



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

CRIMINAL APPEAL NO.508 OF 2016

Suhanabee w/o. Sk. Sattar,
Age : 40 years, Occ. Household,
r/o. Kahala (Kd)
Tq. Naigaon, Dist. Nanded

..Appellant

Vs.

The State of Maharashtra

..Respondent

AND

CRIMINAL APPEAL NO.132 OF 2022

Sunilkumar s/o. Adiklal Mandal,
Age 27 years, Occ. Convict,
r/o. Kanvinda, Post Ramgad,
Tq. Pohyahar, Dist. Kamka,
Jharkhand

..Appellant

Vs.

State of Maharashtra,
Through P.S.O. Kuntur,
Biloli, Dist. Nanded

..Respondent

Mr.G.P.Shinde, Advocate for appellant in Cri. Appeal No.508 of 2016
Mr.R.A.Jaiswal, Advocate for appellant in Cri. Appeal No.132 of 2022
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent

CORAM :	R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.
RESERVED ON :	OCTOBER 01, 2024
PRONOUNCED ON :	OCTOBER 07, 2024

JUDGMENT (Per R.G.Avachat, J.) :-

The challenge in both these appeals is to the judgment and order of conviction and consequential sentence passed on 12.07.2016, by learned Addl. Sessions Judge, Biloli, in Special Case No.54 of 2014. Vide the impugned order, the appellant in Criminal Appeal No.132 of 2022 – Sunilkumar s/o. Adiklal Mandal has been convicted for the offence punishable under Section 302 r/w. 34 of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for life; while, the appellant in Criminal Appeal No.508 of 2016 has been convicted for the offence punishable under Section 201 of Indian Penal Code and sentenced to suffer R.I. for three years.

2. The facts, giving rise to the present appeals, are as under:-

Sk. Riyaz (deceased) was son of appellant – Suhanabee. It is the case of prosecution that appellant – Suhanabee did have extra-marital relationship with appellant – Sunilkumar. On the given day, i.e. on 27.05.2014 by 6.00 p.m., both the appellants along with Rubina (PW 5), daughter of appellant – Suhanabee, were working in the field. Sk. Riyaz (deceased) came there. A petty quarrel ensued between the two since Riyaz questioned him how come he (appellant – Sunilkumar) entered his field. The appellant – Sunilkumar,

thereupon, picked up a spade and inflicted number of blows on the head of Riyaz. Riyaz succumbed thereto.

3. Appellant – Suhanabee informed everyone that her son died on account of fall from a bicycle. She even went to the police station and made a report accordingly. When there was an eye-witness account and the post mortem examination indicated Riyaz met with homicidal death, appellant – Suhanabee gave false information about the said offence, which she knew to be false, with intention to screen the offender (appellant Sunilkumar) from legal punishment.

4. PW 1 – Sk. Ismail lodged First Information Report (Exh.15) based on which, crime C.R. No.23 of 2014 was registered. The appellants were arrested. The investigation of the crime was made. On completion thereof, charge sheet was filed against both the appellants. The trial Court framed Charge (Exh.4). The prosecution to establish the guilt, examined seventeen witnesses and produced in evidence certain documents. On appreciation of the same, the trial court passed the order impugned herein.

5. Heard learned counsel for the parties. Learned counsel for the appellant – Sunilkumar would submit that the case is based

on the evidence of an eye-witness namely, PW 5 – Rubina. She was just 11 years of age at the relevant time. He took us through her cross-examination to submit her to be unreliable. Learned counsel then referred to an alleged confessional statement made by appellant - Sunilkumar in the presence of panch witness. He took us through the same and submitted that the deceased had abused the appellant - Sunilkumar in such words, which caused grave and sudden provocation, and as a result of which the appellant - Sunilkumar assaulted the deceased. He also brought to our notice that it was the deceased who had, first, assaulted appellant - Sunilkumar with stone. The arrest panchnama of the appellant - Sunilkumar was brought to our notice to indicate the injuries on his person. According to learned counsel, appellant - Sunilkumar has been behind the bars for little over 10 years. He would submit that it would be, in any case, not an offence under Section 302 of Indian Penal Code. He, ultimately, urged for allowing the appeal in toto or at least, in the alternative, converting the offence under Section 302 to Section 304 of Indian Penal Code.

6. Learned counsel representing appellant - Suhanabee would submit that the deceased was proceeding on a bicycle. There was nothing at all to indicate the illicit relationship between the

appellants. The appellant – Suhanabee had, therefore, no reason to make a false statement. He took us through the evidence of the relevant witnesses, namely PW 13 – Raosaheb and PW 14 – Sudhakar and submitted that PW 13 – Raosaheb did not tell PW 14 – Sudhakar what the appellant – Suhanabee had stated to him. According to him, what has been stated by PW 13 – Raosaheb in his evidence about the deceased Riyaz to have suffered injuries due to fall from bicycle, was not put to her in her cross-examination under Section 313 of the Code of Criminal Procedure. He referred to question no.15. According to him, whatever PW 13 has testified against appellant – Suhanabee, therefore, could not be read in evidence against her. He further submitted that appellant – Suhanabee has been leading happy married life with her husband.

7. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein as well.

8. Let us advert to the evidence on record and appreciate the same. PW 17 – Dr. Pushpak conducted autopsy on the mortal remains of Sk. Riyaz. His evidence indicates him to have noticed the following injuries on the person of Sk. Riyaz:-

1. Incised vertical wound over left forehead from inner side of left eye brow to scalp 3x0.5x1 cm due to hard and sharp object.
2. Lacerated incised wound on vertex with fracture of skull about 3x1x1 cm due to hard and blunt object.
3. Lacerated wound on left side of scalp near temporal region about 3x1x1 cm due to hard and sharp with fracture of bone.
4. Lacerated wound behind left ear on left occipital bone about 2x2x1 cm with fracture of bone.
5. Abrasion marks in mid-axillary line left side of chest 1x1 cm due to hard object.

In his opinion, Riyaz died of hemorrhagic shock due to multiple head injuries. Although the viscera was preserved, nothing poisonous was found. As such, the cause of death of Riyaz opined by PW 17 - Pushpak has been duly proved. More so, he has categorically ruled out that injury nos.1 and 2 on the person of Sk. Riyaz (deceased) were possible due to fall from bicycle, on a stony surface.

9. PW 1 - Sk. Ismail is brother-in-law (brother of Suhanabee's husband). It is he who lodged the F.I.R. (Exh.15). Admittedly, he had not witnessed the incident. He was, however, categorical to state that when he inquired with appellant - Suhanabee as to how did Riyaz suffered injuries, she informed him

Riyaz fell off bicycle and suffered injuries thereby. During his cross-examination, he was categorical to state to have hearsay information as regards illicit relationship between the appellants.

10. PW 2 to PW 4 are witnesses as regards spot panchnama (Exh.17), inquest panchnama (Exh.19) and the seizure panchnama of clothes of the deceased (Exh.21). Since their evidence is of little consequence to further the case of prosecution, we do not propose to refer the same.

11. PW 5 - Rubina (daughter of appellant - Suhanabee) was about 11 years of age at the relevant time. The trial court did not find her to be not competent witness. It is in her evidence that about four days excluding the day of the incident, she along with appellant - Suhanabee (mother) and the appellant - Sunilkumar were engaged in the work of making water-channel in their field. Her evidence further suggests that on the given day, they went to the field by 12.00 noon and took lunch by 02.00 p.m. and again resumed the work. She further testified that her brother - Riyaz came to the field. It was 05.00 p.m. He (Riyaz) abused the appellant - Sunilkumar and questioned him, as to why did he come to his field. The appellant replied him to have come for the work. Riyaz, thereafter, proceeded towards the field of his maternal uncle. The appellant took up a

spade and followed Riyaz. The appellant then assaulted on his (Riyaz) head with spade near the field of one Bambaiwala. According to her, one Shriniwas Sawkar and Raosaheb mama were present in the field of Shriniwas Sawkar. She immediately approached them and told about the incident. Raosaheb (PW 13) came to the spot. Shriniwas Sawkar also came. Riyaz was taken in a tractor for being taken to hospital. On way, one Pappu came with an auto-rickshaw. Then, they shifted Riyaz from tractor to the auto-rickshaw and brought him to the hospital. The Doctor examined him and advised to shift to Hyderabad. Riyaz was, therefore, being taken to Nanded. Unfortunately, he died on the way.

12. During the cross-examination of PW 5 – Rubina, it has been brought on record that her statement was recorded two days after the incident. It was also brought on record that her mother (appellant - Suhanabee) used to be always in the company of either Riyaz or herself. According to her, she had never seen the appellant – Sunilkumar in her house. She further testified that he (Sunilkumar) was friend of Riyaz. It was suggested to this witness that when her brother was brought to the Chowk (square), their relatives had gathered there. Same suggests the defence to have admitted her presence from the field to the Chowk (square). What she has admitted in cross-examination was that she did not share the

incident with anyone else who were present in the house. This does not rule out her evidence about having informed Raosaheb. She admitted that there was quarrel between her mother (appellant - Suhanabee) and the deceased - Riyaz. To one of the questions, she testified that Riyaz fell off bicycle in the *Nalah* (water-channel) in the field of Bambaiwala. In our view, this is a stray admission having no bearing on the fate of the appeal, more so, when she again denied that when Riyaz was proceeding towards his house in anger, he fell in the stream and sustain injuries. She denied to have had reached at the crime scene after 20 minutes. PW 5 - Rubina is the only eye witness to the incident. She was 11 years of age. For appreciation of her evidence, we have no reason to discard her evidence, more so, when the medical evidence rules out accidental death.

13. PW 7 - Uttam and PW 8 - Kamaji were witnesses to the so called disclosure statement made by appellant - Sunilkumar (Exh.29), pursuant to which a spade came to be recovered. The spot panchnama indicates that the spade was lying at the spot as it is. Admittedly, the seized spade was not sent to the F.S.L. to find, whether there were stains of blood on it. The seizure of the spade, therefore, has no relevancy. We have also closely perused the evidence of PW 9 - Ramrao and PW 10 - Aminabee to find the same

to have no much relevance. Their evidence as regards illicit relationship between the appellant was hearsay. PW 10 - Aminabee is sister-in-law of the appellant - Suhanabee. She claimed to have learnt about the incident from Rubina (PW 5). As such, her evidence too is of little help for the prosecution. Same is the case about PW 11 - Banubee. Her evidence indicates that she was a chicken-vendor. According to her, acquaintance between both appellants developed when they used to visit her shop. She, therefore, asked both of them not to visit her shop. Thus, her evidence too is of little consequence to bring home the charge. PW 12 - Dashrath was a driver by profession. It is in his evidence that Riyaz was being taken to Nanded in his vehicle. During transit, he inquired with the appellant - Suhanabee as to how did Riyaz suffered injuries. She told him Riyaz to have fallen off a bicycle and sustained injuries. This witness was not cross-examined on behalf of appellant - Suhanabee. As such, his evidence went unchallenged.

14. PW 13 - Raosaheb testified that he was in his field at the material time. The daughter of Sattar, i.e. Rubina (PW 5), had come to him running. She would call him 'Mama'. She told him that 'Bihari' (appellant) beat her brother - Riyaz. He immediately rushed towards the place of incident. On inquiry with Suhanabee (appellant),

she told him Riyaz to have fallen off bicycle and suffered injuries. She even requested him not to beat up appellant – Sunilkumar. True, whatever this witness has testified against the appellant – Suhanabee, was not put to her during her examination under Section 313 of the Code of Criminal Procedure. Same, therefore, cannot be used against her. So far as appellant – Sunilkumar is concerned, his evidence reinforces the evidence of PW 5 – Rubina. Her (Rubina) conduct immediately approaching him and narrating about the incident is admissible as *res gestae* under Section 6 of the Evidence Act.

15. It is in the evidence of PW 14 – Sudhakar that he had been to the field of Shriniwas Sawkar. PW 13 – Raosaheb was present there. Rubina (PW 5) came running and informed them about the incident, i.e. the appellant assaulted her brother with spade. His evidence further disclosed that both of them, therefore, went to the spot. The appellant – Suhanabee was there. She told Raosaheb that Riyaz suffered injuries due to fall off a bicycle. In question no.16 in the examination under Section 313 of Cr.P.C., it was specifically put to appellant – Suhanabee that she told Raosaheb (PW 13) in his (Sudhakar) presence that Riyaz suffered injuries on account of falling from bicycle.

16. PW 16 – Santosh was A.P.I., attached to Kuntur Police Station. According to him, an information was received at the police station that one boy died in suspicious circumstances, at village Kahala. He, therefore, went to the village to make enquiry. He then received a phone-call, informing appellant – Suhanabee to have come to the police station to inform her son to have died due to his falling off the bicycle. This evidence is hearsay. The police station officer, who had recorded the information given by appellant – Suhanabee, has not been examined nor a station-diary entry to that effect has been placed on record. PW 13 – Raosaheb Kadam is the witness in whose presence, the Investigating Officer recorded the statement given by the appellant - Suhanabee.

17. We are conscious of the legal provision that in view of Section 25 of the Evidence Act, no confession made to a police officer shall be proved as against a person accused of any offence. The Statement (Exh.26) made by the appellant – Sunilkumar in the presence of PW 6, although in confessional nature, is not to be used against him. We do not see any legal bar to use it in favour of the appellant. The appellant, in his statement, stated as under:-

जब मैं अय, रियाझ मुझे देखा तो मेरेकु गली दिया. तू मेरी मा का धगड है क्या ? तू मेरी मा को चोद रहा है क्या ? तुम्हारी मा को चोदूंगा तो कैसा लगेगा ? वैसे बाता कर रहा था। मैं बोला के अरे तुम्हारी माँको

कौन चोद रहा है, ऐसे बाता कर रहा है। उसने पथर उठाया। मैं भी दो पथर उठाया। औ भी दो पथर उठाया औ फेक दिया तो मैं भी फेक दिया। ओ अपने माको गाली देने लगा तुमको घर आने नही दूंगा चलो कैसे आती तुम घर को? फिर बोला कि मैं अपने पिताजी को फोन कर के बोल देता। मेरे को दार लगा ये ऐसी बाता कर रहा है । अगर उसको घर से निकाल देता तो मेरेकु टेन्शन आ गया मैं उसके आमी को बोला मैं समाजाता हू उसको जाके तो मैं गया। मेरे हाता मे फावडा था। दूर से मैं चिलाया `रियाज तुम्हारी आमी बुलारही है' ऐसे बोला उसको वो सायकल से जा रहा था । वो सायकल से उत्तर और पिछे मूडा मेरे को देखा और बोला तू मेरेसे क्यू बात कर रहा है ? उसने पथर उठाया और उसने मेरेको याह पे (बगलेच्या खाली हाताने इशारा करून दाखवले) मारा। तो मेरे हात मे फावडा था मैं भी फावडासे दो मारा उसको माथे पे मारा तो वो बेहोष हो गया। मैं पाणी लाने को गया और ट्रॅक्टर को बुलाया।

Appellant - Sunilkumar:-

18. PW 5 – Rubina testified that her brother (deceased Riyaz) abused appellant Sunilkumar. Abusing by deceased Riyaz, triggered the incident. The arrest panchnama of the appellant – Sunilkumar on record, would indicate him to have suffered blunt trauma on right cheek, left sole and injury just below the right arm-pit. Same reinforces that it was the deceased Riyaz, who abused the appellant first, and even assaulted him and thereafter only, the appellant – Sunilkumar assaulted on the head of deceased Riyaz by a spade, which was readily available there as an agricultural instrument. True, number of blows given on the deceased indicate that the appellant had intended to do him away. Same suggests intention of

the appellant. However, his case would fall within the Exceptions 1 and 4 of Section 300 of Indian Penal Code. For ready reference, both the Exceptions are reproduced below:-

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.

Exception 5.-

19. In case of **Dauvaram Nirmalkar Vs. State of Chhattisgarh (2022 LiveLaw (SC) 650**, the Apex Court observed :-

“10. Interpreting Exception 1 to the Section 300 in *K.M. Nanavati v. State of Maharashtra*, (1962 Supp (1) SCR 567, this Court has held that the conditions which have to be satisfied for the exception to be invoked are (a) the deceased must have given provocation to the accused; (b) the provocation must be grave; (c) the provocation must be sudden; (d) the offender, by the reason of the said provocation, should have been deprived of his power of self-control; (e) the offender should have killed the deceased during the continuance of the deprivation of power of self-control; and (f) the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake or accident. For determining whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an unusually excitable and pugnacious individual. Further, it must be considered whether there was sufficient interval and time to allow the passion to cool. *K.M. Nanavati* (supra) succinctly observes:

“84. 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. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision: it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his

wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

85. The Indian law, relevant to the present enquiry, may be stated thus: (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. (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. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.”

11. K.M. Nanavati (supra), has held that the mental background created by the previous act(s) of the deceased may be taken into consideration in ascertaining whether the subsequent act caused sudden and grave provocation for committing the offence. There can be sustained and continuous provocations over a period of time, albeit in such cases Exception 1 to Section 300 of the IPC applies when preceding the offence, there was a last act, word or gesture in the series of incidents comprising of that conduct, amounting to sudden provocation sufficient for reactive loss of self-control. K.M. Nanavati (supra) quotes the definition of ‘provocation’

given by Goddard, C.J.; in R. v. Duffy, (1949) 1 All E.R. 932, as :

“...some act or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his own mind... Indeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person had the time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation...”.

12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. (R V.Duffy). The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the

court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

13. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the accused's reaction, should be identified to show that there was temporary loss of self-control and the accused had acted without planning and premeditation. This has been aptly summarised by Ashworth (1975 Criminal LR 558-559) in the following words:

"The significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased's final act and the accused's retaliation should continue to tell against him. The point is that the significance of the deceased's final act and its effect upon the accused – and indeed the relation of the retaliation to that act – can be neither understood

nor evaluated without reference to previous dealings between the parties.” Exception 1 to Section 300 recognises that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self-control, going astray and committing the offence. However, sustained provocation principle does not do away with the requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation.

14. Following the view expressed in K.M. Nanavati (supra), this Court in Budhi Singh v. State of Himachal Pradesh (2012) 13 SCC 663, observed that in the test for application of Exception 1 to Section 300 of the IPC, the primary obligation of the court is to examine the circumstances from the point of view of a person of reasonable prudence, if there was such grave and sudden provocation, as to reasonably conclude that a person placed in such circumstances can temporarily lose self-control and commit the offence in the proximity to the time of provocation. A significant observation in Budhi Singh (supra) is that the provocation may be an act or series of acts done by the deceased to the accused resulting in inflicting of the injury. The idea behind this exception is to exclude the acts of violence which are premeditated, and not to deny consideration of circumstances such as prior animosity between the deceased and the accused, arising as a result of incidents in the past and subsequently resulting in sudden and grave provocation. In support of the aforesaid proposition and to convert the conviction from Section 302 to Section 304 Part I of the IPC in Budhi Singh (supra), the Court also relied upon Rampal Singh v. State of Uttar Pradesh (2012) 8 SCC 289.

15. For clarity, it must be stated that the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the

prosecution and the evidence adduced by the prosecution in the court. It is in this context we would refer to the case of the prosecution, which is that the deceased was addicted to alcohol and used to constantly torment, abuse and threaten the appellant. On the night of the occurrence, the deceased had consumed alcohol and had told the appellant to leave the house and if not, he would kill the appellant. There was sudden loss of self-control on account of a 'slow burn' reaction followed by the final and immediate provocation. There was temporary loss of self-control as the appellant had tried to kill himself by holding live electrical wires. Therefore, we hold that the acts of provocation on the basis of which the appellant caused the death of his brother, Dashrath Nirmalkar, were both sudden and grave and that there was loss of self-control."

20. For all the above reasons, as regards the appellant - Sunilkumar, we find it to be a case of culpable homicide not amounting to murder, punishable under Section 304 Part II of Indian Penal Code. The appellant - Sunilkumar was behind the bars from the day one of his arrest, i.e. from 28.05.2014 till the day this Court released him on P.R. Bond vide order dated 01.10.2024. As such, he was behind the bars little over 10 years. In our view, he needs to be released with the period of sentence he has already undergone.

Appellant - Suhanabee :-

21. As already observed above, the evidence on record indicates that the appellant - Suhanabee, inspite of having been in the know that her son - Riyaz to have been assaulted by the

appellant – Sunilkumar and he (Riyaz) thereby died, still, only with a view to screen him from the legal punishment, she informed her son to have suffered injuries due to fall from a bicycle. The trial court has convicted her for the offence under Section 201 of Indian Penal Code. For better appreciation, the provisions of Section 201 are reproduced below:-

201. Causing disappearance of evidence of offence, or giving false information to screen offender —

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Reading of the first part of Section 201 of Indian Penal Code would indicate that it is applicable in the case of an offence which is exclusively punishable with death sentence. Same is, therefore, not applicable here. We have converted the conviction of appellant – Sunilkumar from offence punishable under Section 302 of I.P.C. into the offence punishable under Section 304 Part I of I.P.C., which prescribes punishment with life imprisonment or imprisonment of either description for a term, which may extend to 10 years and shall also be liable to fine. The second part of Section 201 of Indian Penal Code provides maximum punishment of imprisonment for a term, which may extend to three years and shall also be liable to fine. Considering the fact that the appellant – Suhanabee is a woman and was behind the bars for 137 days during investigation, enquiry and trial, we propose to impose sentence against her to the period of imprisonment, which she has already undergone; more so, when she is leading happy married life and sending her back to jail may create trouble in her matrimonial life.

22. With the aforesaid observations, both the appeals are partly allowed in terms of the following order:-

(i) The impugned order dated 12.07.2016, passed by learned Addl. Sessions Judge, Biloli, in Special Case No.54 of 2014,

convicting and sentencing the appellant in **Criminal Appeal No.132 of 2022 - Sunilkumar s/o. Adiklal Mandal** for the offence punishable under Section 302 r/w. 34 of Indian Penal Code, is set aside. The appellant is acquitted thereof.

Instead, he is convicted for the offence punishable under Section 304, Part I of Indian Penal Code and sentenced to suffer R.I. for 10 years and to pay fine of Rs.1,000/-.

(ii) Appellant – Sunilkumar has already been released on his executing P.R. Bond, vide order of this Court dated 01.10.2024. The P.R. Bond executed by him shall stand cancelled.

(iii) The conviction of the appellant in **Criminal Appeal No.508 of 2016 - Suhanabee w/o. Sk. Sattar**, vide impugned order dated 12.07.2016, passed by learned Addl. Sessions Judge, Biloli, in Special Case No.54 of 2014, for the offence punishable under Section 201 r/w. 34 of Indian Penal Code, is maintained. However, the sentence of imprisonment imposed against her is hereby modified to the extent of the period of 137 days, which she has already undergone.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP