



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

CRIMINAL APPEAL NO. 1168 OF 2019

Bhajansingh Dhannasingh Dhaliwal
Age: 65 years, Occu.: Prisoner,
R/o Nardana Chowk,
Dist. Patiyala, State Punjab

..APPELLANT

VERSUS

State of Maharashtra
Through the In-charge of Police Station Vizirabad,
Dist. Nanded

..RESPONDENT

....
Mr. S.S. Deshmukh, Advocate for appellant (appointment)
Ms. V.S. Chaudhary, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 08th APRIL, 2024
PRONOUNCED ON : 16th APRIL, 2024

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

1. The challenge in this appeal is to the judgment and order dated 06th September, 2016 passed by Sessions Judge, Nanded in Sessions Case No. 88 of 2015, thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.') and consequentially sentencing life imprisonment and fine of Rs.500/- with default stipulation. The appellant is, therefore, in this appeal before us.

2. The facts in brief, giving rise to the present appeal, are as under :-
The F.I.R. (Exh.13) was lodged by P.W.1 – Javed on 31st May, 2015. It has been averred in the F.I.R. that Balaji (deceased) was his friend.

The informant was dealing in business of scrap material. He has his shop at Sarpanch Nagar, Nanded. By little past 04:30 a.m. on 31st May, 2015 both, the informant and Balaji had been to Naginaghat area at Nanded in connection with the informant's business. At Naginaghat, there is a Gurudwara. An open space thereat has been covered with marble for visitors to sit and rest. Cement benches were also placed thereat. Both, the informant and Balaji sat on one bench. On the very bench there was one mattress, already spread. The appellant came there and questioned them as to why did they sit at his place. Balaji raised his voice. Some quarrel ensued between him and the appellant. The appellant assaulted Balaji with a *khanjar*. The informant immediately rushed Balaji to Civil Hospital, Nanded in an auto-rickshaw. Unfortunately, Balaji succumbed to the injuries. The informant, therefore, lodged the F.I.R. (Exh.13) with Vazirabad Police Station, Dist. Nanded.

3. Crime, vide C.R. No. 126 of 2015 was registered against the appellant for the offences punishable under Section 302 of the I.P.C. and Sections 4/25 of the Arms Act. Scene of offence panchanama (Exh.15) was drawn. Inquest panchanama (Exh.41) was conducted. The mortal remains of Balaji was subjected to postmortem examination. The appellant was arrested. Clothes on the person of both, the appellant and Balaji (deceased) were seized and sent to F.S.L., Aurangabad for analysis and report. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, charge-sheet was

filed against the appellant before the Court Chief Judicial Magistrate, Nanded. The learned C.J.M. committed the case to the Court of Sessions, Nanded ('trial Court').

4. The trial Court framed the charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication. The prosecution examined nine witnesses and produced in evidence certain documents. On appreciation of evidence in the case, the trial Court convicted the appellant as stated above. He was, however acquitted of the offence punishable under Section 4/25 of the Arms Act.

5. Learned counsel appointed to represent the appellant in this case would submit that the informant did not know the appellant. P.W.9 – Tatyrao, Investigating Officer, did not conducted Test Identification Parade ('T.I. parade'). Some of the witnesses have turned hostile. Others did not witness the incident. He submits that the informant might have committed murder of Balaji on account of dispute over business dealings. In the alternative, learned counsel would submit that it would at the most be an offence punishable under Section 304 of the I.P.C. He, therefore, urged for allowing the appeal with an appropriate order.

6. Learned A.P.P. would, on the other hand, submit that the assault was on the vital part of the deceased – Balaji. *Khanjar*, a deadly weapon was used. P.W.5 – Dr. Maroti, Medical Officer, who conducted postmortem,

has opined that the injuries suffered by the deceased were sufficient in the ordinary course of nature to cause the death. According to her, it is an offence punishable under Section 302 of the I.P.C. and none other. She, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record. Also gone through the judgment impugned herein. Let us appreciate the same.

8. Admittedly, both, the deceased and the informant were close friends. On the given day i.e. on 31st May, 2015 they had been to Naginaghat area early in the morning i.e. little past 04:30. They took tea at a tea stall of one Happising in the nearby. It was the Gurudwara area. There was, therefore a big footfall. It is also not in dispute that Balaji met with a homicidal death.

9. P.W.5 – Dr. Maroti conducted postmortem examination of the mortal remains of deceased – Balaji. He noticed following injuries on his person :-

- “1. Stitched wound present on left side of back horizontally placed, 6 cm below lower angle of left scapula, three stitches present in situ, on opening the stitches injury of size 3.5 cm x 1 x cavity deep, directed upwards medially, both margins were clean cut, both angles were acute, margins easily separable.*
- 2. Stitched injury present on right lumbar region of abdomen, vertically placed 7 cm lateral to mid line and 6 cm above right*

anterior superior illiac spine with three sutures present in situ, on opening the sutures stab injury of size 3.5 cm x 1.5 x cavity deep directed medially upwards, both margins clean cut and both angles acute, margins easily separable.

3. *Therapeutic laprotomy incise wound of length 20 cm and 16 sutures present in situ on mid line of the abdomen, on opening sutures size of wound 20 x 1 cm x cavity, deep sutured in layers, with one theurepetic drain wound of size 1.5 cm x 1 x cavity deep present on each flank of abdomen.*
4. *Therapeutic drain wound of size 1.5 x cavity deep present on left axillary line at seventh intercostal space on left lateral side of chest.*
5. *Multiple tram track contusions present on left arm lateral aspect upper part, intermingling with each other, varing sizes from 6 cm x 1.5 cm to 10 x 2 cm with two parallel lines and paleness in between them, swelling of left arm present, red in colour.*
6. *Contusion of size 12 x 5 cm present on dorsam of left hand, red in colour.*
7. *Tram track contusion of size 8 x 2 cm present on right arm middle part lateral side with two parallel lines and pale area in between them, red in colour.*
8. *Contused abrasion on lower part of right forearm and wrist of size 10 cm x 4 cm area over dorso lateral aspect, red in colour.*
9. *Contused abrasion present on right side of forehead 2 cm above right eyebrow of size 2 x 0.2 cm, red in colour."*

On internal examination, the injuries corresponding to the external injuries were also noticed. In his opinion, the injuries mentioned in Column No.17 of the postmortem report (Exh.23) were individually as well as collectively sufficient in ordinary course of nature to cause death. The weapon seized was also shown to him to solicit his opinion. According to him, those injuries were possible with the seized *khanjar*. Inquest panchanama (Exh.41) reinforces existence of injuries on the person of

deceased – Balaji. As per his opinion, the cause of death is hemorrhagic shock due to stab injury to chest and abdomen.

10. Evidence of P.W.1 – Javed, informant indicates that both, he and the deceased had been to Naginaghat area in the early morning of 31st May, 2015. They took tea at a tea stall in the nearby. Both of them sat on a bench placed in the premises of a Gurudwara at Naginaghat. One unknown person suddenly came and questioned them as to why they sat on the said bench. A mattress was already placed on the said bench. It was said to have belonged to the said person. Deceased – Balaji appeared to have raised voice. As a result, quarrel between him and the unknown person took place. The said person was armed with a *khanjar*. He assaulted deceased – Balaji therewith. One of the blows was given on the chest. The informant rushed Balaji to Civil Hospital, Nanded in an auto-rickshaw. He then went to police station and lodged the F.I.R.

11. His evidence indicates that he learnt name of the appellant from the nearby persons. He, therefore, named him in the F.I.R. True, on arrest of the appellant no T.I. parade was conducted. The same proved not fatal in view of there being eye witness account.

12. On registration of the F.I.R. (Exh.13), scene of offence panchanama (Exh.15) was drawn by P.W.9 – Tatyaraao, Investigating Officer, in presence of P.W.2 – Baliram, panch witness. The appellant was arrested

on the following day. Clothes on his person and *khanjar* were seized under the panchanama (Exh. 16) drawn in presence of the very witness (P.W.2 – Baliram), while P.W.3 – Namdeo is a witness to seizure of clothes of the deceased under panchanama (Exh.18). Evidence of P.W.2 and P.W.3 is not of much relevance and even not in dispute as well.

13. P.W.4 – Renuka is the widow of deceased – Balaji. Her evidence indicates that the informant and her husband – Balaji were the close friends. On having learnt about the incident, she rushed to the Civil Hospital, Nanded to find her husband in serious condition. Her husband passed away by 10:45 a.m. on the same day. She learnt from the informant that one *sardarji* (appellant) had placed his mattress on a bench on which Balaji sat. A quarrel between the appellant and the deceased took place. Thereupon, the said *sardarji* assaulted Balaji with the *khanjar*.

14. P.W.4 – Renuka is not an eye witness to the incident. Her evidence even not seriously taken exception to.

15. P.W.6 – Satpalsingh testified that he would run a laundry at Naginaghat area. He knew the appellant. It is further in his evidence that by 05:00 in the morning of 31st May, 2015, he had been at the tea stall of one Happingsingh. There was a scuffle between the appellant and the deceased – Balaji. He did not knew the deceased earlier. Since the quarrel started between the two, he left the place. He further submits that he had not seen

the appellant assaulted deceased with a *khanjar*. He was, therefore, declared to have won over by the defence.

Learned A.P.P. subjected him to a searching cross-examination. He was confronted with his police statement and the statement recorded under Section 164 of the Code of Criminal Procedure ('Cr.P.C.'). It has been brought on record that this witness has stated in the statement before police to have had seen the appellant assaulted the deceased with a *khanjar*. During his cross-examination conducted by the defence advocate, he again give-in and stated that his statements to police and magistrate were based on what he had learnt from others.

16. Close reading of cross-examination of this witness, however indicates that there is no challenge to his version that he saw quarrel between the appellant and the deceased. P.W.7 – Manjeetisingh testified that he was serving with a hotel of one Nanaksingh. He was preparing tea at 05:30 a.m. on the given day. There was quarrel between the appellant and deceased, due to which customers fled. The incident took place at Naginaghat. He, however denied to have informed police that the incident took place on account of quarrel ensued over sitting on a cement bench. He denied to have seen the appellant assaulting the deceased.

17. He too was declared to have been won over by the defence. He was confronted with his police statement and the statement given to the Magistrate. Close reading of his evidence would indicate that the defence

did not take exception to his evidence that he saw the quarrel to have taken place between the appellant and the deceased.

18. On the lines of P.W.6 and P.W.7 we have evidence of P.W.8 – Shyam. His evidence indicates that he was serving with a hotel of one Happisingh. Both, the deceased and the informant would come to their hotel for tea. On the given day both of them had been there. Then both sat on a cement bench. The informant started shouting. He (P.W.8 – Shyam) went there. He saw Balaji to have suffered injuries to his abdomen. The informant shifted him to Civil Hospital, Nanded in an auto-rickshaw. He denied that there was quarrel between the two, appellant and the deceased.

19. He too was declared to have been won over by the defence. Learned A.P.P. cross-examined him with reference to his statement to the police and statement made under Section 164 Cr.P.C.

20. P.W.9 – Tatyarao is the Investigating Officer. His evidence indicates that on registration of the crime, he went to the scene of offence and drew the panchanama (Exh.15). He held inquest. Mortal remains of deceased – Balaji was subjected to postmortem examination. He arrested the appellant and seized clothes on his person alongwith *khanjar*.

21. Close appreciation of the evidence referred to hereinabove would indicate that the appellant did not dispute the informant and the deceased to

have been at Naginaghat early morning on 31st May, 2015. Both, the informant and deceased sat on a bench whereon a mattress had already been spread. A quarrel had, therefore, ensued between Balaji (deceased) and one unknown *sardarji*. The informant did not know, who was that unknown person. He came to know his name from others. Although the other prosecution witnesses, P.W.6 to 8 claim to have not seen the incident, their evidence undoubtedly indicate that both, the informant and deceased had been to Naginaghat area. There was a quarrel ensued between Balaji (deceased) and the appellant. These witnesses knew the appellant. Although they claim to have not seen the appellant assaulted the deceased, the evidence of informant is found to be clinching and cogent to conclude it was the appellant and none other, who assaulted Balaji (deceased) with *khanjar*. As a result of the injuries, Balaji succumbed.

22. The question is whether it is an offence of murder or culpable homicide not amounting to murder. We have, therefore, first to refer to the relevant provisions of I.P.C. as under :-

“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 provisions :

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."

23. Close appreciation of the evidence stated hereinabove would indicate that there was no acquaintance between the appellant and the deceased. There was, therefore, no question of premeditation by the appellant to commit murder of Balaji. The evidence of P.W.4 – Renuka, widow of the deceased and all other witnesses indicates that the quarrel had ensued between the deceased and the appellant over sitting on a bench over which the appellant had already spread his mattress. It is also the case of

prosecution that the deceased spoke in loud voice. Even one of the witnesses had stated that there was quarrel between the informant and deceased on one hand and the appellant on the other. The appellant belongs to Sikh religion. His religion permits him to hold/possess the *khanjar*. It has been brought on record during the evidence of prosecution witnesses that the weapon like *khanjar*, which was used in assaulting the deceased, is available at Gurudwara for sale. Same indicates that the *khanjar* happened to be in possession of the appellant. Due to sudden quarrel, the incident took place. In our view, the case would get inferred by Explanation 1 and 4 to Section 300 of the I.P.C. The nature of injuries suffered indicates the appellant to have had intention to inflict such injuries, which he knew that in all probability those would cause death of the deceased. As such, it is an offence punishable under Section 304 Part I of the I.P.C.

24. For the aforesaid reasons, we are inclined to allow the appeal partly. With this, the appeal stands disposed of in terms of following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Judgment and order dated 06th September, 2016 passed by Sessions Judge, Nanded in Sessions Case No. 88 of 2015, thereby convicting 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 I of the Indian Penal Code, and therefore, sentenced to suffer rigorous imprisonment for nine years and pay fine of Rs.1,000/- (Rupees One Thousand), in default to suffer rigorous imprisonment for two months.
- (IV) Since the appellant is behind the bars from the date of his arrest i.e. 01st June, 2015 till date, he be given set off under Section 428 of Code of Criminal Procedure.

SSD

(NEERAJ P. DHOTE, J.)**(R.G. AVACHAT, J.)**