



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 182 OF 2020

Anil @ Lalya Badal Shinde
Age: 23 years, Occu.: Labour,
R/o Moha, Pardhi-Pedhi, Tq. Kallam,
Dist. Osmanabad

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.S. Jadhav, Advocate for appellant
Mr. S.D. Ghayal, Addl.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 18th DECEMBER, 2024**

ORAL JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenge in this appeal is to a judgment and order dated 16th May, 2019 passed by the Additional Sessions Judge, Osmanabad ('trial Court') in Sessions Case, No. 40 of 2017. Vide the impugned order of conviction, the appellant has been sentenced to suffer imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.') and directed to pay a fine of Rs.5,000/- with default stipulation. Although, he was held guilty of the offence punishable under Section 324 of the I.P.C., no separate sentence has been imposed.

2. The facts, giving rise to the present appeal, are as follows :-

First Information Report ('F.I.R.') (Exh.46) was lodged by PW 2 – Rani. The appellant is the son of her sister-in-law (husband's sister). The incident took place on 03rd March, 2017 by 06:00 in the evening at the appellant's house. A quarrel was ensued between the appellant and his mother. Nana (deceased), husband of PW 2 – Rani, who was residing in the neighbourhood of the appellant, went to the appellant's house to subside the quarrel. Instead, the appellant assaulted on the head of Nana with a stone. Nana suffered injury, and therefore, returned to his house. PW 2 – Rani tied his head injury with her *pallu*. The appellant came to the house of Nana. He was armed with stones. He threw a stone on the person of Rani. It hit her shoulder. He again gave blow on the head of Nana with the stone and went away.

3. PW 2 – Rani and others took Nana first to Government Hospital at Moha. He was then rushed to Civil Hospital, Kalamb. Nana succumbed to his injuries during treatment the same day.

4. PW 2 – Rani, therefore, lodged the F.I.R. (Exh.46) at Police Station, Kalamb. Crime vide C.R. No. 63 of 2017 was registered for the offences punishable under Sections 302 and 324 of the I.P.C.

5. Crime scenes panchanama (Exh.43) was drawn. Some articles were seized from the crime scenes. The appellant was arrested. Mortal remains of Nana was subjected to inquest and autopsy as well. Clothes on

his person were taken charge of. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the appellant was proceeded against by filing the charge-sheet.

6. Trial Court framed the charge (Exh.20). The appellant pleaded not guilty. From his cross-examination it appears that it was the case of the appellant that it was PW 2 – Rani, who committed the murder of her husband – Nana and to save herself, lodged a false report.

7. To bring home the charge, the prosecution has examined eleven witnesses and adduced in evidence certain documents. Trial Court, on appreciation of the evidence in the case, convicted and consequently sentenced the appellant as stated above.

8. Learned counsel for the appellant would submit that most of the witnesses did not stand by the prosecution. The case is based on the evidence of sole witness, PW 2 – Rani. She was none other than widow of the deceased. According to him, the deceased was alcoholic. Investigating Officer admitted that there was a stone imbedded in the courtyard. He noticed blood stains thereon. According to him, the deceased, while running away fell, whereby his head hit with the said stone and he died thereby. Learned counsel alternatively submitted that if the evidence of PW 2 – Rani is accepted as it is, it would not constitute an offence of murder punishable under Section 302 of the I.P.C. According to him, it would be an offence

punishable under Section 304 Part II of the I.P.C. He, therefore, urged for passing of appropriate order.

9. Learned A.P.P. would, on the other hand, submit that although the case is based on sole eye witness account, i.e. PW 2 - Rani, she is none other than the widow of the deceased. She too was hit with a stone. As such, she was an injured eye witness. Her evidence carries much weight. On the question of quarrel and weapon of assault, learned A.P.P. would submit that the appellant hit a stone on the head and killed Nana. The same would, therefore, be an offence punishable under Section 302 of the I.P.C. He, therefore, urged for dismissal of the appeal.

10. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

11. PW 8 – Dr. Sudhir conducted autopsy on the mortal remains of Nana. He noticed following injuries on his person :-

1. CLW 6cm x 2cm x 1cm left temporoparietal region oblique in direction.
2. Abrasion over right knee 3 cm x 2cm
3. Abrasion over right knee 3cm x 1cm
4. Abrasion over left knee 2cm x 1cm
5. Abrasion over left knee 3cm x 2cm
6. Swelling over left occipital region 5cm x 4cm

The postmortem report under his signature finds place at Exhibit 61. In his opinion the cause of death was, "head injury and intracranial hemorrhage".

12. The question is whether the appellant is the author of the homicidal death of Nana.

13. PW 1 – Deepak is a witness to the spot panchanama (Exh.43). The crime scene is the house of the appellant and that of the deceased as well.

14. The material witness is PW 2 – Rani, widow of the deceased. She testified that the incident took place by 06:00 p.m. on 03rd March, 2017, in the house of the appellant. There was quarrel between the appellant and his mother. She was engaged in cooking. On hearing the noise from the house of the appellant, her husband went towards the said house to subside the quarrel. The appellant, therefore, assaulted on the head of her husband – Nana with a stone. Nana, therefore, returned to his house in injured state. The appellant followed him with stones. He hit her with one stone and gave another blow on the head of Nana with a stone. It was a handful size stone.

15. During her cross-examination, it has been brought on record that Nana would suspect her fidelity. He would, therefore, not allow her to visit the appellant's house. The appellant was none other than son of deceased - Nana's sister. She was categorical to deny that she had scuffle with her

husband, who was under the influence of liquor. During her cross-examination she was suggested that it was her, who was responsible for death of her husband. She was categorical to deny the same.

16. PW 3 – Ramchandra is a witness to the panchanama relating to seizure of clothes of the appellant, while PW 4 - Rajendra is a witness to the inquest panchanama (Exh.50). PW 5 – Ashok, PW 6 – Rahul and PW 7 - Lochana (stepmother of Nana) did not stand by the prosecution. Nothing material could be elicited from their cross-examination which could be fruitful for the prosecution. PW 9 - Mundhe was the judicial officer (J.M.F.C.), who was examined regarding recording of statement of the witnesses under Section 164 of the Cr.P.C. PW 10 - Rohini was the daughter of the deceased. She did not witness the incident.

17. PW 11 – Dr.Nitin did the investigation of the crime. Our attention was drawn to his evidence wherein he testified that a stone was seen imbedded in soil. He did not seize the same. Learned counsel for the appellant meant to say that the deceased fell on that stone and received head injury resulting into his death. This was a changed defence before this Court. Before the trial Court it was the case of the appellant that it was PW 2 – Rani, who had quarreled with her husband and hit him causing his death.

18. From close reading of the aforesaid evidence it does indicate that fate of the case rest on the sole testimony of PW 2 – Rani, widow of the

deceased. She being the close relative of the deceased and sole witness, her evidence needs to be closely scrutinized. If we rely on her evidence as it is, it can be said to have proved that the appellant had quarrel with his mother. Deceased – Nana went to subside the same. The appellant hit him on his head with a stone. Nana came back to his house. The appellant followed him with stones. He hit therewith to Rani and then again made an assault therewith on the head of Nana.

19. However, close reading of the evidence of PW 8 – Dr. Sudhir would indicate that he had also examined the appellant at the same time and noticed following injuries on his person : -

1. Abrasion right shoulder region 3cm x 1cm.
2. Abrasion right shoulder region 2cm x 1cm.
3. Abrasion back on left side 3cm x 0.5cm.
4. Abrasion left scapular region 1cm x 0.5cm.
5. Abrasion left scapular region 0.5cm x 0.5cm.
6. Abrasion right thigh lateral aspect 3cm x 0.5cm.

20. Although the prosecution is not under obligation to explain minor and superficial injuries, PW 2 - Rani appears to be economical with truth. The fact that the appellant sustained the injuries at the same time suggests there was a scuffle between him and the deceased. The same has not been disclosed by PW 2 – Rani. Admittedly, the appellant did not have enmity with the deceased. Although the assault was made on vital part of the body, it was with handful size of stone. The appellant, at the relevant time, was of twenty-one years of age. Since the appellant too had suffered the injuries,

necessary inference would be that the scuffle had preceded between the two and then the appellant assaulted Nana on his head with the stone. Had Nana not been to the house of the appellant, he would not have invited the trouble. The same suggests the appellant to have had no intention to do away with Nana at the first instance. But, when he immediately followed Nana to his house and gave second blow, the same indicates him to have had intended to do away with the deceased. Based on the injuries on the person of the appellant and there being no previous enmity between the two, the case in our view, falls within Exception 4 of Section 300 of the I.P.C., which reads thus :-

“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.”

21. The trial Court did not take into consideration this aspect of the matter. Interference with the impugned order of conviction and consequential sentence is, therefore, warranted. In the result, the appeal partly succeeded. Hence, the following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Impugned judgment and order dated 16th May, 2019 passed by the Additional Sessions Judge, Osmanabad in Sessions Case, No. 40 of 2017 is hereby set aside. The appellant stands acquitted of the offence punishable under Section 302 of the Indian Penal Code.

Instead, the appellant is convicted for the offence punishable under Section 304 Part I of the Indian Penal Code and thereby sentenced to suffer rigorous imprisonment for eight (8) years and to pay fine of Rs.1,000/- (Rupees One Thousand), in default, to undergo rigorous imprisonment for two months.

- (III) Fine amount, if has already been paid, be adjusted accordingly.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)