



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

CRIMINAL APPEAL NO.275 OF 2019

Rustam s/o Laxman Jadhav, aged about
32 years, Occ. Cultivation, R/o Kakban,
Tq. Jivti, Dist. Chandrapur. (In Jail)

... APPELLANT.

VERSUS

The State of Maharashtra, through
Police Station Incharge, Police
Station ivti, Tq. Jivti, Dist.
Chandrapur.

... RESPONDENT.

Shri P.R. Agrawal, Advocate for the appellant.
Shri S.S. Doifode, A.P.P. for the respondent/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 19.08.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

The matter is taken up for final disposal by consent of
learned Counsel appearing for the parties.

2. The appellant's conviction for the offence punishable under

Section 302 of the Indian Penal Code (IPC) in Sessions Case No.27 of 2012 led him to file this appeal in terms of Section 374 of the Code of Criminal Procedure, challenging the judgment and order of conviction. The incident which gave rise to this appeal took place on 02.12.2011 around 8.00 p.m. resulting into death of one Rangrao Jadhav. Total eight persons were put on trial, however the learned Trial Judge by acquitting rest has convicted the appellant Rustam (accused No.1) for the offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life, alongwith fine of Rs.25,000/- with stipulation of default.

3. The prosecution case in brief is that deceased Rangrao gave Rs.3 lakhs to appellant Rustam for supplying labours for cutting sugarcane. Though the amount was paid, Rustam neither returned the amount nor supplied the labours. On said count, on 02.12.2011, in the evening, deceased Rangrao along with his companion went to the house of Rustam for asking refund of money. There was hot altercation in between both groups. Some of the family members of Rustam manhandled Rangrao and his fellow colleagues. In said incident, Rustam went inside the house, brought Barchi (A stick having fixed sharp edged iron sphere head at one side) and inserted at the stomach

of deceased Rangrao causing bleeding injury. Immediately, Rangrao was taken to the Nanded City for medical aid however, after five days, he succumbed to the injuries.

4. The prosecution has been lodged against all family members of Rustam alleging that they have formed unlawful assembly and in prosecution of common object of the assembly, committed murder of Rangrao. The prosecution has examined 14 witnesses to establish the guilt of the accused. The prosecution evidence consists of 4 eye-witnesses, the Medical Officer and the Police Officers. The Trial Court relied on the consistent evidence of eye witnesses and held that the occurrence as alleged was proved. The Trial Court held that since Rustam brought a sharp edged weapon and inserted in the stomach of the deceased Rangrao, he had intention to kill and therefore, convicted him for the offence punishable of murder as defined under Section 300 of the IPC.

5. Learned Counsel appearing for the appellant besides challenging the finding of guilt has equally concentrated on the point that even if the incident is held to be proved, still it fell short to constitute the offence of murder punishable under Section 302 of the

IPC. He would submit that the occurrence was outcome of sudden fight, and without premeditation in quarrel Rustam did the act of giving a single stroke by Barchi at the stomach of the deceased. According to him, neither there was intention to kill nor it was a premeditated act, and thus, the essential ingredients to constitute the offence of murder are totally missing. He would submit that the case squarely falls under exception IV to Section 300, i.e. culpable homicide not amounting to murder punishable under Section 304 of the IPC.

6. Learned A.P.P resisted the submission by contending that Rustam has used dangerous sharp edged weapon, assaulted at the vital part of the body and it was a premeditated attack as Rustam brought Barchi from inside the house, and therefore, it is an offence of murder. He would submit that eye-witnesses have consistently stated that weapon was brought from within to cause fatal injury.

7. We have carefully scrutinized the entire evidence. The prosecution has relied on the evidence of PW1 Govind Rathod (informant), PW3 Rohidas Rathod, PW4 Sandip Jadhav and PW5 Devidas Chavan, who are eye-witnesses to the occurrence. Their evidence is very much consistent to say that during the quarrel, Rustam

went inside the house, brought Barchi and assaulted Rangrao at his stomach. Cross-examination of these material witnesses remained abortive. Therefore, we have no hesitation in concluding that the act alleged by the prosecution is duly proved. The question for consideration is whether the act of the appellant causing death of Rangrao would amount to murder or culpable homicide not amounting to murder. On the basis of given facts, the pivotal question of intention is to be decided whether the case falls under Section 302 or 304 part I or 304 Part II of the IPC.

8. The learned Counsel appearing for the appellant relied on the decisions of the Supreme Court in case of *Manke Ram vs. State of Haryana* (2003) 11 SCC 238, *Shivappa Buddappa Kolkar alias Buddappagol vs. State of Karnataka and others* (2004) 13 SCC 168, *Nazir Malita and others vs. State of West Bengal* (2020) 14 SCC 801, *Mohd. Rafiq alias Kallu vs. State of Madhya Pradesh* (2021) 10 SCC 706, *Kala Singh alias Gurnam Singh vs. State of Punjab* (2021) 10 SCC 744, *Ajmal vs. State of Kerala* (2022) 9 SCC 766 to contend that when the act was committed without premeditation in sudden fight, it is not possible to hold that the accused has committed the offence of murder. We have carefully examined the cited cases, wherein under different

circumstances on given facts, it has been concluded that the offence of murder was not established. We can take into aid all those decisions only to the extent of principles laid down therein about the parameters to assess the nature of act.

9. In this regard the observations of the Supreme Court in case of ***Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444*** at paragraph 29 are worth to be noted, which reads as below :

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to

cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

10. Reverting to the factual aspect, it reveals that there was monetary transaction in between the deceased and Rustam. The deceased has advanced money to Rustam for providing sugarcane labours, however the later did not. On the date of incident, the deceased along with four others went to the house of Rustam by Sumo car to question the default. At relevant time, brothers and other family

members of Rustam also gathered from nearby places. There was hot exchange of word in between two groups.

11. Our attention has been invited to the evidence of PW3 Rohidas Rathod (eye-witness), who stated that there was hot exchange of words among the deceased and Rustam, followed by scuffle among them. Pertinent to note that appellant Rustam did not went to the house of the deceased Rangrao carrying a weapon. It assumes significance because the same is the relevant factor to cull out his intention. Admittedly, Rustam was at his house as usual, since the deceased with four to five persons came to his house, the incident happened. This bit of circumstance also assists us to gather the intention. It has come in the evidence that during scuffle Rustam went inside the house, brought Barchi and gave single blow at the stomach of the deceased. It reveals from the evidence that scuffle was going on in between two groups. As per the prosecution case, initially there was manhandling and thereafter, Rustam went inside the house, brought Barchi and delt a single blow. The said circumstance suggests that Rustam was not armed with the weapon but when the circumstances went beyond control, he brought the Barchi, which was kept in the house for safety and had used it for assault. It is not a case that either the weapon (Barchi) was snatched by someone or it fell down, meaning

thereby despite opportunity besides single blow, Rustam did nothing. Though the weapon namely Barchi was brought from inside the room, however it was momentary reaction for which one cannot hold that the same was premeditated attack. It is apparent that there was no premeditation and in sudden fight Rustam gave a single blow at the stomach of the Rangrao.

12. True, the nature of weapon and part chosen of body are relevant, however those circumstances are to be appreciated on the combination of other surrounding circumstances. It has come in the medical evidence that single blow caused incised wound to the extent of 2 cm only. It is brought to the notice that after assault, Rangrao was carried to Nanded i.e. for the distance more than 250 kilometres for first aid, who died after five days. These facts assist us to indicate that the blow was not with full force at the stomach of the deceased. There is no material to indicate that the appellant done the act by taking undue advantage or acted in cruel manner. If at all, Rustam intended to cause death, he would have had a forceful blow or repeated the act to achieve the desired result. The act of the accused of bringing Barchi in sudden quarrel and giving a single blow at stomach, would fall within the ambit of culpable homicide not amounting to murder. However certainly, knowledge of Rustam about likelihood of causing death can

be construed, and thus, the act would squarely fall within Section 304 Part II of the IPC.

13. In view of above, the conviction of the appellant for the offence punishable under Section 302 of the IPC deserves to be quashed and set aside and instead of that, he is liable to be punished for the offence punishable under Section 304 Part II of the IPC. It was informed that the appellant is in jail for near-about eight years. Though the learned Counsel for the appellant urged that the period already undergone is sufficient, however we differ on the ground that one person has lost his life on a petty matter. While imposing sentence right balance is to be maintained in both situations. Therefore, in our view, rigorous imprisonment for 10 years would be apt to secure the ends of justice. The Trial Court has imposed fine of Rs.25,000/- which we hereby reduce to the extent of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months. In view of that the appeal stands partly allowed in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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