

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1199 OF 2022

WITH

**INTERIM APPLICATION NO.3799 OF 2022
IN
CRIMINAL APPEAL NO.1199 OF 2022**

Krushna Jairam Patara
Age about 50 years, Occupation Labour
Residing at Shigaon Khutaed
Taluka and District Palghar
(presently lodged in Nasik Central Jail) Appellant

versus

The State of Maharashtra
(At the instance of Boisar Police Station) Respondent

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- Mr. Gautam T. Kanchanpurkar, Advocate for Appellant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.

**CORAM : SARANG V. KOTWAL, J.
DATE : 24th FEBRUARY, 2023**

JUDGMENT :

1. The Appellant has challenged the Judgment and Order dated 22/03/2022 passed by the Additional Sessions Judge, Palghar, in Sessions Case No.41/2018. By the impugned

Judgment and Order, the Appellant was convicted and sentenced as follows ;

- (a) He was convicted for commission of the offence punishable u/s 304(II) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for three months.
- (b) He was given set off u/s 428 of Cr.PC. for the period he was in custody as an under-trial prisoner.

2. Heard Mr. Gautam T. Kanchanpurkar, learned counsel for the Appellant and Mr. S. R. Agarkar, learned APP for the State.

3. The prosecution case is that, in the night of 1st and 2nd March 2018, there was Holi celebration. The Appellant and his wife Sangita were dancing in that celebration. In the night, both of them went home. In the early morning, the Appellant came to his mother, who was residing nearby and told her that the deceased was lying in serious condition. The Appellant's mother

informed the family members of the Appellant's wife Sangita and others. All of them rushed to the spot. They saw that Sangita was lying unconscious with a head injury. She was taken to a hospital at Tarapur. She died in the hospital. Initially, an accidental death report was given by Sangita's brother. The post-mortem examination was conducted. Sangita's sister Kalpana Govari lodged her FIR. Initially it was registered at Tarapur Police Station, vide C.R.No.00/2018 and then it was transferred to Boisar police station, where it was registered vide C.R.No.50/2018 u/s 302 of the IPC. The investigation was carried out. The Appellant was arrested on 03/03/2018. During investigation, the statements of witnesses were recorded. At the instance of the Appellant, his clothes and the murder weapons i.e. a stone and a wooden log were recovered from his house and from the backside of the house. The articles were sent for chemical analysis. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Sessions.

4. During trial, the prosecution examined 12 witnesses including Sangita's brother, sister, cousin and uncle, Appellant's mother and brother, Panchas, Medical Officer conducting the post-mortem examination and the Investigation Officer.

5. The defence of the Appellant was of total denial. However, some suggestions were given to some witnesses that two unknown boys had assaulted the deceased. At some places another suggestion was given that the deceased fell on a stone and suffered injuries. The learned Trial Judge disbelieved the defence of the Appellant. He referred to the police statement of the Appellant's mother. The contradictory part from her police statement compared to her deposition was proved by the Investigating Officer. Learned Judge relied on those contradictory parts. In that statement, the Appellant's mother had referred to the confession made by the Appellant to his mother that he had committed Sangita's murder because he had seen two unknown boys with Sangita and one of them was without his clothes. The learned Judge concluded that this

description of the incident fell within Exception 4 of section 300 of the IPC and held that it was the case of culpable homicide not amounting to murder. Though the Appellant was charged with the offence of commission of murder u/s 302 of the IPC; instead the Appellant was convicted for offence punishable u/s 304(II) and was sentenced to suffer rigorous imprisonment of seven years.

6. P.W.1 Kalpana Govari was Sangita's sister. She has deposed that Sangita had got married with the Appellant about 15 years before the incident. According to this witness, the Appellant used to beat Sangita and there used to be quarrel between them. She has deposed that she had personally seen the Appellant beating Sangita after consuming liquor. The incident occurred during Holi festival. On the day of incident at about 08.30 a.m. P.W.1's cousin Pournima Govari (P.W.3) called P.W.1 telephonically and told her that Sangita was not feeling well and that she should come to Sangita's house. P.W.1 then went to Sangita's house. She was lying unconscious with injury on her

head. P.W.1 along with others took her to Talasari Hospital. On the same day, during treatment, she died. P.W.1 lodged her FIR. It is produced on record at Ex.8. She has deposed that the Appellant and Sangita were residing separately from other family members.

In the cross-examination, she stated that the distance between her house and Sangita's house was approximately 1 ½ km. Sangita was habituated to consuming liquor. When she saw Sangita on that day, she was unconscious and did not talk with her. Before the incident, she was in the house of Sangita till 10.00 p.m. and there was no quarrel. She deposed that she did not know whether Sangita had consumed liquor and because of that fell on the stone and died. P.W.1's FIR substantially corroborates her evidence.

7. P.W.2 Chandrakant Govari was Sangita's uncle. On the day of Holi, he had gone to the Appellant and Sangita's house. At about 10.00 p.m. P.W.2 returned home. On the next day, the

Appellant's brother and mother came to his house and told him that Sangita had become unconscious. The Appellant's mother told him that Sangita fell down under the influence of liquor. P.W.2 along with others went there and saw Sangita. She had suffered bleeding injury. There was a stone and wooden log lying at the spot outside the house. Sangita was taken to Tarapur Civil Hospital, where she died.

In the cross-examination, he deposed that he was unaware whether Sangita was having love affair with two boys from the village.

8. P.W.3 Pournima Govari was Sangita's cousin. She has deposed that after Sangita's marriage there used to be quarrels between her and the Appellant. She has stated that the Appellant used to consume liquor and used to suspect Sangita's character. Sangita used to tell this witness about it. She had told this witness that the Appellant used to beat her. The incident took place on 02/03/2018. She has deposed that P.W.2 i.e. her father had gone to Sangita's house and he had returned at 10.00

p.m. On the next day the Appellant's brother and mother came to her house at 08.00 a.m. They informed that Sangita had become unconscious. The Appellant's mother told her that on the previous night there was a quarrel between Sangita and the Appellant and in the fit of anger, he assaulted Sangita with a wooden log. PW.3 and others went to Sangita's house. Sangita was injured and she was taken to Talasari hospital. This witness had seen a stone and the wooden log lying outside the house. She identified the Appellant before the Court. There is nothing of much importance in her cross-examination. It mainly consists of mere suggestions.

9. PW.6 Kunal Govari was a villager from that village. He has deposed that on 01/03/2018, it was a festival of Holi. At about 09.00 p.m. he had gone to the place where Holi was celebrated. He had seen the Appellant and Sangita present at that time. He has deposed that he and others were dancing till 02.30 a.m. Then he went back to his house. On the next day, he came to know that Sangita was murdered.

In the cross-examination, he deposed that on 01/03/2018, there wasn't any quarrel between the Appellant and Sangita.

10. P.W.7 Nitesh Govari was a Rikshaw driver, in whose Rikshaw, Sangita was taken to hospital.

11. P.W.9 Rajesh Kadu, was Sangita's brother. He was informed by P.W.1. He went to Sangita's house and saw her lying unconscious. She was taken to hospital. During treatment she died. He gave information to the police. It was registered as the accidental death report and it was produced on record at Ex.36. His house was barely 200 ft away from Sangita's house.

In the cross-examination he has admitted that Sangita was addicted to liquor.

12. P.W.10 Sanjay Patara was the Appellant's brother. He has deposed that his mother Hiru was residing with him and some times with his other brother. The Appellant and Sangita

were residing separately. His house was 100 ft. away from the Appellant's house. The Appellant and Sangita did not have children. The incident took place on the day of Holi. He deposed that at about 11 to 11.30 p.m. Sangita went to her house. P.W.10 himself was present at the place where Holi was celebrated. At 04.30 a.m., the Appellant went home. He further deposed that the Appellant told his mother that Sangita had fallen outside her house and there were no clothes on her person. The Appellant had further told his mother that he had seen two persons running away from his house.

13. P.W.5 Hiru Patara is an important witness. She was the mother of the Appellant. Though she was declared as a hostile witness, still her evidence is important. She has deposed that she had five sons. At the time of the incident, she was residing with P.W.10 Sanjay Patara. The Appellant and Sangita were residing together at a different place. Their house was at a distance of 100 to 200 ft away from Sanjay's house. On the date of Holi festival after 12 p.m., everybody went home. On the next day, at

about 05.00 a.m. the Appellant came to Sanjay's house and woke up this witness and told her that Sangita had fallen unconscious. She went there. She saw that Sangita was lying on the ground. There were no clothes on her person. She had suffered bleeding injury on her head. The Appellant told this witness that Sangita fell on a stone when she was running away from the house. He did not tell the reason why she was running. After that, P.W.5 informed others and Sangita was taken to a hospital.

14. After this part of her deposition, she was declared hostile and she was cross-examined by learned APP. The contrary portions from her police statement were marked as 'A' and 'B'. They were formally proved through the Investigating Officer, who had recorded her statement. Those are brought on record at Ex.51 and 52. They read thus;

'There used to be quarrel between my son Krishna and daughter-in-law Sangita on the ground of Sangita's character.'

'After I asked repeatedly, he started crying. He took me to his house and told that he had seen Sangita with two boys. Out of them, one boy had not worn shirt. He did not know their names. They ran away on seeing him. Sangita was alone in the house. On seeing him, she started running away. Therefore, he caught her and gave several blows and because of that she had fallen at the spot.'

In the cross-examination conducted on behalf of the Appellant, she accepted that the Appellant had told her that he had seen two boys running away from his house and that Sangita had fallen in the backyard of the house.

15. P.W.11 Rahul Mahala was the carrier, who had carried the articles for chemical analysis.
16. P.W.8 Subhash Lilka, was a Pancha in whose presence, the Spot Panchanama was conducted at Ex.29. It was conducted on 03/03/2018 between 06.15 p.m. to 07.00 p.m. He was also a

Pancha in whose presence the Appellant had given a memorandum statement (Ex.30) u/s 27 of the Indian Evidence Act showing his willingness to point out the place where he had concealed his clothes and the weapons. His clothes were recovered at his instance from his house and the wooden log and the stone were recovered from backside of his house, from under a Tamarind tree. That Panchanama is produced on record at Ex.31. It was carried out on 05/03/2018. The C.A. report concerning those articles is produced on record. The C.A. report shows that there was blood of 'A' group on Sangita's blouse and on the Appellant's T shirt. Blood was also found on the stone but the blood group was inconclusive.

17. P.W.4 Dr. Manoj Shinde, had treated Sangita, when she was alive, but was unconscious. He conducted her post-mortem examination after her death. On examination he found the following injuries:

- (1) Deep lacerated wound over lateral aspect of right eye about 3 cm x 1 cm x 1 cm in dimension.

- (2) Abrasion with bruises over left lateral aspect of left eye and chin about 2 cm in dimension each.
- (3) Abrasion over right cheek about 2 cm in dimension.
- (4) Irregular abrasions over left shoulder and anterior aspect of arm about 10 cm in length.
- (5) Irregular multiple liner abrasions and bruises involving lateral aspect of left thigh about 20 cm x 10 cm in dimension.
- (6) Abrasion over forearm and hands.
- (7) Abrasion over both knees about 2.5 cm dimension each.
- (8) Contusion over anterior aspect of left thigh.
- (9) Irregular abrasion over left buttocks.
- (10) Contusion over left lower and right lower aspect of upper back with minimal abrasion.

On internal examination he found that there was fracture at the base of the skull. There was intracranial hemorrhage. There was fracture of 5th, 6th, 7th and 8th rib. Liver had injuries with intra abdominal bleeding. As per his opinion, the cause of death was head injury and intracranial hemorrhage. The injury to the head was sufficient to cause death. The injuries were possible with a blunt object like a wooden log.

18. P.W.12 API Kishor Shinde, was the Investigating Officer. He had investigated C.R.No.50/2018 registered at Boisar police station. He had seized the clothes of the deceased. He had recorded statements of witnesses. He had conducted the Spot Panchanama and the Recovery Panchanama. He proved the portion marks 'A' and 'B' from P.W.5's statement, which are produced on record at Ex.51 and 52. Sangita had died after 10-12 hours after having been taken to the hospital. She was unconscious till she died.

This, in short, is the evidence led by the prosecution.

19. Learned counsel for the Appellant submitted that there are no eyewitnesses to the incident. There is no evidence based on which, the conviction of the Appellant can be recorded. He submitted that the evidence shows that there was no quarrel between the couple on the previous night or during Holi festival. There was no immediate reason for the Appellant to cause her

murder. He submitted that the recovery of the articles is not conclusive because the alleged weapons i.e. the stone and the wooden log, were found from an open space behind the house of the Appellant. It was accessible to all. He further submitted that even otherwise, the C.A. report is not conclusive. The prosecution has not proved that the Appellant's blood group was not 'A' group. There is nothing to show that there was blood on the wooden log. The blood was found on the stone, but the blood group was inconclusive. In any case, since the deceased had fallen at that spot, therefore, finding of blood stains on the stone was not improbable. He submitted that the Learned Judge has already held that it is not a case of murder, but it is a case of offence punishable u/s 304-II of the IPC. He submitted that the Applicant is in custody for almost five years continuously. Considering the nature of offence and the circumstances, leniency be shown to him and the sentence be reduced.

20. Learned APP opposed these submissions. According to him, the learned Judge has given proper reasons in convicting

the Appellant. The presumption u/s 106 of the Indian Evidence Act is important and the Appellant has not given any explanation whatsoever regarding injuries suffered by the deceased. The burden was strictly on the Appellant to explain those injuries as per section 106 of the Indian Evidence Act. He submitted that looking at the nature of the injuries, it cannot be said that he had no knowledge of the effect of these injuries. Learned APP therefore supported the impugned Judgment and Order.

21. I have considered these submissions. As rightly argued by learned APP and as it is rightly held by learned Trial Judge, the Appellant has not discharged his burden u/s 106 of the Evidence Act. The incident had occurred during early hours after 02.30 a.m. on 02/03/2018. Sangita was found in the house. The Appellant was present in the house. He had informed his mother. Therefore, it is undisputed that the Appellant was with the deceased during that time and therefore burden was on him to explain the circumstances. He has not discharged that burden through any defence evidence.

22. Learned counsel for the Appellant however is right in attacking the evidence regarding recovery of the articles. The stone and the wooden log were found from an open space. There is nothing to show that the wooden log had blood stains. Though, the Appellant's T shirt was recovered from his house and though it shows presence of blood of 'A' group, the prosecution has failed to prove that it was not his own blood group. The prosecution has not brought any evidence on record to show what was the blood group of the Appellant. Therefore, the evidence regarding the recovery of the weapons and the clothes of the Appellant will not help the prosecution.

23. The main evidence against the Appellant is the fact that the deceased was in his company during odd hours and he had not explained the injuries.

24. In this context, the prosecution has relied on Ex.50 and 51 which are portions from police statement of P.W.5. There is hardly any effective cross-examination of this witness on behalf

of the Appellant regarding this portion from her police statement. In fact, the cross-examination on behalf of the Appellant also includes her answer that the Appellant had told her that he had seen two boys running from his house and that Sangita had fallen behind his house. He had also told her that one of the boys was not having clothes on his person and that there were no clothes on the person of Sangita. Thus, even the prosecution's as well as the defence's case is consistent on the point that the Appellant had seen two boys running from the house. Out of them, one was not wearing clothes. Even Sangita was not wearing clothes. Therefore, he got angry and then assaulted Sangita. The learned Judge has believed this incident based on this deposition. I do not see any reason to take a different view. The learned Judge has observed that the incident would fall within the Exception 4 of section 300 of the Indian Penal Code, which reads thus,

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 having taken undue advantage or acted in a cruel or unusual manner.

However, in my opinion, the incident and the circumstance would fall within the Exception 1 of section 300 of the Indian Penal Code, which reads thus;

*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.*

25. It is quite clear from the evidence that the Appellant had seen two boys and deceased in objectionable situation, which would amount to grave and sudden provocation making him lose his self-control causing him to assault the deceased Sangita and thereby causing the injuries which are reflected in the post-mortem notes. Therefore, though the conviction is properly recorded u/s 304-II of the Indian Penal Code; in my

opinion, the incident would fall within Exception 1 of section 300 and not within Exception 4 of section 300 of the Indian Penal Code.

It is very significant that the prosecution is relying on the extra-judicial confession made by the Appellant to his mother. That confession itself shows that it was a case of grave and sudden provocation.

26. Considering overall circumstances and the reasons for this assault, some leniency can be shown to the Appellant. He was sentenced to suffer rigorous imprisonment for 7 years. He is already in custody since 03/03/2018. Therefore, the sentence imposed on him can be reduced to a certain extent.

27. Hence, the following order :

ORDER

(i) The Appeal is partly allowed.

- (ii) The conviction of the Appellant u/s 304(II) of the Indian Penal Code is upheld. However, instead of rigorous imprisonment of 7 years, the Appellant is sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for 3 months.
- (iii) The Appellant is given set off u/s 428 of Cr.PC.
- (iv) With these directions, the Appeal is disposed of.
- (v) With disposal of the Appeal, the connected Interim Application is also disposed of.

(SARANG V. KOTWAL, J.)