

2] We have heard the learned counsel Mr.Anush Shetty for the Appellant and Mr. S.V. Gavand, learned APP for the State.

The learned counsel representing the Appellant has urged before us that the accused submitted his written statement under Section 313 of the Code of Criminal Procedure (for short 'Code') on 15.01.2022, where he has admitted the incident including the accusation, that it is on account of blow given by him to Sanmukh Kamble, he succumbed to the injury. However, in his written statement, he has raised a plea of self defence and the learned counsel for the Appellant has urged before us that on reading the Written Statement, when he has admitted to commission of the act, by appreciating the background, the conviction under Section 302 of the IPC shall be set aside and at the most he could be convicted under Section 304(II) of the IPC.

3] To appreciate the said argument, we have perused the impugned Judgment, based on the evidence placed before the trial Judge in support of the Charge framed against the Accused Durgappa Jangam, that on 23.03.2019 at about 8.30 p.m. in block No.2 of new building, under construction for dried grape market, on road situated at village Kavathe-Ekand, Taluka – Tasgaon, District -Sangli, the accused intentionally committed murder intentionally or knowingly causing the death of the deceased Sanmukh Kalappa Kamble, by hitting a wooden cudgel on his head and thus committed an offence under Section 302 of the IPC. The accused pleaded not guilty and preferred to be tried.

In order to prove the charge against the accused, the prosecution examined 12 witnesses, which included the informant, Satish Gautam Kamble (PW 1) and the Contractor Santosh Jagdhane (PW 10). In addition six Panch witnesses on different Panchanamas are examined. PW 8 is Ganpat Mane who deposed that he had offered water to the

deceased. In addition, the Medical Officer from Rural Hospital Tasgaon Dr.Nilesh Mohan Mahangare, was examined as PW 11, and the Investigating Officer PI Vishram Madane is examined as PW 12.

In addition, the prosecution rest its case on various documents including the FIR (Exh.28), statement of the informant recorded under Section 164 of the Code (Ex.29), Inquest Panchanama (Exh.31), seizure panchanama of the clothes of the accused and deceased (Exh.34 and 37), seizure panchanama of mobile (Exh.39), recovery panchanama of the weapon (Exh.49), as well as the certificate of cause of death (Exh.60).

4] It is the case of the prosecution that the accused as well as the deceased and PW 1 and PW 8 were working as labour with Santosh Jagdhane (PW 10) a Contractor, on a site at Tasgaon, where centering work of godown being constructed by Market Committee, Tasgaon, was undertaken. The deceased and the accused were working with the Contractor since last 8 years. Whenever the work was going on the site, they used to reside together and prepare meal for themselves.

On the date of incident i.e. on 23.03.2019, the deceased and the accused did not attend the work in the morning shift and they reached the site at 2.00 p.m. It is the case of the prosecution that the accused demanded mobile phone from the deceased and this resulted in verbal alterations between them. They were asked to leave the workplace. After completing the work at about 6.00 p.m. the informant went to Tasgaon for buying certain things and returned to his work place at around 8.30 p.m.

After his return, some verbal altercation occurred between the accused and the deceased and it took an ugly turn, and the accused assaulted the deceased. On being questioned as to why he committed

this act, he did not respond. The injured asked for water and before he could be served water, he was dead.

The information about the incident was given to the Contractor who called the ambulance and the Doctor opined that the deceased was no more. The informant Santosh Kamble lodged the FIR, specifically assigning role to the accused, which resulted in registration of the subject FIR, invoking Section 302 of the IPC, and he was arrested immediately.

5] During the course of investigation, various Panchanamas were drawn and the accused made disclosure statement pursuant to which one wooden log was seized. The clothes on the person of the deceased and that of the accused were also seized under Panchanama and forwarded for chemical analysis.

6] PW 1, the informant, deposed before the Court that he was having food at the time when the incident took place and noticed that Sanmukh was on the ground and blood was oozing out from his head, whereas the accused was standing there and one wooden log was also lying nearby.

Even PW 8 Ganpat Mane has deposed that on the date of incident, the accused and the deceased were not on duty and they had a brawl on account of mobile phone, and after finishing the marketing, when he returned to the place where food was being served, he heard calls from PW 1, who was shouting that Durgappa had killed Sanmukh Kamble and when he reached the spot, he found Sanmukh lying with blood oozing from his nose, ears and mouth. Since the injured was asking for water, he made him drink water, but he immediately died.

7] The postmortem report has ascertained the cause of death to be head injury due to strike by heavy object and PW 11 Medical Officer attached to Rural Hospital, Tasgaon, noted the injuries, which included a CLW over occipital region 10x7x3 cm. He also noticed injury on the skull and specifically deposed that except the injuries set out by him no other injuries were found on his entire body. He was also confronted with the weapon of offence and he opined that the injuries like fracture, abrasion, contusion and laceration are possible by use of the said weapon. He clearly opined that the injuries mentioned in Column No.19 of the Postmortem Report were sufficient to cause death.

In the cross-examination, he has specifically admitted that if there is blow by a weapon shown to him from backside of the head causing injury No.2 in Column No.17, then the person may fall on his chest and if floor and wall are hard and blunt, then by fall such injury is possible.

8] On appreciation of evidence placed by the prosecution on record, the learned Judge concluded that the prosecution had proved beyond reasonable doubt that the accused had committed murder of the deceased and in Para 28, he specifically observed as below :

“28. In present case, the evidence came on record show that, the accused and deceased were absent on work on the date of incidence and they came at the place of work in the afternoon and the witnesses stated that, there was dispute between them regarding mobile hand-set and later on in the night time one of the witnesses heard noise and who immediately went at the palce of incidence where he saw deceased in injured condition and accused was thee and accused failed to give any explanation. So also, there were no any other persons except the deceased and accused in Gala No.2 i.e., place of incidence. There is no evidence on record to show that, sudden fight took place between accused and deceased. There is sufficient evidence on record regarding the injuries sustained by the deceased and nature of injuries. Therefore, the principles laid down in case of Vinod Kumar V/s Amritpal (cited supra) and relied on by the prosecution are applicable in the present case whereas the Judgments and case laws relied on by the accused are not applicable as the facts of the cases relied on by the accused as mentioned above are different than the facts of the present case.”

9] We have perused the written statement of the accused, submitted under Section 313 of the Code, where he has not denied the occurrence of the incident, but he has specifically stated that the deceased had gone to market for some reason and he had a quibble with someone and therefore, he was annoyed.

According to the Accused, after having dinner, he was sitting in Room No.2 when Sanmukh arrived there and raked quarrel by saying that when the brawl had occurred in the market, why did he not come to his help. The accused attempted to satiate him, but in a fit of anger the deceased uttered that he shall not be kept alive and charged him. At that time, in order to save himself, the accused caught hold of him and he was on the ground and repeatedly uttering that he would not spare the accused. Both of them were loathed in dust and had torn each other clothes. Since the deceased was aggressive, while he was lying on the ground, the accused pushed his head on the floor and he started bleeding from the back side of his head.

According to the accused he was terrified and started whimpering though he made no attempt to run. At that time PW 1 Santosh Kamble and other workers arrived at the spot and he disclosed to them as to what had happened.

In his written statement, the accused had specifically stated that Sanmukh and he were very good friends and he had no intention to kill him, but only by way of self defense, since he formed opinion, based on the conduct of the deceased that he may kill him, he pushed his head against the floor not thinking that it would cause his death.

10] Considering the said statement, alongwith the deposition of PW 1 and PW 8, who have noticed, the deceased lying on the floor and accused sitting next to him, we are of the opinion that since the

accused has categorically admitted his guilt and since it has surfaced on record that he had no intention to kill Sanmukh, but it is only by way of private defence, he reacted by banging his head on the floor, since he was apprehensive that as the deceased was agitated, he would overpower him.

The statement of accused is corroborated with the medical evidence as it can be seen that there is only one injury on the head, which has resulted into his death.

11] In the wake of above, considering the statement of the accused, according to us, the act would fall within Part II of Section 304, which punishes culpable homicide, not amounting to murder, as the act is done with knowledge that it is likely to cause death, but without any intention to cause death or such bodily injury which is likely to cause death.

On finding that the case of the Accused/the Appellant would fit into Part II of Section 304 of the Code, which the trial Judge has failed to take into consideration and since the learned counsel for the Appellant has informed, that he has undergone 6 years of actual imprisonment, without remission, we deem it appropriate to acquit him for the offence under Section 302 of the IPC and instead convict him under Part II of Section 304 of the IPC as he had no intention to kill the deceased and the act was committed without any premeditation. The deceased suffered a single fatal injury behind his head and therefore, by recording his guilt under Part II of section 304 of the IPC, he is sentenced to undergo Rigorous Imprisonment for 7 years by modifying the sentence of life imprisonment imposed upon him.

By modifying the sentence in the aforesaid manner, in the wake of explanation of the accused offered under Section 313 of the Code

being acceptable and corroborated by the Prosecution witnesses, the Appeal is partly allowed by setting aside the conviction of the Accused under Section 302 of the IPC.

The Appellant is sentenced to undergo Rigorous Imprisonment for 7 years, since we have modified the sentence to 7 years. On undergoing the sentence imposed, the Appellant shall be set at liberty.

In the wake of disposal of Appeal, Interim Application stand disposed off.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]