

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

CRIMINAL APPEAL No. 68/2019.

Vichet s/o Sambhaji Waghmare,
Aged about 20 years, Occupation
Nil, resident of Tishti, Tahsil
Nagbhid, District Chandrapur. ... **APPELLANT.**

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station, MIDC, Bori,
Nagpur. ... **RESPONDENT.**

Mr. D.V. Chauhan, Advocate [Appointed] with Mr.C. Barve, Advocate
for the Appellant.
Mr. V.A. Thakare, A.P.P. for Respondent/State.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : JUNE 06, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Appellants' conviction in Sessions Trial No.271/2017 for the offence punishable under Section 302 of the Indian Penal Code, led him to file this appeal raising challenge to the finding of guilt recorded by the trial Court.

2. The appellant/accused was charged for committing murder of a minor boy – Atharva, aged 3 years with requisite intention and knowledge, thereby committing an offence punishable under Section 302 of the Indian Penal Code. The prosecution examined 7 witness to establish the guilt, besides relying on documentary evidence. On the basis of forthcoming material, the trial Court held that the accused is the author of the crime and his act falls within the term 'murder', as defined under Section 300 of the Indian Penal Code, and accordingly passed the order of conviction.

3. The prosecution case in brief is that the accused was

neighbouring resident of the informant lady. The deceased Atharva was 3 years child of the informant. On the date of incident i.e. 03.03.2017, around 5 p.m., while the deceased was playing in the court yard, accused beat him by fist-blows, kicks, and thrown him on a heap of earth, resulting into his death. The informant Shashikala [mother] has witnessed the occurrence. She immediately rushed to the police station and lodged the report. One neighbouring resident has also seen the incident. Injured Atharva was admitted to the hospital where he was declared dead. There were several abrasions on the person of the deceased. The cause of death was hemorrhage and shock due to liver laceration. After completing necessary and usual formalities, final report was filed. After full fledged trial, the accused was convicted for the offence punishable under Section 302 of the Indian Penal Code.

4. Heard Shri Chavan, learned Counsel appointed for the appellant/accused and learned A.P.P. for the respondent State. The learned Counsel for the appellant would submit that the trial Court failed in appreciating the evidence in its proper perspective.

According to him, there is no independent eye witness. The evidence of informant is interested one and therefore, it cannot be relied. Moreover, it is argued that there is possibility of sustaining injuries by fall. Besides that, it is argued that there was total absence of intention to kill. The entire incident was totally unplanned, nor the accused has used any weapon in commission of crime, and therefore, essentials to attract the offence of murder are missing.

5. On the other hand, the learned A.P.P. has supported the reasoning and findings recorded by the trial Court. It is argued that the deceased was barely three years old vulnerable child. The accused repeatedly gave fist-blows and kicks which is sufficient to disclose the determined intention to kill the child. The learned A.P.P. took us through the evidence of P.W.3 to contend that when the accused was accosted by the neighbour, he brought a weapon namely sickle, which also shows his intention. With there prime submissions, he prayed for dismissal of the appeal.

6. There is no quarrel in between the parties that Atharva

met with homicidal death. We have gone through the inquest panchnama, as well as the postmortem notes, coupled with the medical evidence. There were several abrasions on the person of the deceased. P.W.7 Dr. Pathak, testified that death was possible due to assault by fists and kicks. There was internal injury to liver in the occurrence. In view of that there is no doubt about homicidal death of Atharva.

7. P.W.1 – Shashikala in her evidence stated about the occurrence. She deposed that at the relevant time, the accused, who is neighbour, suddenly started to beat her son by fist-blows and kicks. Not only that, the accused lifted the minor and thrown him on the hip of soil. Neighbouring resident P.W.3 Ramteke has also witnessed the incident. He has also stated about the assault at the hands of the accused.

Though P.W.4 Poonam was not the eye witness, however, at the relevant time she has seen the accused on the spot. These witnesses have been cross examined at length. They withstood to their evidence on scrutiny. There is no enmity in between the parties

so as to attract a theory of false implication. Evidence of mother inspires full confidence. Moreover, she has no reason to exclude the real culprit and falsely implicate her neighbour. The trial Court has properly assessed the evidence on the point of occurrence while holding that the accused is the author of the occurrence. Submissions made by the defence in this regard are unacceptable. The evidence unerringly point towards the act of accused in assaulting the deceased minor, which ultimately resulted into his death.

8. This brings us to the crucial question as to which was the proper provision to be applied. The learned Counsel for the appellant straneously argued that the incident does not disclose that the accused had intention to cause death or to cause a particular injury, which is sufficient in the ordinary course of nature to cause death. The instant question which requires consideration is whether it was a culpable homicidal amounting to murder, punishable under Section 302 of the Indian Penal Code, as has been held by the trial Court, or it was a culpable homicidal, not amounting to murder

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punishable under Section 304 of the Code, as submitted by the defence counsel.

9. In order to constitute an offence of murder, the act of accused must fall within the category 1 to 4 as stated in Section 300 of the Code. Undisputedly there is no material to hold that it was a premeditated attack on the minor child. Admittedly the accused was not armed with any weapon, nor even at the time of occurrence he took any hard substance to beat the victim. There was no strong motive for commission of crime. Though the accused has allegedly brought sickle after the incident, however, he has not used the same. All that the accused did was giving fist-blows and kicks to the minor. No doubt the victim was a minor boy, however, the manner of occurrence falls short to indicate that the accused has definite intention to kill the minor. It is difficult to hold that by giving mere fist-blows and kicks, the accused has intended to cause death. However, knowledge can be attributed that his act may result into death of the minor. Therefore, the act of accused falls under Section 304-II of the Code.

10. So far as the aspect of imposition of sentence is concerned, the criminal law adheres in general to the principle of proportionality in prescribing the punishment. The accused was 20 years of age at the time of occurrence and engaged in labour work. There was no motive, but, the incident appears to be all of a sudden. The prosecution has not brought on record enmity in between the parties, however, one should not forget that the act of the accused took life of an innocent boy. Having regard to all above circumstances rigorous imprisonment for a period of 10 years would meet the ends of justice. In view of that Criminal Appeal is partly allowed. We hereby set aside and alter the conviction from Section 302 of the Indian Penal Code to one under Section 304-II of the Code. The accused is sentenced to suffer rigorous imprisonment for a period of 10 years along with fine of Rs.1000/-, in default of payment of fine, to suffer rigorous imprisonment for two months. The accused/appellant would be entitled to set off in terms of Section 428 of the Code of Criminal Procedure.

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11. Fees of the appointed Counsel be quantified as per Rules, and as per request of learned Counsel, the same be remitted to the High Court Bar Library, Nagpur.

JUDGE

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