

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.226 OF 2019

The State of Maharashtra
Through Police Inspector,
Shrigonda Police Station,
District Ahmednagar

.. Applicant

Versus

1. Shrikant Ajinath Sasane
Age: 28 years, Occu.: Labour,
2. Shashikant Ajinath Sasane (Abated)
Age: 30 years, Occu.: Labour,
3. Deepali Maruti Shinde
Age: 25 years, Occu.: Maid Servant,

All R/o. Sasane Nagar, Shrigonda,
Tq. Shrigonda, District Ahmednagar

.. Respondents

...

Mr. A. M. Phule, APP for the applicant – State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 3rd October, 2023.

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 11.07.2019 passed by the learned Additional

Sessions Judge, Ahmednagar in Sessions Case No.66 of 2017; thereby acquitting the respondents from the offence punishable under Section 302 read with Section 34 of Indian Penal Code.

2. Heard learned APP Mr. A. M. Phule for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. The short point involved in this application is as to whether there were justifiable grounds before the learned Trial Court to acquit the accused persons from the offence punishable under Section 302 read with Section 34 of Indian Penal Code, however, the fact is that they have been held guilty of committing offence punishable under Section 304 Part-II read with Section 34 of Indian Penal Code and sentenced accordingly. In other words, by way of present application, the prosecution intends to challenge lowering the offence from Section 302 to Section 304 Part-II of Indian Penal Code. If we consider the points those were framed for determination, then the learned Trial Judge has held that the prosecution has proved that the death of Dada @ Maruti Kailas Shinde was homicidal in nature and therefore, at this stage, we do not want to dispute the same. Now, in spite of holding that his death was homicidal why the offence under Section 302 of Indian Penal Code was not held by the Trial Court, is a question. For that purpose, the prosecution story as well as the evidence is required to be

scanned. At the cost of repetition, we would say that we will not discuss the medical evidence in view of the aforesaid finding by the learned Trial Court that death of Dada @ Maruti Kailas Shinde was homicidal in nature.

4. The FIR is filed by one Dilip Dadaram Sasane, who is the relative of deceased Dada @ Maruti. Deceased Dada @ Maruti was residing at Ramwadi, whereas informant Dilip is residing at Sasane Nagar, Shrigonda, District Ahmednagar. Accused No.3 Deepali is the wife of deceased Dada @ Maruti Kailas Shinde. There was marital discord between the deceased and accused No.3 and, therefore, accused No.3 was residing at Shrigonda with her parents and she was serving as sweeper in Nagavade English Medium School. Informant Dilip lodged FIR on 22.12.2016 stating that Maruti had come to his place by taking an Indica Car for leaving Dilip's brother Deepak. Maruti was a driver, who used to drive the vehicles of others. On 21.12.2016, he stayed with Dilip and then it is said that on the next day around 1.00 p.m., there was quarrel between Maruti and accused No.3 when he had gone near Nagvade English Medium School. Thereafter, accused No.3 called her two brothers i.e. accused Nos.1 and 2 and thereafter all the three accused persons had assaulted Dada @ Maruti. Out of them, accused Nos.1 and 2 assaulted him by sticks on his head as a result of which he sustained grievous injury and fell down. He became unconscious and was then shifted to Civil Hospital at Ahmednagar in an

Ambulance. From the contents of the FIR it can be seen that the informant was not an eye witness. His brother-in-law Balu Sakat gave information to informant Dilip about the same on phone and thereafter Dilip went to school, made inquiry with the watchman of the school and a lady shop owner of the stationary nearby and then he had lodged the report.

5. Prosecution has examined in all fifteen witnesses to bring home the guilt of the accused and for our purposes, the testimony of P.W.3 Suresh Golande, who was then serving as instructor, is important. He has stated that on the day of incident, he was having duty and when they were taking lunch around 1.00 p.m., they had heard the shouts loudly near the porch. When the principal instructed him as well as Dhavale sir and Kutal Sir to remove the person, who was shouting, from the school premises. They went near the person. It was seen by them that the watchman was holding the hand of the person and accused Dipali was present. They had talked to Maruti, who then told them that accused Dipali is his wife and she is not cohabiting with him since last four years. This P.W.3 Suresh has only stated that thereafter they removed that person from the premises. He rather says that accused Dipali was asked to sit in the administrative office by principal madam and then he says that accused Dipali had called her brothers. Thereafter, he has no idea what happened. This indicates that the deceased himself had gone to the school, where accused No.3 was serving and raised

shouts.

6. PW.7 Kailas Dhavale is also corroborating to what PW.3 Suresh has stated. It appears that the prosecution has not examined the watchman and the lady shopkeeper selling stationary, who as per the informant were inquired with by the informant and they had given him the account. PW.3 and PW.7 have stated that the quarrel took place between the accused persons and deceased Dada @ Maruti, but they have not stated that the assault was given by stick by the accused persons, but they were consistent enough in saying that the ambulance had come and took the injured in ambulance, which presupposes that Dada @ Maruti received injuries at the said place.

7. During the pendency of the trial, accused No.2 expired and, therefore, the case has abated against him and accused Nos.1 and 3 as aforesaid have been held guilty of committing offence punishable under Section 304 (II) read with Section 34 of Indian Penal Code and thereby sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/- each, in default of payment of fine to suffer further rigorous imprisonment for three months.

8. As aforesaid, though the death was held to be homicidal, the offence that has been held to be proved is under Section 304(II) of the Indian Penal

Code. We are therefore guided by the recent decision in **Anbazhagan Vs. State represented by the Inspector of Police, [2023 SCC OnLine SC 857]**, wherein the principles of law discernible as to whether the case would fall under Section 302 or 304 Part-I/Part-II of Indian Penal Code have been summed up after taking into consideration the catena of judgments of the Supreme Court, which reads thus :-

“(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bedroom of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to

Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death. To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be

carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or *prima facie* established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of *mens rea*. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

9. We would like to say that taking into consideration the chronology of events as discussed above, the case would fall under principles at serial Nos.(2), (3), (5) and mainly (12) of the above-said decision. Here, the deceased himself had gone to the school where accused No.3 was serving.

He was picked up a quarrel there and it appears that with some fear, accused No.3 had called her brothers. It has not come on record that accused Nos.1 and 2 had come armed with sticks in their hands. That means there was no preparation by them. Therefore, it cannot be said that the accused persons had intention to kill Dada @ Maruti Kailas Shinde and, therefore, the learned Trial Judge has rightly held that at the most then the accused persons would be held guilty for offence punishable under Section 304 Part-II of Indian Penal Code. No case is made out to grant leave. Hence, the application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm