



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

CRIMINAL APPEAL NO. 1034 OF 2019

Siddheshwar Ramrao Chavan
Age: 35 years, Occu.: Agri.,
R/o Kumbephal, Tq. Sindkhedraja,
Dist. Buldhana

..APPELLANT

VERSUS

State of Maharashtra
Through Police Inspector,
Mantha Police Station,
Tq. Mantha, Dist. Jalna

..RESPONDENT

....
Mr. A.R. Shaikh, Advocate for appellant
Mr. A.R. Kale, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 14th JUNE, 2024
PRONOUNCED ON : 19th JUNE, 2024

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

1. The challenge in this appeal is to the judgment and order dated 13th September, 2019 passed by Additional Sessions Judge, Jalna in Sessions Case No. 158 of 2017. Vide the impugned judgment and order, the appellant has been 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 fine of Rs.10,000/- with default stipulation. The appellant was also prosecuted for the offences punishable under Sections 324, 504 and 506 of the I.P.C., wherefrom he has been acquitted. Neither the State nor the victim has preferred appeal against acquittal.

2. A short question for consideration in this appeal is as to whether the act of the appellant, causing death of his mother-in-law, constitutes an offence of murder punishable under Section 302 or under Section 304 Part II of the I.P.C., as has been urged by learned counsel for the appellant.

3. The facts in brief giving rise to the present appeal are as follows :-

The appellant married P.W.4 – Vaishali about twelve years before 14th June, 2017 (fateful day). The couple was blessed with two children. Vaishali is the daughter of maternal uncle of the appellant. After quite a long happy married life, the appellant allegedly got addicted to alcohol. He would harass and ill-treat Vaishali. Two months before 14th July, 2017, Vaishali had returned to the house of her parents at Malegaon, Tq. Mantha, Dist. Jalna. The appellant came to the house of his parents-in-law on the given day i.e. on 14th June, 2017 by 06:00 p.m. to get his wife (Vaishali) back to her matrimonial house. P.W.1 – Rohit (informant), brother-in-law of the appellant refused to send Vaishali with him (appellant). A quarrel-cum-scuffle took place between the two. The appellant then left the house of his parents-in-law. He returned after a while armed with a knife and said, “I will see you all one by one”. Sumanbai (deceased), mother-in-law of the appellant tried to hold the appellant. He gave a knife blow on her chest. She thereby suffered bleeding injury. When Vaishali and P.W.1 – Rohit intervened to save her, they too suffered injuries. Sumanbai was rushed to the Government Hospital, Mantha. The medical officer there declared her dead on admission. P.W.1 – Rohit, on the following day i.e. 15th June, 2017 lodged the F.I.R. (Exh.14).

Before registration of the crime, inquest (Exh.23) and autopsy (Exh.38) were conducted on 15th June, 2017. A scene of offence panchanama (Exh.17) was drawn. The knife stained with blood came to be seized from the crime scene. Clothes on the person of the deceased and that of the appellant were seized. Statements of the persons acquainted with the facts and circumstances of the case were recorded. C.A. reports (Exh.29 to 31) were received.

4. Upon completion of investigation, the appellant was proceeded against by filing the charge-sheet before the Court of J.M.F.C., Mantha, which in turn, committed the case to the Court of Session. The case was assigned to the Additional Sessions Judge, Jalna for trial in accordance with law. Charge (Exh.7) was framed against the appellant for offence punishable under Sections 302, 324, 504 and 506 of the I.P.C. The appellant pleaded not guilty. His defence was of false implication. According to him, P.W.1 – Rohit, his brother-in-law assaulted him with a kitchen knife while he had been to his residence to get his wife back. His mother-in-law and wife intervened. Mother-in-law suffered injury, accidentally.

5. To bring home the charge, prosecution examined six witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, convicted the appellant and consequently sentenced as stated above.

6. Learned counsel for the appellant would submit that the appellant would reside at village Kumbephal, Tq. Sindkhedraja, Dist. Buldhana. He had come to the house of his parents-in-law on 14th June, 2017 to get back his wife, P.W.4 – Vaishali. P.W.1 – Rohit, his brother-in-law refused to send Vaishali back to her matrimonial house. A quarrel ensued between the two. It was his brother-in-law, who fetched a kitchen knife from the kitchen of his own house. Sumanbai (deceased) and Vaishali intervened. Sumanbai thus suffered injury which proved fatal. He would, in the alternative, submit that it was a case of single blow. The appellant did not have intention to kill his mother-in-law or anyone else. The kitchen knife, with which the appellant assaulted his mother-in-law, was shown to us to indicate it was not a dangerous weapon. According to learned counsel, the injury was below left chest, near to the stomach. The cause of death is hemorrhagic shock due to stab injury. He then adverted our attention to the injury certificate of the appellant (Exh.41). Our attention was also drawn to certain portion of the cross-examination of P.W.1 – Rohit, who admitted in no uncertain terms that in the village where he resides, no knife was available for sale. Learned counsel meant to say that the kitchen knife was in the house of the informant himself. Since the appellant did not have intention to kill anyone, he did not fetch any such knife from outside. According to him, all the witnesses examined by the prosecution are interested. He was not resident of village Malegaon whereat the incident took place. He, therefore, ultimately urged for converting the conviction of the appellant from Section 302 to Section 304 Part II of the I.P.C. and imposing proportionate sentence.

7. Learned A.P.P. would, on the other hand, submit that the appellant was addicted to alcohol. When he came to the house of his parents-in-law to get his wife back, a quarrel-cum-scuffle took place between him and P.W.1 – Rohit (informant), his brother-in-law. Thereafter he left the house and returned with a knife and said, “I will see you all one by one”. Same indicates his intention was to commit murder. Learned A.P.P. would further submit that it is not that every case of a single blow resulting into death would fall under Section 304 Part II of the I.P.C. He relied on the judgment of the Apex Court in case of ***Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of A.P., 2006 AIR (SC) 3010*** to ultimately urge for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein. Let us advert thereto and appreciate the same.

9. Admittedly, marriage between the appellant and P.W.4 – Vaishali took place twelve years before June 2017. The couple was blessed with two children. The appellant has his residence at village Kumbephal, Tq. Sindkhedraja, Dist. Buldhana, while the house of his parents-in-law is at village Malegaon, Tq. Mantha, Dist. Jalna. Vaishali is the daughter of appellant's maternal uncle. The case of the prosecution that the appellant was addicted to alcohol is evident from his injury certificate (Exh.41) admitted by the appellant himself. The injury certificate (Exh.41) indicates that while

the medical officer examined him, the appellant was found drunk and intoxicated. After having a long happy married life, P.W.2 – Vaishali appears to have left her matrimonial house and came back to her parents'. It happened just two months before 14th June, 2017 (fateful day). From the evidence on record it indicates that there-before no complaints were made by Vaishali in relation to harassment and ill-treatment by the appellant. Be that as it may.

10. Admittedly, the incident took place on 14th June, 2017, little past 06:00 p.m. According to the informant, P.W.1 – Rohit, the appellant came to his house. All his family members were present in the house. He (appellant) abused all of them on having questioned as to why they did not send his wife Vaishali to his house. It is further in his evidence that he refused to send Vaishali with the appellant as he would harass and ill-treat her under the influence of liquor. Therefore, there was scuffle between him and the appellant. The appellant then left the house. It is further in his evidence that he then called P.W.3 - Sevakram Shriram Rathod, Sarpanch of the village with a view to inform him about the incident and then inform to Bit Jamadar, Mantha Police Station. Sevakram accordingly came to his house. The appellant thereafter again returned armed with a knife. He told them, "I will see you all one by one". It is further in his evidence that when his mother Sumanbai (deceased) tried to hold the appellant, at that time he gave a knife blow on her chest. Sumanbai thereby suffered bleeding injury. Vaishali intervened. She too suffered knife injury. When he (P.W.2) intervened, he

too suffered injury to his hand. Then all of them, except the appellant, went to Mantha Police Station. The police station officer referred them to Government Hospital, Mantha for medical treatment. The doctor there declared Sumanbai dead on admission.

11. P.W.2 – Chinchole, is a witness to the crime scene panchanama (Exh.17) besides two more panchanamas relating to seizure of clothes of the deceased and that of the appellant (Exh.18 and 19) respectively.

12. P.W.3 – Sevakram was not a witness to the earlier incident, which allegedly took place at 06:00 p.m. It was a scuffle between the appellant and P.W.1 – Rohit. His evidence indicates that he had come to the house of Shriram Rathod on the request of Nitesh, brother of P.W.1 – Rohit. He requested to contact Bit Jamadar of Mantha Police Station. He tried to contact him on his cell phone, however the call was not completed. It is in his evidence that all the family members of P.W.1 – Rohit were present in the house. It is further in his evidence that the appellant came with a knife and assaulted on the chest of Sumanbai therewith. He, therefore, accompanied all of them, except the appellant, to Mantha Police Station and then to Government Hospital, Mantha. The defence version of the appellant was put to him in his cross-examination. He denied each and every suggestion.

13. P.W.4 – Vaishali (wife of the appellant) testified that on the fateful day the appellant had come to get her back for cohabitation. Her brother,

Nitesh refused to send her back with him. The appellant gave a push to Nitesh and left. It is further in her evidence that Nitesh called P.W.3 – Sevakram to their residence. Sevakram came. Thereafter the appellant came back holding a knife in his hand and having seen the appellant, her mother – Sumanbai stood up. The appellant gave a blow on her chest with the knife. When she and her brother, P.W.1 – Rohit tried to separate the quarrel, both of them suffered injury to their hands. All of them, except the appellant, then went to Mantha Police Station and thereafter to Government Hospital, Mantha.

14. She was subjected to a searching cross-examination. She denied to have never been subjected to harassment by the appellant. She denied that she left the matrimonial house leaving the children behind. She denied the defence questions put to her during cross-examination.

15. P.W.6 – Alamgir was a police officer, who recorded the F.I.R. lodged by P.W.1 – Rohit. It is P.W.5 – Rafiq who did the investigation of the crime and filed the charge-sheet.

16. What can be disclosed from the evidence on record is that there was a long standing marital relationship (about twelve years) between the appellant and P.W.4 – Vaishali. The couple was blessed with two children. There is some evidence to indicate the appellant would consume alcohol. There is, therefore, every reason for us to infer that Vaishali might have left her matrimonial house and started residing at the house of her parents' at

village Malegaon. There is further evidence on record to indicate that both the children of the couple are staying with the appellant at his native place. On the given day i.e. 14th June, 2017, the appellant had admittedly come to the house of his parents-in-law to get his wife back for cohabitation. Same suggests that he had not come with an intention to kill anyone of his in-laws. It is true, that intention to kill can be developed on the spot. The evidence, however indicate that the prosecution witnesses were somewhat economical with the truth. According to P.W.1 – Rohit, there was scuffle between him and the appellant by 06:00 p.m. and then the appellant left the house. While as per the version of P.W.4 – Vaishali, it was the appellant, who gave push to Nitesh, her another brother, and left the house.

17. In our view, there must have been some scuffle. The appellant too was assaulted. It is not known whether he was assaulted first or he first assaulted his mother-in-law. P.W.1 – Rohit has admitted in his evidence that no knife is available for sale at his Tanda (vicinity, a place whereat he was residing). The weapon of assault is a kitchen knife. It's one side is blunt. It does not have a plain sharpness since the side of knife with which cutting could be made has teeth. As such, it was admittedly a kitchen knife. The investigating officer appears to have not made investigation to find wherefrom the appellant could secure the kitchen knife. Even we accept the prosecution case as it is, what P.W.1 – Rohit testified is that when the appellant returned with a knife, his mother – Sumanbai tried to hold the appellant. The same indicates that action of Sumanbai to catch hold of the

appellant was preceding the assault. It is not in the evidence of any of the prosecution witnesses that the appellant on his return with a knife straight away assaulted Sumanbai therewith. The witnesses found to be economical with the truth since P.W.1, 3 and 4 denied the appellant to have been assaulted. The evidence of P.W.5 – Rafiq indicates that he had referred the appellant, Sumanbai (deceased), P.W.1 – Rohit and P.W.4 – Vaishali to the Government Hospital, Mantha for medical examination at one and the same time. After realising the consequences of his admission, he testified that he did not recollect as to whether he referred the appellant for medical examination. The evidence on record indicates that all of them were examined by the medical officer one after the other. The injury certificate of the appellant (Exh.41) suggests that he suffered following two injuries :-

Type of injury	Site of part of the body on which inflicted & extent	Size	Sharp margin Direction etc.	Age of the injury	Type of probable weapon used	Nature of the injury
CLW	Left lathal thigh upper 1/3 rd	2 x 2 cm	Sharp	Recent	Sharp & pointed	Simple
CLW	Right hand at base of proximal phalanx of right middle & index finger	7 x 0.5 x 5 cm	Irregular	Recent	Sharp & pointed	Simple

The appellant was even referred to Civil Hospital, Jalna for further treatment. The same suggests that the appellant must have been assaulted by P.W.1 – Rohit with sharp and pointed weapon. As such, first it is a case of an incident taken place in a spur of moment. Although the appellant had returned armed with a knife, it is only when his mother-in-law stood up and

tried to catch hold of him, he gave her a kitchen knife blow. It is not that no sooner the appellant returned with a knife, he started assaulting one after the other indiscriminately.

18. Each case has to be decided on its facts and circumstances. We have perused the judgment in case of Pulicherla Nagaraju @ Nagaraja Reddy (supra) relied on by the A.P.P. The facts therein indicate that it was a case of long standing dispute between the two families. Although it was a case of single assault, the same was made with a dangerous weapon like *barisa*. In the case in hand, we do not find the kitchen knife could be such a dangerous weapon. Learned A.P.P. has specifically relied on paragraph no.17 which reads thus :-

“17. It would thus be seen that in all these cases, the accused landing a single blow was only one of the several circumstances which persuaded this Court to hold that the offence did not fall under Section 302 but fell under Section 304 Part I or Part II. The fact that the accused gave only one blow, by itself, would not mitigate the offence to one of culpable homicide not amounting to murder. There are several cases where single blow inflicted by the accused, resulting in death have been found to be sufficient for conviction under Section 302. We may refer to a few of them, namely, Virsa Singh v. State of Punjab (AIR 1958 SC 465), Gudar Dusadh v. State of Bihar (AIR 1972 SC 952), Vasanta v. State of Maharashtra (1984 Supp. SCC 648), Jai Prakash v. State (Delhi Administration) [1991 (2) SCC 32] and State of Karnataka v. Vedanayagam [1995 (1) SCC 326].

17.1) In Virsa Singh (supra), this Court held that a culpable homicide is a murder under Section 300 clause Thirdly, if the prosecution should establish four elements (i) the presence of a bodily

injury, (ii) nature of such bodily injury, (iii) intention on the part of the accused to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and (iv) the injury was sufficient to cause death in the ordinary course of nature (this part of enquiry being purely objective and inferential, nothing to do with the intention of the offender). Dealing with the question, as to how intention is to be inferred, Vivian Bose, J. succinctly stated :

"...In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted x x x x The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended some consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question."

17.2) The following legal position regarding single blow injury, was summed up in Jagrup Singh v. The State of Haryana (AIR

1981 SC 1552) thus :

"There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under section 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death."

19. True, intention to commit murder can be ascertained from the facts viz. nature of weapon used, number of blows inflicted and body part on which the assault/s was/were made. We are also of not a view that every single assault resulting into death could necessarily be an offence falling under Part II of Section 304 of the I.P.C.

20. As such, it is a question of fact whether the appellant had made assault by the knife with an intention to commit murder of his mother-in-law. As per the postmortem report (Exh.38), Sumanbai died due to hemorrhagic shock due to stab injury. Although the postmortem report has been admitted in the defence, it was incumbent on the part of the prosecution to examine the medical officer, who conducted the postmortem examination. By non-examination of the medical officer, this Court has no material before it to find

whether bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. For better appreciation, we need to refer to Sections 299, 300 and 304 Part II of the I.P.C. They are, therefore, reproduced below :-

“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, commit 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.

Section 304, Part II is attracted when it is proved that even if the accused had no intention to cause such bodily injury as was likely to cause death but had the knowledge that the injury was likely to cause death.”

21. On appreciation of the evidence on record, we find it to be a case falling under Section 304 Part II of the I.P.C. Admittedly, the appellant had come to the house of his parents-in-law to get his wife back. His brother-in-law (P.W.1 – Rohit) refused to send his (appellant) wife with him. The reason therefor that the appellant was addicted to alcohol and would harass

her under the influence thereof. While the appellant was at the house of his parents-in-law in the evening, according to P.W.1 – Rohit, a minor scuffle between him and the appellant took place. While as per the evidence of P.W.4 – Vaishali, the appellant gave Nitesh, her another brother, push and left the house and returned with a knife. As per the evidence of P.W.1 – Rohit, no knife was available for sale at the Tanda whereat he was residing. It is not known wherefrom the appellant had secured the kitchen knife. No investigation in that regard was made. The appellant too suffered two injuries referred to above. The first injury was suffered with a pointed and sharp weapon. It is not known whether any other weapon was there available for P.W.1 – Rohit to assault the appellant. The injury suffered by the appellant could not be said to have been self-inflicted. It is also not the case of prosecution. Had the appellant really intended to kill anyone of his in-laws or his wife on his return armed with a knife, he would have started assaulting them indiscriminately and even without waiting for a minute. Even if we accept the evidence of P.W.1 – Rohit that the appellant on return stated that now he will see each and everyone one after another, the same does not indicate his intention was to kill his in-laws. It is only when his mother-in-law tried to catch hold of the appellant, he gave her a kitchen knife's blow below the left chest, close to the stomach. Had he really intended to kill, he would have given further blows. The prosecution appears to have suppressed very many facts and particularly who caused the injuries to the appellant with a sharp and pointed weapon. The appellant had suffered those injuries in the incident that took place at the house of his in-laws.

22. Considering the nature of weapon, it being a single blow given below the left chest and that too after his mother-in-law (deceased Sumanbai) tried to catch hold of him, indicate that he did not intend to kill her. The appellant could, however be attributed with knowledge that with such act death would likely to cause. In our view, therefore, it is a case of offence of culpable homicide not amounting to murder, punishable under Section 304 Part II of the I.P.C.

23. The appellant is in jail since 17th June, 2017. Considering the nature of offence and the fact that he had come to get his wife back to his house for cohabitation and further more his both children were with him, we propose to impose sentence of eight years rigorous imprisonment. With this, appeal partly succeeds in terms of following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Judgment and order dated 13th September, 2019 passed by Additional Sessions Judge, Jalna in Sessions Case No. 158 of 2017, thereby convicting and sentencing the appellant for the offence punishable under Section 302 of the Indian Penal Code is hereby set aside. He stands acquitted thereof.
- (III) The appellant is convicted for the offence punishable under Section 304 Part II of the Indian Penal Code, and therefore, sentenced to suffer rigorous imprisonment for eight years

and pay fine of Rs.5,000/- (Rupees Five Thousand), in default to suffer rigorous imprisonment for six months.

- (IV) Since the appellant is behind the bars from the date of his arrest i.e. 16th June, 2017 till date, he be given set off under Section 428 of Code of Criminal Procedure.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)