



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

CRIMINAL APPEAL NO.47 OF 2022

Dnyaneshwar Chandrakant Kale,
Age 32 years,
r/o. Wadule Bk., Kale Vasti,
Tq. Shevgaon, Dist. Ahmednagar

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.R.B.Dhakne, Advocate for appellant
Mr.S.J.Salgare, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : DECEMBER 12, 2024**

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

The challenge in this appeal is to the judgment and order of conviction and consequential sentence dated 12.12.2019, passed by learned Addl. Sessions Judge, Ahmednagar (trial court), in Sessions Case No.89 of 2019. The relevant part of the order of conviction and consequential sentence reads thus:-

(i) Accused Dnyaneshwar Chandrakant Kale is hereby convicted u/s.235(2) of Cr.PC. of the offence punishable u/s. 302 of I.P.C. and he is sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/-, in default of payment of fine to suffer further rigorous imprisonment for six months.

(ii) Accused is further convicted u/s. 235(2) of Cr.P.C. of the offence punishable u/s. 323 of I.P.C. and he is sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs.1,000/- in default of payment of fine, to suffer further rigorous imprisonment for one month.

(iii) The substantive sentences shall run concurrently.

(iv) The accused is in custody from 30.12.2018 till today. He is entitled for set off u/s.428 of Cr.P.C. for the period which he has already undergone.

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

Sandip (deceased) was cousin of the appellant. On 07.08.2018, there was a quarrel between the appellant and his father. The appellant's brother, Dhananjay, had, therefore, lodged FIR against the appellant. The appellant was arrested. The appellant had requested Sandip (deceased) to stand him surety for his release on bail. Sandip refused. About 7-8 days before the fateful day, i.e. 29.12.2018, the appellant was released on bail. The appellant made a phone call to Sandip, inquiring with him, as to why he did not stand surety for him. It appears that quarrel ensued between the two during the telephonic conversation itself. Sandip and two others,

therefore, went to the house of the appellant to inquire, as to why did he abuse him on phone. The appellant was sitting on a rest-platform just outside of his house. The appellant started abusing him. He fallen Sandip on the ground and took bite on left leg of Sandip. Then, one Babu Jarge (PW 4) intervened. The appellant took bite on his back. The appellant then fished out a knife and stabbed on the chest of Sandip. Sandip's cousin - Amol (PW 2) rushed Sandip to the hospital. Unfortunately, Sandip breathed his last. PW 2 - Amol therefore, lodge FIR with Shevgaon Police Station, Dist. Ahmednagar.

3. A crime vide C.R. No.632 of 2018 was registered with Shevgaon Police Station, Dist. Ahmednagar, for the offences punishable under Sections 302, 324 and 504 of Indian Penal Code. The appellant was arrested. Inquest and autopsy were conducted on the mortal remains of the deceased Sandip. Statements of the persons acquainted with the facts and circumstances of the case were recorded. The knife came to be seized. All the seized articles were sent to the R.F.S.L. for analysis and report. Upon completion of the investigation, charge sheet was filed against the appellant.

4. The trial court framed Charge (Exh.2). The appellant pleaded not guilty. His defence was of false implication. The

prosecution to bring home the charge, examined six witnesses and adduced in evidence certain documents. The appellant too examined one witness in his defence. On appreciation of the evidence in the case, the trial court convicted the appellant and consequently sentenced, as stated above.

5. Heard learned counsel for the parties. Learned counsel for the appellant would submit that the appellant did not intend to do away with Sandip. It was Sandip (deceased), PW 2 – Amol and PW 4 – Bapu, who themselves went to the house of the appellant and picked up the quarrel. They even assaulted the appellant. Our attention was adverted to the injury certificate of the appellant. Learned counsel meant to say that the quarrel had ensued between the two. It was sudden one. The appellant, in the heat of passion, gave a single knife-blow, which, unfortunately, proved fatal. According to learned counsel, the offence may fall under Section 304 of Indian Penal Code.

6. Learned APP would, on the other hand, submit that the single injury proved fatal. Same indicates the intention of the appellant. A sharp weapon like knife was used to assault on the chest of the deceased. The Medical Officer opined that the said

injury was sufficient, in the ordinary course of nature, to cause death. He, therefore, urged for dismissal of the appeal.

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

8. Let us advert to the evidence on record and appreciate the same. Admittedly, Sandip died due to '*cardio-respiratory arrest due to traumatic and hemorrhagic shock due to stab injury*'. PW 5 – Dr. Dipak had conducted autopsy on the mortal remains of Sandip. He noticed following injuries on the person of deceased Sandip:-

- 1) Stab injury of size (2x1 cm) over left side of chest in the 5th intercostal space 5 cm lateral to the left midclavicular line. Horizontal wound edges clean and sharp with acute angle. Wound is reddish with bleeding present. Elliptical shaped.
- 2) Abrasion of size 1x1 cm over left forearm lower 1/3rd with scab formation.
- 3) Scratch marks over right greater toe

Internal injuries

Walls, ribs cartilages

- 1) Intercostal muscles in the left 5th Intercostal muscle has been cut. No rib fracture found.
- 2) About 2 liter of blood found present in left thoracic cavity and pleural cavity
- 3) Stab injury present over pericardium corresponding to injury no.1 in column no.17

PW 5 – Dr. Dipak issued post-mortem examination report (Exh.25). In his opinion, injury no.1 suffered by the deceased was sufficient, in the ordinary course of nature, to cause his death.

9. PW 1 – Pandurang is a witness to the crime-scene panchnama (Exh.14). From the crime-scene itself, a blade of knife and its broken plastic handle were seized. He is also a witness to the panchnama relating to the seizure of clothes of the appellant. The panchnama is at Exh.15.

10. PW 2 – Amol lodged the FIR (Exh.21). He testified that Sandip (deceased) was his cousin. Sandip was doing centering work to earn his living. Chandrakant Kale (PW 3) was the maternal uncle of deceased Sandip. The appellant is son of Chandrakant. As such, both appellant and deceased were maternal cousin brothers. He further testified that on 07.08.2018, the appellant had a quarrel with his father. The appellant's brother – Dhananjay, therefore, lodged FIR against the appellant. The appellant was arrested. He had requested Sandip to stand surety for his release on bail. Sandip had refused. This is said to be the motive to commit the crime. A few days after the said incident, the appellant was released on bail. It was on 29.12.2018 by 07.00 p.m. in the evening, the appellant and

Sandip talked with each other on cellphone. The appellant questioned Sandip as to why did he not stand surety. **Sandip was speaking in loud tone.** The appellant, therefore, started abusing Sandip. He himself (PW 2 - Amol), Sandip (deceased) and Bapu (PW 4) went to the house of the appellant on motorbike. The appellant was sitting on the platform in front of his house. Sandip asked him as to why did he abuse him. The appellant, thereupon, again, started abusing Sandip. He then caught hold of Sandip and fallen him on the ground. The appellant then took bite on the leg of the deceased. When Bapu intervened, the appellant took a bite on his back. The appellant then stabbed on the chest of Sandip with knife. Sandip was rushed to the hospital. He, unfortunately, breathed his last. We have closely perused the cross-examination of PW 2 -Amol, to find no admission or anything that could be said to be helpful to the appellant.

11. PW 3 - Chandrakant is the father of the appellant. He testified that the appellant would quarrel with him over partition of land. The appellant even used to beat him up. The appellant's wife has deserted him. His evidence further indicates that he was present when Sandip and two others had come to his house. His evidence further indicates that the appellant went inside the house

and came with a knife. He (PW 3) and his wife frightened and remained in the house. In short, the evidence PW 3 - Chandrakant, father of the appellant, indicates that he did not witness the incident.

12. PW 4 - Bapu testified that he had accompanied Sandip along with Amol (PW 2) to the house of the appellant. Sandip questioned the appellant as to why did he abuse him. The appellant, thereupon, started abusing Sandip. He then caught hold of Sandip and fallen him on the ground. The appellant then took bite on the leg of the deceased. When he (PW 4) intervened, the appellant took a bite on his back. The appellant then stabbed on the chest of Sandip with knife. Sandip was rushed to the hospital. Here again, close reading of the cross-examination of this witness indicates that nothing useful could be elicited.

13. As such, the evidence on record indicates that the appellant was quarrelsome. He had asked Sandip (deceased) to stand surety for his release on bail. Sandip had refused. On release of the appellant on bail, a quarrel ensued between the two during the telephonic talk. Sandip along with PW 2 - Amol and PW 4 - Bapu, therefore, went to the house of the appellant. Sandip questioned, as to why did he abuse him. The same indicates that it is not the

appellant, who went to the house of the deceased Sandip and assaulted him. PW 2, PW 3 and PW 4 are found to be somewhat economical with truth. According to them, the appellant took bite on the leg of Sandip. No such injury was noticed on the person of the deceased. The appellant examined a defence witness, i.e. DW 1 - Dr. Deepak Pardeshi, who testified that API - Magar had brought the appellant for pre-arrest medical examination. He noticed following injuries on the person of the appellant:-

- 1) Abrasion admeasuring 1 x 1 cm. over middle of the scalp
- 2) Linear abrasion admeasuring 1.5 x 2 cm. over terminal phalanx of right thumb
- 3) Swelling over bilateral knee joint

He issued injury certificate (Exh.47).

14. The aforesaid evidence goes a long way to indicate that the deceased Sandip, PW 2 - Amol (informant) and PW 4 - Bapu went to the house of the appellant and picked up a quarrel with him (appellant). Had they not preferred to go to the house of the appellant, which was about 1 km. away from their residence, the incident would not have happened. One can read between the lines. The quarrel must have ensued between the appellant on one hand and Sandip, Amol and Bapu, on the other.

15. Learned counsel for the appellant adverted our attention to the submissions made by learned APP, who was in-charge of the sessions case. The submissions of learned APP before the trial court were that there was scuffle between the accused (appellant) and the deceased. Moreover, had the appellant really wanted to finish off Sandip, he would have been to Sandip's house and assaulted him with number of blows. It is reiterated that the deceased along with two others went to the house of the appellant and picked up quarrel. Scuffle between him and the appellant took place. As such, the deceased invited the trouble. The appellant, in anger, stabbed on the chest of Sandip. The stab proved fatal. In the opinion of the Medical Officer, said injury was sufficient, in the ordinary course of nature, to cause death. In our view, therefore, the case would fall within Part I of Section 304 of Indian Penal Code since exception 4 to Section 300 of Indian Penal Code would come into play, which reads thus:-

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.

16. In the result, the appeal succeeds. Hence, the following order:-

(i) The appeal is partly allowed.

(ii) The conviction of the appellant for the offence punishable under Section 302 of Indian Penal Code and the consequential sentence to suffer imprisonment for life and to pay fine of Rs.10,000/-, with default stipulation, imposed vide order dated 12.12.2019, passed by learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No.89 of 2019, is hereby set aside.

Instead, the appellant hereby stands convicted for the offence punishable under Section 304 Part I of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for eight years and pay fine of Rs.2,000/-, in default, to undergo S.I. for three months.

(iii) Rest of the terms of the impugned order to stand unaltered.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP