



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

CRIMINAL APPEAL NO. 604 OF 2020

Indrasing Padkya Pawara
C-11592 Circle 3/6,
Age-39 years, Occu.- Nil,
R/o Langadi Bhavani,
Tq. Shahada, Dist. Nandurbar

..APPELLANT

VERSUS

State of Maharashtra
Through P.S.O.,
Police Station Shahada,
Tq. Shahada, Dist. Nandurbar

..RESPONDENT

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

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 08th APRIL, 2024
PRONOUNCED ON : 03rd MAY, 2024

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

1. The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 06th February, 2018 passed by Additional Sessions Judge, Shahada in Sessions Case No. 42 of 2016. Vide the impugned judgment and order, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- with default stipulation.

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

P.W.1 – Ramesh lodged the F.I.R. (Exh.10) on 28th May, 2016. He was a last year student of law stream. He had been to his village Langadi Bhavani, Tq. Shahada, Dist. Nandurbar on account of summer vacation. Deepak (deceased) was his cousin. The houses of P.W.1 – Ramesh and Deepak were adjacent to each other.

3. On 27th May, 2016 by 06:00 in the evening Deepak (deceased), P.W.1 – Ramesh, their another friend and distant brother – Govind were talking *inter-se* on ota of the house of Deepak. Nisha, wife of Deepak, was also present there. The appellant is the uncle of Nisha. Both, Deepak and Nisha were emotionally involved. They had eloped and married with each other. The appellant, being uncle, and the father of Nisha were annoyed thereby. Both were said to have been giving threats of eliminating Deepak.

4. On the aforesaid date, time and at place, the appellant came there and said that he will eliminate Deepak. The appellant thereupon stabbed in the ribs of Deepak with a mutton cutter and fled. One Mangesh Pawara secured services of an ambulance. Deepak was being taken to the hospital at Nandurbar in the said ambulance. On the way to the hospital, Deepak breath his last. P.W.1 – Ramesh lodged the F.I.R. (Exh.10) at Shahada Police Station. A crime vide C.R. No. 158 of 2016 was registered against the appellant for the offence punishable under Section 302 of the I.P.C. P.W.8 – Dnyaneshwar was entrusted in the investigation. He paid visit to the scene

of offence and drew panchanama thereof (Exh.38). Mortal remains of Deepak were subjected to inquest and then postmortem examination. The appellant was arrested. He made a disclosure statement (Exh.20) pursuant to which weapon of assault was seized under recovery panchanama (Exh.44). Statements of the persons acquainted with the facts and circumstances of the case were recorded.

5. Upon completion of investigation, the appellant was proceeded against by filing the charge-sheet before the Court of J.M.F.C., Shahada. Learned Magistrate committed the case to the Court of Additional Sessions Judge, Shahada ('trial Court'). The trial Court, in turn, framed the charge (Exh.3). The appellant pleaded not guilty. His defence is of false implication.

6. To establish the charge, prosecution has examined eight witnesses and produced in evidence certain documents. On appreciation of the same, the trial Court convicted and consequently sentenced the appellant as stated above.

7. Learned counsel for the appellant would submit that the appellant belongs to *Pawara* community. Although Deepak and Nisha had eloped and married with each other, the dispute was settled in a panchayat of the community members held before six months. The couple was residing happily at the village. There was no flare up between the couple after return to the village till date of the incident. It was a day of *Manata* (a religious

festival), on which a goat is sacrificed and villagers are offered non-veg meal. On the given day, Deepak alongwith his parents and wife were away from the house. P.W.1 – Ramesh and P.W.2 – Govind, eye witnesses, were the friends of the deceased. Both of them were taking education at Nandurbar. Therefore, their presence at the scene of offence is doubtful. Nisha was engaged in cooking in the kitchen room. As such, who committed the murder of Deepak is not known. The appellant has been falsely implicated.

8. Learned counsel in the alternative submits that it would at the most be an offence under Section 304 Part II of the I.P.C. A single blow was inflicted. A scuffle has preceded the incident. How and why the scuffle commenced is not in the evidence of the prosecution witnesses. The reason of love marriage of Nisha with the deceased had become a history. Since the matter was settled, the appellant has started visiting the house of Deepak. Learned counsel has relied on following authorities to ultimately urge for allowing the appeal and in the alternate, convert the conviction from offence under Section 302 of the I.P.C. to Section 304 Part II of the I.P.C. :-

(i) Pappu Vs. State of Madhya Pradesh, 2006 AIR (SC) 2659

(ii) Augustine Saldanha Vs. State of Karnataka, 2003 AIR (SC) 3843

9. Learned Addl.P.P. would, on the other hand, submit that it is an offence of honour killing. The appellant had expressed his intention to eliminate Deepak before assaulting him with a sharp edged weapon. The blow proved fatal. The incident took place at the entrance door of the house

of the deceased. Same suggests the appellant to have visited the place only with an intention to eliminate Deepak. The case is based on eye witness account. The witnesses are relations of both, the appellant and deceased. On arrest of the appellant, the weapon used in commission of crime came to be seized. C.A. report thereof (Exh.54) indicates it to have been stained with the blood of blood group of the deceased. According to learned Addl.P.P., it was an open and shut case. The trial Court has rightly convicted the appellant and sentenced to life imprisonment. According to him, no interference with the impugned judgment and order of conviction and sentence is warranted. He, therefore, urged for dismissal of the appeal.

10. Considered the submissions advanced. Perused the evidence on record. Also gone through the impugned judgment and order. Let us advert thereto and appreciate the same.

11. P.W.7 – Dr. Jaymala, conducted the autopsy of the mortal remains of deceased. She noticed following injuries on his person :-

- i] There was stab wound on left side of chest having length 1.5 cm and depth 1/2 cm and breadth 1/2 cm.
- ii] There was contused lacerated wound having size 5 x 3 x 3 cm on left hypocontrial region to left iliac region.
- iii] The stab wound was between left 3 to 4 inter coastal space rib. Directly penetrate and injured to left lung.
- iv] There was rupture of left side pleura.
- v] The stab wound was present on left side lung.
- vi] There was clotted blood present in large vessels.

In her opinion the deceased died of hemorrhagic shock due to injuries.

12. The question is whether the appellant has caused death of the deceased. The case is based on evidence of four eye witnesses besides recovery of a weapon used in commission of offence at the instance of the appellant.

13. P.W.1 – Ramesh (informant) testified that he was a resident of village Langdi Bhavani. Deepak (deceased) was his cousin. Nisha (widow of Deepak) is the daughter of Uttam Pawara. The appellant is the uncle of Nisha. Deepak and Nisha were emotionally involved. Both of them had eloped in November 2015 and got married with each other. The appellant was annoyed thereby. The appellant and his brother (father of Nisha) would, therefore, threaten to eliminate Deepak.

14. It is further in his evidence that it was 06:00 in the evening of 27th May, 2016. He, alongwith his friend Govind (P.W.2) was sitting on the otla of the house of Deepak. Both, Deepak and his wife Nisha, were also present there. All of them were engaged in talking. The appellant suddenly came there and said in Pawara language, “*तोह मी आज मार दी*” (I will kill you today). It is further in his evidence that the appellant was armed with a mutton cutter. He assaulted on the ribs of Deepak with the said mutton cutter. After having made the assault, the appellant fled. His evidence further indicates that one Mangesh Pawara dialed phone number 108 from his cell phone to avail

services of an ambulance. While Deepak was being taken to the hospital in the ambulance, he unfortunately succumbed to the injuries. He accompanied Deepak to Civil Hospital, Nandurbar. He did not meet police officer there. It is further in his evidence that thereafter he lodged the F.I.R. (Exh.10).

15. P.W.1 – Ramesh was subjected to a searching cross-examination. It has been brought on record that he was a last year student of law stream. His residence was just twenty feet away from the house of Deepak. P.W.2 – Govind was also taking education at Nandurbar. He would stay in a hostel. He admitted that there were two groups in the village. There was rivalry between the two groups over village panchayat election. It has also been brought on record that there was a Distribution Point ('DP') of electricity near the field of the appellant. Whenever electricity supply used to get disconnected, the villagers, Sarpanch and Police Patil would blame the appellant. He denied that there was no otila to the house of the deceased. According to him, it was a day of *Manta* (a religious festival). On that day, a goat is sacrificed and non-veg food is offered to the villagers. He, however denied that Deepak, his parents and Nisha were outside the village for celebrating *Manta*. He denied that the contentions made in the F.I.R. were hearsay. Cross-examination further indicates that the suggestions given to P.W.1 – Rajesh that at the time of incident he himself, P.W.2 – Govind, Deepak (deceased) and his wife – Nisha were the only persons present at the spot, goes a long way to infer the appellant to have admitted presence of all of them at the scene of offence.

16. P.W.2 – Govind was another eye witness. It is in his evidence that he had been to the village on summer vacation. He alongwith P.W.1 – Ramesh, Deepak (deceased) and his wife – Nisha were talking on otla of the house of Deepak. The appellant suddenly came there and said to Deepak “*तोह मी आज मार दी*”. There was scuffle between the appellant and Deepak. Thereafter, the appellant took out the knife/mutton cutter from his pocket and assaulted on the ribs of Deepak therewith. The appellant pushed Deepak and left the spot.

17. During cross-examination of this witness it was suggested to him that those being summer days, sun set happens late. Due to sun rays (heat), nobody would sit on otla. He admitted that there were two groups in the village. According to him, the DP was erected near the field of the appellant. He, however claimed ignorance that whenever electricity supply would get disconnected, the village Sarpanch used to blame the appellant. The witness could not state how long the scuffle took place between the appellant and Deepak. He also could not state what kind of conversation/quarrel occurred between the appellant and Deepak. According to him, the scuffle took place at the door of the house of Deepak.

18. P.W.3 – Nisha, widow of the deceased, is another eye witness. She gave her evidence on the lines of evidence of P.W.1 – Ramesh and P.W.2 – Govind. According to her, she was present while the appellant came and said that he will eliminate Deepak now. The appellant then

assaulted on the ribs of Deepak with a knife. Her evidence further indicates that both, P.W.1 and P.W.2 brought Deepak inside the house. The wound was covered with a piece of cloth. Thereafter, Deepak was rushed to the hospital in an ambulance. Deepak, unfortunately died. She referred to her statement recorded under Section 164 of the Code of Criminal Procedure. Same is at Exhibit 15.

19. During her cross-examination, it has been brought on record that she was emotionally involved with Deepak. Both of them had eloped and married with each other. A panchayat of the community members was, therefore, held. Her father and uncle (present appellant) were late to come to the panchayat (meeting). The panchas were, therefore, annoyed with them. The panchas had even abused her father and uncle. It is further in her evidence that Sarpanch and Police Patil of the village were the relatives of her husband. Her evidence further indicates that the appellant was residing outside the village. She went on to state that the appellant would visit her house. She, however denied to have been visiting his house. According to her, a DP was installed near the field of the appellant. Although she admitted that she was cooking rice at the relevant time, she denied to have been in the kitchen room at the relevant time. She further went on to admit that it was a day of *Manta* (a religious festival). She, however denied that she alongwith her parents-in-law and the deceased had gone to attend the said festival. She was suggested that when she came out of the kitchen, she saw Deepak to have sustained injuries and P.W.1 – Ramesh and P.W.2 – Govind

were the only persons present there. These suggestions suggest that the appellant admitted presence of Ramesh and Govind at the scene of offence. She denied that the F.I.R. was lodged after due deliberation. She did not deny the appellant to have killed her husband (Deepak).

20. P.W.4 – Shekhlal would reside immediately opposite the house of deceased – Deepak. His evidence is on the lines of evidence of P.W.1 – Ramesh and P.W.3 – Nisha. According to him, he was present just outside his house. He saw the scuffle between the appellant and the deceased. The appellant knocked Deepak down. He tried to reason with the appellant that why was he behaving with Deepak in such a manner. The appellant was armed with a knife. The appellant assaulted on the ribs of the deceased with the knife. During cross-examination, he admitted that Deepak was his cousin. He denied to have had not seen the incident.

21. P.W.5 – Nilesh is a panch witness. It is in his evidence that on 31st May, 2016 the appellant made a disclosure statement that he would take them to a place whereat the knife was kept. Accordingly, he took them to a certain place and took out the knife from the roof of a cattle shed. The disclosure statement made by the appellant is at Exhibit 20. It was suggested to this witness that the appellant was not present while he visited the police station.

22. P.W.6 – Dr. Kiran testified that he had reached village Langdi Bhavani with the ambulance in response to a call on phone number 108. He

carried Deepak in the ambulance to the Civil Hospital, Nandurbar. He admitted to have no knowledge of the incident. P.W.8 – Dnyaneshwar is the investigating officer. His evidence indicates that he recorded the F.I.R. lodged by P.W.1 – Ramesh. He then paid visit to the scene of offence and drew panchanama thereof (Exh.38). He conducted inquest (Exh.33) and submitted the dead body for postmortem examination. It is further in his evidence that the appellant made a disclosure statement, pursuant to which a knife came to be seized.

23. Close reading and appreciation of the aforesaid evidence would indicate that it was the appellant and no other, who assaulted Deepak with a sharp weapon. The weapon allegedly used in assaulting Deepak was seized pursuant to the disclosure statement made by him. We have an opportunity to examine the said weapon. We find it to be a small knife and not the mutton cutter. According to all the eye witnesses, the appellant gave one stab therewith to the deceased. The reason of assault was said to be his niece – Nisha to have married the deceased after having been eloped with him. According to us, the said had become history, since the couple had returned to the village. A panchayat of community members was held and the matter was settled. Nisha, widow of the deceased, testified that the appellant would visit their residence. Admittedly, a scuffle ensued before the incident. The appellant took out the knife from his pocket and gave a blow therewith to the deceased. True, he was armed with a knife. None of the prosecution witnesses could throw light on the cause of scuffle between the

two. None of them could gave duration thereof. The question is, therefore, whether it is an offence of murder or culpable homicide not amounting to murder.

24. Relevant provisions of the I.P.C. read thus -

“299. Culpable homicide. - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Murder. - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly. - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly. - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly. - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

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.

The above exception is subject to the following provisos: —

First — That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly — That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly — That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Exception 2 -

Exception 3 -

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.

25. The evidence indicates the appellant gave a single blow to the deceased, that too after a scuffle and the blow proved fatal. The blow was inflicted on the ribs of the deceased. It was a sharp knife, but not a mutton cutter. The appellant was annoyed with the deceased to have eloped with his niece and married her. The appellant had come to the house of the deceased armed with a knife. He assaulted on the ribs of the deceased. The same indicates the appellant to have intended to cause bodily injury to the deceased and the said bodily injury was inflicted with an intention it to be sufficient in the ordinary course of nature to cause death (3rdly of Section 300 of the I.P.C.). The appellant did not suffer even a bruise or scratch on his person. In our view, the case gets inferred by Exception 4 to Section 300 of the I.P.C. referred above, and therefore, it would be an offence punishable under Section 304 Part I of the I.P.C. It is reiterated that the assault was on ribs. Single blow proved fatal.

26. For all the aforesaid reasons, interference with the impugned judgment and order of conviction and sentence is warranted to a limited extent. Hence, the following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Order of conviction and consequential sentence of the appellant dated 06th February, 2018 passed by Additional Sessions Judge, Shahada in Sessions Case No. 42 of 2016 for the offence punishable under Section 302 of the Indian Penal Code, is hereby set aside.
- (III) Instead, the appellant is convicted for the offence punishable under Section 304 Part I of the Indian Penal Code, and therefore, sentenced to suffer rigorous imprisonment for eleven (11) years and to pay fine of Rs.2,000/- (Rupees Two Thousand). Since the appellant has already paid fine of Rs.2,000/- vide the impugned judgment and order, he is exempted from depositing the fine amount in the present conviction.
- (IV) The appellant be given set off for the period which he has already undergone under Section 428 of the Code of Criminal Procedure.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)