidence. PW-11 - Dr. Mitesh Nikam, Medical Officer on duty in Seven Hills Hospital was the first person to have seen Sangita at 11.00 p.m. when she was brought to the hospital after the incident. He has stated that Sangita had one head injury and she was in a critical state and was advised immediate admission in the ICU but the relatives took discharge against medical advice. This is an important fact which needs consideration. Had Sangita been admitted to Seven Hills Hospital at 11.00 p.m. in the ICU on the Doctor's advice, her life would have been saved. What is pertinent to note is the fact that after a gap of 3 hours and against medical advice she was taken to Cooper Hospital for admission and treatment. In the interregnum there is no doubt that there must have been loss of blood and deterioration of her health parameters due to the severe bleeding head injury. PW-12 - Dr. Sheetal Mistry, the Medical Officer on duty attached to Cooper Hospital has also been examined; she has testified that Sangita was brought with a bandage on her head and in a semi

conscious oriented state and was not in a condition to give her statement. The Medical Report at Exhibit '57' shows that even due to the injury inflicted on the head of Sangita it would be sufficient to cause death in the ordinary course of nature. However in her cross-examination this Doctor has stated that the injury being irregular could possibly also be because of an iron rod. As seen, there is no dispute about the two injuries on the deceased. PW-13 - Dr. Swaroop Bhalepatil who conducted the postmortem has certified the said injuries as follows:

- (i) stitched sutured wound at left temporal partial region of forehead, 15cm with 14 stitches given all these stitches were intact and
- (ii) stitched sutured wound at right frontal region above eyebrow 5 cm with 4 stitches and stated the cause of death due to shock.

9. Considering the overall evidence, it is clear that the infliction of the blow by the Appellant on the deceased Sangita was preceded by a prelude of incidents. To begin with the initial altercation took place between the Appellant and his wife on the one hand and the complainant on the other hand; thereafter the mother of the complainant i.e. deceased Sangita joined the quarrel and it

escalated between the wife of the Appellant and Sangita; that thereafter the complainant was pulling his mother Sangita inside the house to break the quarrel which was resisted by Sangita; thereafter the Appellant inflicted a blow of the chappal on the face of Sangita; and thereafter though she was bleeding the quarrel continued between the wife of the complainant and Sangita and after 3 to 4 minutes the Appellant returned back with an axe and inflicted a blow from the blunt side of the axe on Sangita's head. Admittedly, the Appellant was under the influence of alcohol at the time of the entire incident. Therefore it cannot be ruled that the Appellant had the intention and premeditation of causing the death of Sangita and the blow inflicted by the Appellant Sangita was with the intention of causing her death. The aforementioned entire incident clearly shows that all acts committed during the said incident were in the heat of the moment and certainly without premeditation. No doubt, the second injury inflicted by the Appellant with the axe is of a dangerous character, undoubtedly fatal but equally it needs to be seen from various factors leading to the death of Sangita. One factor which we have noticed is that the dimensions of the injuries on deceased Sangita's head are noted differently in the evidence of PW-12 (Dr. Sheetal Mistry - Cooper Hospital) where the dimension is shown as 20 x 2 x 0.5 cm; in the evidence of PW-12 (Dr. Swaroop Bhalepatil - Forensic Expert Medical Officer - Cooper Hospital Postmortem Centre) the dimension

is shown as 15 cm. length. We have also perused the certificate given by the Casualty Doctor of Cooper Hospital at 11.34 p.m. on 13.05.2014 stating that the patient Sangita was advised admission in the ICU but the patient's relative refused the admission as they wanted to continue treatment in another centre and she was discharged against medical advice.

10. In view of the above discussion and findings, we are of the considered opinion that the conviction and sentenced passed by the learned Trial court convicting and sentencing the Appellant for the offence of murder of Sangita calls for a reconsideration.

11. Section 300 IPC defines murder 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—

2ndly.—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—

3rdly.—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—

4thly.—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's 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."

11.1. Exception 4 to Section 300 IPC outlines a situation where culpable homicide does not amount to murder. There are three

requirements for this exception to apply: (i) the act of killing is committed without premeditation; (ii) the act of killing is committed in a sudden fight in the heat of passion upon a sudden quarrel; and, (iii) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

11.2. In our considered opinion, the three requirements for Exception 4 of Section 300 IPC to be applicable have been satisfied in the present case:

- i. There cannot be evidence, it is matter of appreciation from the incident as a whole, or preparation, or an intention harbored by the Appellant to commit the act of killing the deceased;
- ii. The evidence given by the eyewitnesses prove that the incident occurred because of a sudden altercation which, in turn may have been caused due to the provocation by the deceased also. The Appellant hit the deceased on her head with a singular blow in the spur of the moment owing to the intense altercation between the parties;
- iii. Because the Appellant was inebriated and the quarrel between them was heated, it cannot be reasonably said that the Appellant has acted in an unusual manner.

11.3. On the basis of the above, we may state that though the Appellant had absolute knowledge that his act of hitting the deceased on the head with axe would be likely to cause the death of the deceased, he had no intention to do so. Such an act does not travel beyond the offence of culpable homicide (as defined in Section 299 IPC) not amounting to murder. The punishment for culpable homicide not amounting to murder has been prescribed under Part II of Section 304 IPC. The facts alluded to hereinabove alongwith our observations come within the ambit of Part II of Section 304 IPC. As such, the Trial Court erred in convicting and sentencing the Appellant for the offence of murder under Section 302 IPC.

12. From the above discussion and findings, we are of the firm opinion that the Appellant, in a heat of passion, acted in a manner that he knew is likely to cause the death of the deceased but without the intention to kill the deceased. In view of the same, the conviction of the Appellant for the offence of murder is hereby altered to that of culpable homicide not amounting to murder as defined under Section 299 IPC read with Exception 4 of Section 300 IPC.

13. Hence in view of the above, we pass the following order:

- (i) Appeal is partly allowed;
- (ii) Conviction of the Appellant recorded by the City

Civil and Sessions Judge, Greater Mumbai vide Judgment and Order dated 21st April 2017 in Sessions Case No.805 of 2014 thereby convicting the Appellant for the offence punishable under Section 302 of Indian Penal Code and sentencing him to undergo rigorous imprisonment for life is quashed and set aside;

- (iii) Appellant is instead convicted for the offence punishable under section 304(II) of IPC and is sentenced to the period already undergone;
- (iv) Fine amount is maintained;
- (v) Appellant be released from jail forthwith, if not required in any other offence;
- (vi) Appeal is disposed of on above terms;
- (vii) Since the appeal is disposed of, application seeking suspension of sentence being Interim Application No.3351 of 2021 does not survive and the same is disposed of accordingly.

[MILIND N. JADHAV, J.]

[SMT. SADHANA S. JADHAV, J.]