



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

CRIMINAL APPLICATION (BA) NO.1041/2023
Santosh Balaji Nagrale

..VS..

State of Maharashtra, thr.PSO PS Chandrapur City, District Chandrapur

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri Shashank Manohar, Counsel with Shri Atharva Manohar,
Advocate for the Applicant.
Shri Harshal Futane, Additional Public Prosecutor for the
NA/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 04/12/2023
PRONOUNCED ON : 08/12/2023

1. By this application under Section 439 of the Code of Criminal Procedure, the applicant is seeking bail in connection with Crime No.381/2022 registered with the non-applicant/police station for offence punishable under Section 302 of the Indian Penal Code.

2. The applicant is arrested on 9.7.2022 and since then he is in jail.

3. Heard learned counsel Shri Shashank Manohar for the applicant and learned Additional Public Prosecutor Shri Harshal Futane for the State.

4. Learned counsel Shri Shashank Manohar for the applicant, submitted that accusations levelled against the applicant are on the basis of a report lodged by Sau.Pruna Satish Nagrale, the wife of the deceased. As per the report, the applicant is her brother-in-law and they all are residing jointly along with her in-laws. Her husband, who is the deceased, is addicted to vices like drinking liquor. On 8.7.2022, at about 7:00 pm, her husband came from outside and was drinking liquor by sitting in front of hall and was whispering and, therefore, she restrained him. However, he started quarreling with her. At the relevant time, her sister-in-law, who is the wife of the applicant, was playing with her small child and at the relevant time, the deceased was taunting her and also abused her and, therefore, she manhandled the deceased. The applicant also came there and intervened by taking deceased aside. Thereafter, her husband started quarreling with her and was also manhandling her. After some time, the applicant and the deceased had a quarrel as the applicant had asked the deceased why he abused his wife. She heard the shouts of her husband and saw that the applicant has given blows by means of a knife on the chest of the deceased. Due to the repeated blows, the deceased sustained grievous injuries and

succumbed to the injuries. On the basis of the said report, the offence is registered.

5. Learned counsel Shri Shashank Manohar for the applicant, submitted that recital of the First Information Report makes it clear that the alleged incident occurred out of grave and sudden provocation. Recital of the First Information Report itself shows that it was the deceased who raised the quarrel initially with his own wife and, thereafter, the wife of the applicant. The applicant is the person who attempted to convince the deceased not to quarrel, but the deceased, who was under the influence of liquor, started abusing and quarreling with the applicant and, therefore, applicant lost control and the alleged incident took place. He submitted that the case is covered under exception of grave and sudden provocation. At the most, the case of the applicant is culpable homicide not amounting to murder for which punishment is not more than ten years. Learned counsel submitted that now investigation is completed and the chargesheet is filed. Further incarceration of the applicant is not required.

6. In support of his contentions, learned counsel Shri

Shashank Manohar for the applicant placed reliance on the decision of the Honourable Apex Court in the case of **Budhi Singh vs. State of Himachal Pradesh, reported in (2012)13 SCC 663** and submitted that the doctrine of grave and sudden provocation is incapable of rigid construction leading to or stating any principle of universal application. While applying this principal, primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide and as per the facts, it was not a culpable homicide amounting to murder.

7. *Per contra*, learned Additional Public Prosecutor Shri Harshal Futane for the State strongly opposed the application on the ground that recital of the First Information Report shows that when the deceased was drinking liquor, the quarrel took place between him and the wife of the applicant and, thereafter, there was a quarrel between the applicant on account of asking by the applicant why the deceased was quarreling with his wife and the applicant gave repeated blows due to which the deceased succumbed to the injuries. Learned Additional Public Prosecutor, therefore, prays for

rejection of the application.

8. After hearing learned counsel Shri Shashank Manohar for the applicant and learned Additional Public Prosecutor Shri Harshal Futane for the State, there is no dispute regarding the manner in which the alleged incident has taken place. Admittedly, the alleged incident has taken place as the deceased was under the influence of liquor and taunted the wife of the applicant. Recital of the First Information Report further shows that as the wife of the applicant was manhandling the deceased, the applicant intervened and took him aside. After some time, again there was a quarrel between the applicant and deceased as the deceased abused his wife on which the applicant has given blows of knife on the chest of the deceased. During investigation, the investigating officer visited the alleged spot of the incident and drawn panchanama. Blood stained clothes and articles are seized. The postmortem report is also on record. If the postmortem report is perused, it reveals that the deceased sustained as many as 17 injuries on his person and out of them, 16 are stabbed injuries on the vital parts of the body of the deceased. Thus, it is not a case of a single blow given by the applicant as he lost his self control due to

provocation.

9. It is submitted by learned counsel Shri Shashank Manohar for the applicant that the case is covered under culpable homicide not amounting to murder.

10. The culpable homicide is defined in Section 299 of the Indian Penal Code and it is genus. Whereas, the murder defined in Section 300 of the Indian Penal Code and it is specie. Under Section 299 of the Indian Penal Code, whoever causes death with an intention or knowledge specified in that section, commits offence of culpable homicide. However, since culpable homicide is only genus, it includes two forms; one is a graver offence which amounts to 'murder' and lesser one which does not amount to 'murder'. It can be seen that, therefore, though the offence of culpable homicide is defined, the said provision does not provide any punishment for that offence as such and, for the purpose of punishment, the court has to examine facts and find out whether the offence falls or does not fall under the definition of murder under Section 300 of the Indian Penal Code. In view of this scheme, therefore, every act of homicide falls within the definition of culpable homicide under Section 299 of the Indian Penal Code.

Section 300 of the Indian Penal Code on the one hand mentions that a homicide is murder. However, in that section five exceptions have been given and these exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code. Therefore, it has to be seen; (1) what was the intention or knowledge with which the act was done and what are circumstances in which it was done, (2) if it is established that the offence is culpable homicide, but it does not fall within the definition of murder and if it falls under any of exceptions to that section, the offence is punishable under Section 304 of the Indian Penal Code. Once, it is held that the offence falls under Section 304 of the Indian Penal Code, the punishment differs, depending upon whether the death is caused with an intention or only with the knowledge and, therefore, if the element of intention exists, the offence is punishable under Part-I of Section 304 of the Indian Penal Code, otherwise, the offence falls under Part-II of Section 304 of the Indian Penal Code.

11. Recently, the Honourable Apex Court determined the principles in the case of Ajmal vs. State of Kerala,

reported in (2022)9 SCC 766 whether the offence is culpable homicide or murder and held that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts more than a century. The confusion is caused, if courts, losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to keep in focus. The key words used in the various clauses of Sections 299 and 300 of the Indian Penal Code. It is further observed that the court should proceed to decide the pivotal question of intention with care and caution so that will decide whether the case falls under Section 302 or under Section 304 Part-I or Part-II of the Indian Penal Code. 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 of the Indian Penal Code.

The Honourable Apex Court further held that 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 circumstance 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.

12. The doctrine of grave and sudden provocation is incapable of rigid construction leading to or stating any principle of universal application. While applying this principal, primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide and as per the facts, it was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury. Another test that is applied more often than not is

that the behaviour of the assailant was that of a reasonable person. A fine distinction has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of self-control and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain and dominion over the mind.

13. Considering the facts of the present case, admittedly, there was quarrel between the wife of the applicant and the deceased. The deceased is the real brother of the applicant and was under the influence of liquor. The whole doctrine relating to provocation depends on the facts that it causes, or may cause, a sudden and temporary loss of self-control. Consequently, where the provocation inspires an actual intention to kill, or to influence grievous bodily injury, the doctrine that provocation may reduce murder to manslaughter seldom applies, observed by the Honourable Apex Court in the case of **Budhi Singh** *supra* relied by learned counsel for the applicant. In the said judgment, the Honourable Apex Court by referring the judgment in the case of **Holmes vs. Director of Public Prosecutions**, reported in

1946 AC 588 observed that " is there any standard of a reasonable man for the application of the doctrine of 'grave and sudden' provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values, etc.; in short, the cultural, social and emotional background of the society to which an accused belongs.

The Honourable Apex Court further observed that the Indian law, relevant to the enquiry, may be stated; (1) the test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control; (2) in India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code, 1860; (3) the mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

14. Thus, the Honourable Apex Court observed that premeditation and intention to kill are two vital circumstances amongst others which are to be considered by the court before holding accused guilty of an offence under Section 302 of the Indian Penal Code.

15. Turning back and by applying the aforesaid principal to the present case, if the material on record is assessed, the weapon used by the applicant is knife. Sixteen stabbed injuries are received by the deceased on the vital part of the body i.e. chest which sufficiently show that repeated blows are given by the applicant to the deceased who is his brother. The injuries are inflicted with such a force due to which the internal injuries like clean cut ribs fracture at thoracic wall, two puncture stab wounds, and 7 puncture stab wounds were found and right and left lung and heart were found penetrated due to the stab wound 1 cm on heart at right atrium.

16. Thus, the injuries at this stage appear to be inflicted with a force to end the life of the deceased. It appears that it was certainly an act with an intention and, therefore, the contention of learned counsel Shri Shashank

Manohar for the applicant, that the case covers under Section 304 II of the Indian Penal Code, is not acceptable.

17. In view of the above facts and circumstances, since *prima facie* case is made out against the applicant, the application for bail deserves to be rejected and the same is **rejected**.

The criminal application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!