

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL No. 579 OF 2022.

Mayur s/o Ruplal Dhurve,
Age 20 years, Occupation – Labour
In jail, resident of Tiagaon, Tahsil
Amgaon, District Gondia (M.S.) ... **APPELLANT.**

VERSUS

State of Maharashtra,
through Police Station Officer,
Amgaon, Tahsil Amgaon,
District Gondia (M.S.) ... **RESPONDENT.**

Mr. G.S. Shegaonkar, Advocate (Appointed) for the Appellant.
Shri A.M. Kadukar, A.P.P. for the Respondent/State.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.

CLOSED FOR JUDGMENT ON : 16.11.2022.
JUDGMENT PRONOUNCED ON : 18.11.2022.

JUDGMENT (Per Vinay Joshi, J) :

Challenge in this appeal is to the judgment delivered by the Sessions Judge, Gondia in Sessions Case No.47/2020 on 26.10.2021, convicting the appellant/accused for the offence punishable under Section 302 of the Indian Penal Code, sentencing him to undergo life imprisonment along with payment of fine.

2. The accused was charged for committing murder of his own father. The prosecution has examined as many as 6 witnesses to bring home the guilt of the accused. Besides that, the prosecution banks on certain documents to support the charge. The trial Court has relied on the evidence of eye witnesses, which has formed the basis of conviction.

3. We have heard the learned Counsel for the parties and perused record.

4. The background facts in nutshell are as follows.

The informant is mother of the accused, and wife of the

deceased. On 21.03.2020 around 11 p.m. she has lodged report regarding the occurrence. The informant stated to police that the accused is her younger son aged 20 years, and was doing labour work at the relevant time. Always there happened to be quarrel in between the accused and her deceased husband [Ruplal], at the instance of expenses made by the accused. On 20.03.2020 in late evening there was quarrel in between the father and son on account of accused buying a mobile handset. On the following day, around 5 p.m. while the informant was cleaning utensils, she saw that the accused was following the deceased by holding stone. She went behind and saw that the accused caused her husband Ruplal to fall, and was trying to press his throat. The informant intervened and with the aid of neighbouring person Ashish, separated the duo. Immediately the accused came with an axe and dealt repeated blows at the back, stomach and thigh of Ruplal. Later on Ruplal died due to the injuries sustained in the assault.

5. The police have carried panchnama of the scene of offence. Axe was seized from the place of occurrence. Blood stained clothes of the deceased, as well as accused were seized and sent for

chemical analysis. Postmortem was conducted on the dead body. After completion of the investigation, final report has been filed.

6. The trial Court has framed charges to which the accused disowned the guilt. The prosecution mainly relied on the evidence of P.W.1 – informant Revanta, and another eye witness Ashish [Exh.12], who is a neighbour. Besides that evidence of panch witness, medical officer and police officers have been recorded. The trial Court held that the prosecution has successfully established the guilt of the accused with requisite standard of proof and accordingly passed the judgment and order of conviction.

7. We prefer to directly consider the evidence of eye witnesses, since it assumes great significance. P.W.1 – Revanta [informant] is wife of the deceased, whilst mother of the accused. It is her evidence that at the relevant time while she was cleaning utensils, she saw accused and deceased were quarreling at the instance of buying mobile handset, hence, she rushed to pacify them. The accused was strangulating her husband, hence, with the aid of the neighbour she separated the quarrel. Within quick succession,

the accused returned with an axe and dealt blows by rare handle of the axe on the stomach of her husband, who ultimately died. Contextually, we have gone through the evidence of another eye witness Ashish, who is a neighbour. He has squarely supported the evidence of P.W.1 Revanta on the point of actual occurrence. It is his evidence, that when he separated the duo, the accused went and came back with an axe. He saw the accused inflicting repeated blows with the axe, because of which the later became unconscious. Both the eye witnesses were cross examined at length, however, they withstood to their version. A faint attempt has been made in defence to suggest that the accused acted in private defence, however, the said defence does not gain support either from the cross examination or from the circumstances.

8. The learned trial Court has rightly assessed the evidence of both the eye witnesses. Pertinent to note that the informant is the mother of the accused, who has no grudge, nor reason to falsely implicate her own son. Therefore, her evidence is quite credible, as well as gained assurance by supporting evidence of neighbouring person.

9. We have gone through the evidence of P.W.5- Dr. Chaudhary, who has conducted autopsy on the dead body. He has found following injuries on the person of the deceased :

- “[i] Abrasion measuring 3 cm length x 2 cm breadth at the left shoulder region near clavicle.
- [ii] Abrasion measuring 9 cm length x 6 cm breadth [Grace] at lumbar region.
- [iii] Linear abrasion measuring 2.5 cm x 1 cm at right pelvic region.
- [iv] Laceration admeasuring 2 cm x 1.5 cm at left pelvic region along with contused area around the injury of dimension about 5 cm with peeling of epidermis seen.
- [v] Linear abrasion seen about left pelvic region in left abdominal region of dimension 3 cm length lateral.
- [vi] Left anterior superior iliac spine fracture along with multiple fragmented bones of wing of ilium.”

Cause of death was as injuries to major vessels and to left kidney. Most of the injuries were abrasions on the person of the deceased. Thus, the medical evidence is consistent with the version of the eye witnesses that the accused dealt blows by rare side of the axe.

7

Apparently it is a case of homicidal death.

10. The learned Counsel for the appellant would submit that the incident was an outcome of sudden quarrel, therefore, it will not amount to an offence of “murder”, within the meaning of Section 300 of the Indian Penal Code. He would submit that in a sudden fight, in a heat of passion, the accused lost his control and had dealt blows to the deceased. It is submitted that neither the accused intended to cause death, nor he had adequate knowledge regarding the consequences of the said act. It is submitted that the injuries were mere abrasions, however, since there was damage to major vessels and kidney, it resulted into death. In support of said contention he relied on the decision of the Supreme Court in case of **Kulesh Mondal .vs. State of W.B. - AIR 2007 SC 3228**, wherein the offence of murder was brought down to culpable homicide by invoking exception 4 to Section 300 of the Indian Penal Code.

11. We have considered the plea relating to applicability of exception 4 to Section 300 of the Indian Penal Code. It is contended that the incident was an outcome of sudden quarrel in a

Rgd.

heat of passion. In order to bring the offence within the compass of exception 4 to Section 300 of the Code, it has to be established that the act was committed without premeditation, in a sudden fight in a heat of passion, upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner. One cannot lay a general rule as to what shall be termed to be a sudden quarrel. It is a question of fact that whether the quarrel in question is a sudden or not, most necessarily depends upon the proved facts of each case.

12. We have revisited the entire material. It has come in the evidence that the accused, a young boy aged 20 years, had purchased a mobile from his earnings from labour work. The deceased, who was his father has quarreled for the reason of purchasing mobile. At the time of occurrence, the accused chased his father with a stone, however, there is no evidence that the accused hit by stone, however, it has come in the evidence that he initially caught hold his father and on separation brought an axe and dealt blow from its rare side on the stomach of his father. It has come during the cross examination that the deceased was a man of

irritable nature. The deceased frequently used to take up quarrel with his wife and son [accused]. It has also come on record that the deceased used to assault under influence of liquor with whatever articles he gets. The entire incident is to be appreciated on the background of these facts. There happens to be no motive for a son to have a grudge against his own father so as to cause his death. The incident appears to be a sudden occurrence on account of father scolding his son on buying mobile.

13. Notably, though the accused brought an axe, however, he dealt blows from the rare side/portion of the axe i.e. by handle, which assumes significance. Had it been the fact that the accused intended to kill the deceased, then there was no reason for him to use the rare portion of the axe. It is required to be noted that though the accused was angry and in heat of passion, he assaulted his father, still he has chosen to use rare side of the axe, meaning thereby he was not intending to cause fatal injury to his father. The manner of attack itself postulates that the accused has not used the dangerous side of the axe. There is no material on record to indicate that the accused has taken undue advantage and acted in a cruel or

unusual manner. Considering these background facts, the act of accused would certainly fall within the purview of explanation 4 to Section 300 of the Code. Moreover, as the accused has no intention to kill, however, his act postulates the knowledge that it is likely to cause death, the act of accused would fall within Part-II of Section 304 of the Indian Penal Code.

14. The accused is a young boy of 20 years. Section 304, Part-II of the Indian Penal Code provides punishment for imprisonment which may extend to 10 years or with fine or with both. Though the case is covered under exception 4 of Section 300 of the Code, however, the act has resulted in causing death of a human being. Therefore, in our view, imprisonment for a period of 8 years along with fine would meet the ends of justice.

15. In view of above discussion, Criminal Appeal is partly allowed. The conviction and sentence of appellant/accused for the offence punishable under Section 302 of the Indian Penal Code is converted into Section 304, Part-II of the Indian Penal Code. The accused is sentenced to suffer rigorous imprisonment for a period of

8 years, along with of fine of Rs.5000/-, and in default to undergo further R.I. for three months.

16. The appellant/accused is entitled for set off in terms of Section 428 of the Code of Criminal Procedure.

17. Criminal Appeal is accordingly allowed and the judgment and order of conviction dated 26.10.2021 delivered by the Sessions Judge, Gondia in Sessions Case No.47/2020 is modified to the extent mentioned above.

18. Muddemal property be dealt with as per Rules.

19. Fees of the appointed Counsel for the appellant be paid as per Rules.

JUDGE

JUDGE