



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

CRIMINAL APPEAL NO.926 OF 2022

Puna Jagan Naik
age 35 years, Occu. Agriculturist,
R/o Village Varad, Tq. Chopda,
District Jalgaon

... APPELLANT

VERSUS

The State of Maharashtra
Through Station Officer,
Rural Police Station, Chopda,
Tq. Chopda, District Jalgaon

(Copy to respondent be served
on the Public Prosecutor of
High Court of Judicature of
Bombay, Bench at Aurangabad)

... RESPONDENT

.....
Mr. S.S. Kazi, Advocate for appellant
Mrs. Kalpalata Patil Bharaswadkar, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

DATE : 19th DECEMBER, 2024

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

The appellant was convicted for the offence
punishable under Section 302 of the Indian Penal Code and,

therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- with default stipulation, vide judgment and order dated 18/3/2015, passed by Additional Sessions Judge, Amalner (Trial Court) in Sessions Case, No.53/2012. The appellant is, therefore, before us in this appeal.

2. In short, the case of the prosecution before the Trial Court was that, the appellant along with deceased and P.W.3 Budha had been to forest for collecting firewood. A scuffle between the appellant and Pandu (deceased) took place. The appellant lifted a stone and hit on the head of Pandu twice. The brain matter oozed out. P.W.3 Budha returned to the village and related the incident to the Sarpanch, Police Patil and others. P.W.1 Rajendra, Village Police Patil, therefore, lodged the First Information Report (F.I.R. - Exh.17) with Rural Police Station, Chopda. A crime vide C.R. No.52/2012 for offence punishable under Section 302 of the Indian Penal Code was registered. During investigation, crime scene panchanama (Exh.19) was drawn. The appellant was arrested. Clothes on his person were seized. Inquest and autopsy on the mortal remains of Pandu were conducted.

Statements of persons acquainted with the facts and circumstances of the case were recorded. Then the appellant was proceeded against by filing a Charge Sheet.

3. The Trial Court framed the Charge (Exh.11). The appellant pleaded not guilty. His defence was of false implication.

4. To bring home the charge, the prosecution had examined 6 witnesses and adduced in evidence certain documents. The Trial Court, on appreciation of the same, convicted and consequently sentenced the appellant as stated above.

5. Heard. The learned Advocate for the appellant would submit that, the F.I.R. was based on hear-say. Had P.W.3 Budha really witnessed the incident, he could have lodged the F.I.R. Evidence of P.W.3 Budha, therefore, becomes unreliable. He relied on the judgment of the Apex Court in the case of **State of Punjab Vs. Bittu & anr. [(2016) 15 SCC 566]**. In the alternative, the learned Advocate would submit that it would at the most be an offence punishable

under Section 304 of the Indian Penal Code and appropriate relief be granted to the appellant.

6. The learned A.P.P. would, on the other hand, submit that, although the quarrel had preceded the assault, it is not that the appellant did not have intention to do away with the deceased. She relied on the judgment of the apex Court in case of **Kunhimammed @ Kunheethu Vs. The State of Kerala (Criminal Appeal, arising out of SLP (Crl.) No.4403 of 2023)**, decided on 6/12/2024 and particularly paragraph No.25.3. According to her, the assault was with such a force that the brain matter had come out. The same suggests the appellant's intention to eliminate the deceased. According to learned A.P.P., the intention can be developed in a spur of moment.

7. Let us turn to the evidence on the record. The F.I.R. was lodged by P.W.1 Rajendra, who was Police Patil of the village. Admittedly, he did not witness the incident. He admitted to have come to know about the incident from the villagers. His evidence would, therefore, be relevant only to the extent of setting the criminal law in motion.

8. P.W.2 Arun is a witness to the crime scene panchanama (Exh.19) and seizure of clothes.

9. The case is based on sole testimony of P.W.3 Budha. He testified that, he along with the appellant and the deceased had been to the forest for collecting firewood. There was scuffle between the appellant and the deceased. He rescued the same. He then went some distance ahead. The appellant again pushed Pandu. He (appellant) then lifted a stone and hit on the head of Pandu. According to him, the appellant hit on the head of the deceased with the stone twice and then he ran away.

10. During his cross-examination, he denied that the appellant had gone to Ambapani Dam for fishing. He admitted that the relations between him and deceased Pandu were cordial. He went on to state to have had no good relations with the appellant. He admitted that, he used to consume liquor. According to him, it was the belief of him and the villagers as well that the appellant had committed two murders in Madhya Pradesh. The villagers, therefore, did not want the appellant to

stay in the village or in their locality.

11. P.W.5 Dr. Nita conducted autopsy on the person of deceased. She noticed following external injuries :-

- (1) CLW 10x3 cm. over right parietal region with underlying bone fracture with brain matter oozing outside.
- (2) CLW 2x1 cm. over right upper orbital bridge with underlying bone fracture.
- (3) CLW 5x5 cm. over left occipital temporal region with underlying bone fracture with brain matter oozing out.
- (4) Multiple abrasions over right side of forehead.
- (5) multiple ribs fracture over left side of chest wall.

The post mortem report under her signature finds place at Exh.43. In her view, the cause of death was cardio respiratory arrest due to hypovoluma due to intra cranial haemorrhage and brain injury due to multiple injuries over skull. Still viscera was preserved and opinion was reserved.

12. The cause of death of the deceased is not disputed before us. When the case is based on sole eye witness account that too who is admittedly have no good relations with the appellant, his testimony needs a close scrutiny. As per the

prosecution, the trio namely the deceased, appellant and P.W.3 Budha had gone to the forest area together for collecting firewood. P.W.3 Budha admitted that, scuffle had taken place between the two. P.W.3 Budha was, however, economical with truth. He did not relate the reason over which the scuffle did take place between the appellant and the accused. Admittedly, all of them belonged to Bhil community. What has been used to assault is a stone lying on the ground. The same suggests that, something has been suppressed that impelled/ motivated the appellant to assault the deceased with a stone. It is true, the assault was made on head, vital part of body. The brain matter had come out. That would suggest the appellant had an intention to do away with the deceased. It is, however, not known when all the three, i.e. the appellant, deceased and P.W.3 Budha had been to the forest together, what had happened to trigger the incident. When P.W.3 Budha was in their company, he was under obligation to state the reason of the scuffle between the two. His evidence in that regard is silent. It may be a case of suppression of genesis of the incident. On the contrary, he states his relations with the deceased were good while he was inimical with the appellant.

Although it is for the appellant to make out his defence as regards the case to be fallen within any of the general exceptions of the Indian Penal Code, the same could be made out from the prosecution evidence as well.

13. In the case at hand, admittedly, a scuffle had taken place between the appellant and the deceased. The deceased had accompanied the appellant to the forest. P.W.3 Budha was with them. How come all of a sudden the scuffle takes place between the two. It is reiterated that, P.W.3 Budha has not testified anything as regards what impelled the appellant to mount an assault on the deceased Pandu. Admittedly, all of them belong to Bhil community. We have, therefore, to assume that the incident took place in a spur of moment. When all was well, the deceased might have done something to cause irritation to the appellant, resulting him to mount an assault on him. The assault was made with stone lying on the ground, meaning thereby, the intention was developed in a spur of moment. The cause therefor was the deceased and none else. In our view, therefore, the case of the appellant would fall either under Exception 1 or 4 to Section 300 of the

Indian Penal Code.

14. We have closely gone through the authority relied on by learned A.P.P. It was a case of scuffle between two rival factions. Act of stabbing and killing the deceased was not premeditated, but what is said to have occurred spontaneously. The deceased therein had suffered number of injuries on chest. The appellant therein was already armed with a sharp weapon. In paragraph No.25.3 of the judgment, it has been observed :-

“25.3 Among the injuries, some were specifically identified as fatal, including :

i. Penetrating wounds to the chest and rib cage. These injuries caused significant trauma to the internal organs, including the lungs and heart.

ii. Laceration of the heart. The most critical injury involved a penetrating wound measuring 7x2x1.5 cm in the left atrium and the upper part of the left ventricle, which extended through the entire thickness of the anterolateral wall of the heart. This injury also tore the mitral valve leaflets and caused contusions at the edges of the wound. The medical expert opined that this particular injury was sufficient to cause death in the ordinary course of nature.”

This makes all the difference. Moreover, it was a

case wherein life sentence was confirmed by two Courts below i.e. the Trial Court and the High Court as well.

15. On peculiar facts of the present case, we found the appellant's case to fall under Exception 1 or 4 of Section 300 of the Indian Penal Code, as stated above. The appellant is a rustic villager. He is behind the bars for little over 12 years and 4 months. Punishment provided for the offence punishable under Section 304 Part I of the Indian Penal Code is up to 10 years or which may extend to life imprisonment. We do not find this case to award the appellant sentence of imprisonment for life. To this extent, interference with the impugned order of conviction and consequential sentence is warranted.

16. In the result, the appeal partly succeeds. Hence the order :

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) Conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code and the

consequential sentence, recorded by by Additional Sessions Judge, Amalner in Sessions Case, No.53/2012 vide judgment and order dated 18/3/2015, are hereby set aside. The appellant is acquitted thereof.

(iii) Instead, the appellant is convicted for the offence punishable under Section 304 Part I of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.1000/- (Rupees one thousand), in default to suffer rigorous imprisonment for three months.

(iv) The appellant is entitled for set off vide Section 428 of the Code of Criminal Procedure.

(v) Registrar (Judicial) of this Court to communicate this order to the jail authorities with a direction that if the appellant has already undergone the sentence as directed by this order, and if he is not required in any other case, he be released forthwith.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-