



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.542 OF 2022

1. Ramesh @ Shyam Pandharinath
Gawande, aged about 35 years, Occ.
Agriculturist;
2. Sugandhabai w/o Pandharinath
Gawande, aged about 70 years,
Occupation : Agricultureist, Both r/o
Aatipati Ward, Allipur, Tq. Hinganghat,
Dist. Wardha.

... APPELLANTS.

VERSUS

The State of Maharashtra, through
Police Station Officer, Police Station
Allipur, Tq. Hinganghat, Dist.
Wardha.

... RESPONDENT.

Shri S.V. Manohar, Senior Advocate assisted by Shri A.A. Choube,
Advocate for the appellants.
Shri M.J. Khan, Addl.PP. for the respondent/State.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 05.01.2024.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

. Mother and son were tried for the offence punishable under
Section 302 read with Section 34 of the Indian Penal Code (‘IPC’) for

committing murder of another son (Gajanan). Mother was additionally charged for voluntarily causing hurt by dangerous weapon to prosecution witnesses Seema, and thereby committed an offence punishable under Section 324 of the IPC.

2. The Trial Court vide impugned judgment and order dated 25.07.2022 in Sessions Case No.17 of 2017 convicted the accused no.1 Ramesh @ Shyam (son) for the offence punishable under Section 302 of the IPC, whilst acquitted accused no.2 Sugandhabai (mother) from the charge of murder. However, Trial Court has convicted accused no. 2 Sugandhabai, for the offence punishable under Section 324 of the IPC. The Trial Court has sentenced accused no.1 Ramesh to undergo imprisonment for life along with fine of Rs.25,000/- for the offence punishable under Section 302 of the IPC. Accused no.2 Sugandhabai was sentenced to suffer rigorous imprisonment for one year with fine of Rs.2,000/-, for the offence punishable under Section 324 of the IPC. Being aggrieved by the aforesaid judgment and order of conviction, both accused have appealed in terms of Section 374 of the Code of Criminal Procedure ('the Code').

3. The facts of the prosecution case in brief are that, deceased Gajanan was the real brother of accused no.1 Ramesh and son of

accused no.2 Sugandhabai. Both brothers were residing separately adjacent to each other. Deceased Gajanan was residing with his wife Seema, minor son Suyog and daughter Vidisha. Both brothers had a property dispute for which deceased Gajanan had filed a Civil Suit.

4. On 09.06.2013, around 4.00 pm deceased Gajanan was talking with neighboring person namely Dashrath Pethkar and his wife, in front of his house. Informant Seema was at her doorstep. At relevant time, accused no.1 Ramesh was cutting firewood across the road, by means of axe. Deceased Gajanan had consumed Kharra (sort of Tobacco) which he spitted. Accused Ramesh got annoyed and started to assault Gajanan by means of axe by saying that 'why you spitted by looking to me'. He dealt the axe blows at the head of Gajanan on which the latter fell down. Accused Ramesh also gave axe blow at his left thigh causing bleeding injury. Informant Seema rushed at the rescue of her husband Gajanan, however accused no.2 Sugandhabai caught her hair and by blunt side of axe dealt a blow. Injured Gajanan was shifted to the Hospital where he succumbed to the injuries on the following day. The informant Seema rushed to the Concerned Police, and lodged the report regarding occurrence.

5. Initially, crime was registered for the offence punishable

under Section 307 read with Section 34 of the IPC. During the course of investigation Panchanama of the scene of offence was drawn, clothes of deceased as well as accused were seized. Blood samples were collected. At the instance of the accused Ramesh weapon used in the commission of crime was seized. Postmortem was conducted on the dead body, inquest panchanama was drawn, statement of eye-witnesses have been recorded. On completion of investigation, final report has been filed. Both accused denied the guilt and put the prosecution to the task of establishing levelled charges with requisite standard of proof. The prosecution has examined in all 16 witnesses and also banked upon certain documents to bring home the guilt of the accused. The Trial Court held that Gajanan met with a homicidal death. Accused no.1 Ramesh assaulted Gajanan and thereby committed the offence of murder. So also, the Trial Court held that Accused no.2 Sugandhabai caused hurt to the informant Seema, by means of dangerous weapon. On said finding trial Court has imposed aforementioned sentence.

6. Heard learned Senior Counsel Shri Manohar appearing for the accused, on facts, as well as on law. Learned Senior Counsel Shri Manohar has not disputed the homicidal death of Gajanan, however endeavoured to convince that the prosecution failed to establish that the accused had assaulted to the deceased. In the alternative he would

submit that act of Accused no.1 Ramesh does not constitute the offence of 'murder' as defined under Section 300 of the IPC. Essential ingredients to constitute the offence of murder are missing, at the most, it is a case of culpable homicide not amounting to murder punishable under Section 304 Part II of the IPC.

7. *Per contra*, learned Addl.PP. Shri Khan firmly supported the decision rendered by the Trial Court. He would submit that accused no.1 Ramesh has assaulted on the head by dangerous weapon from which the very intention to kill can be gathered and thus, it is a case of murder. In the alternative he would submit that even if it is held that it was not a pre-planned act of accused Ramesh, however his intention can be well gathered and thus, it would fall under Section 304 Part I of the IPC.

8. The prosecution evidence consist of Eye-Witnesses, Panch, Medical Officers and Police Personnel. The line of cross-examination indicates that the accused had denied homicidal death in the Trial Court by claiming to be accidental death. The Trial Court has considered said submission in extenso and held that homicidal death of Gajanan has been duly established. Though this point was not canvassed before us, however since the accused is facing a charge of

murder, it necessitates us to deal with said aspect.

9. In order to establish homicidal death of Gajanan, prosecution is banking upon the Inquest Panchanama, Postmortem Report and evidence of the Medical Officers. In this regard, the prosecution heavily relied on the evidence of PW11 Dr. Vishal Surwade, who has conducted autopsy. For the sake of convenience, we have extracted relevant portion of his evidence as below :

4. During external examination I found following injuries.

1. Incise looking lacerated wound over right fronto parietal region, about 12 cm above the right mastoid of size 9 cm x 2 cm x cavity deep. Brain matter was coming out. General position of the wound is obliquely downward. Beveling margin is present. These margins are clearcut but contused. Both angles of wound are accut.

2. Incise looking lacerated wound, it was present over left side of the occipito parietal region, it was 9 cm. From left mastoid of size 9 cm x 2 cm x cavity deep. Brain matter was coming out. General position of the wound was horizontal above occipital protuberance. Beveling is also present over upper margin of the wound. Margins are contused and cleancut. Both angles of the

wound are acute.

3. Chop wound present over posterior aspect of left thigh of size 13 x 4 cm x muscle deep. The general position of the wound is obliquely downward towards the medial end. Margins contused and clean cut. Hamstring muscle is showing the clean cut tear. Middial end of the wound is obtuse angle while lateral end is of acute angle.

5. I also noted fracture on left side of occipital bone, fracture of right parital bone. All these injuries were fresh and anti- mortam.

6. During internal examination I found following injuries;

1) On opening the scalp, scalp is edematous, and contused. There was collection of blood i.e. subgalial hematon was present over frontal, parietal and occipital region.

2) On opening the vault, there was depressed communated fracture of the right parietal bone of size 5x2 cm. Was present there. Depressed and communitied fracture was present on the left occipital bone of size 6x2 cm. Whereas, at the base of the skull a linear fracture of size 3 cm was present at right middle cranial fossa.

10. As per his opinion, cause of death was hemorrhage and shock as a result of head injury. He further opined that injury

mentioned in postmortem report (Exh.130) is possible by axe Art. No.10.

11. The Prosecution has also examined PW12 Dr.Yogita Mahakalkar, who has initially examined Gajanan (deceased) and found following injuries :

(1) On right side of head about right ear the injury was upto 8 cm from the right ear, the size of injury was 6 to 7 cm.

(2) Another injury was on backside of head slightly away from the mid-line the size of injury was 6 to 7 cm.

(3) The injury was on left thigh on backside. The size of injury was 6 to 7 cm.

12. She deposed that all the injuries were caused due to sharp and hard object. All the injuries were fresh, which might have caused within half an hour. All injuries were grievous in nature. After examination, she referred injured Gajanan to Government Hospital Wardha. She proved injury certificate of patient deceased Gajanan at Exh.206. She identified axe Article-10 and deposed that the injuries caused to patient Gajanan were possible by said axe.

13. Both Medical Officers have been cross-examined however

they denied the suggestion which could cause sketh to the prosecution case. Medical Officers have specifically opined cause of death as 'hemorrhage and shock as a result of head injury'. Both have stated that injury was possible by seized axe. Looking to the nature of injury coupled with the evidence of Medical Officer, we have no hesitation to hold that Gajanan met with homicidal death.

14. Though the prosecution has examined several eye-witnesses, however besides the informant Seema (PW6), other witnesses have left their loyalty to the prosecution. In umpteen cases, we came across similar situation where the eye-witnesses shown their reluctance to give evidence for variety of reasons. Rather, the common man does not wish to become a cause, or do not want to attract the wrath of rival, or engulf into the controversy. Certainly, the tendency of hostility is not potential to decide the fate of the case, but with regard to the said human phenomenon the available material needs scrutiny.

15. Since the rest turned hostile, the case is based on the sole testimony of PW6 informant Seema. Learned Senior Counsel Shri Manohar would submit that since the case is based on single eye-witness, her evidence must be worthy of credit and must inspire full confidence of the Court. We are fully in agreement with said

submission. In said perspective, we have minutely examined the evidence of PW6 informant Seema. Witness Seema is widow of Gajanan. The place of occurrence was just 30 to 40 feet away from her doorstep. Nothig has brought on record through cross-examination to improbabilize her presence. In these circumstances, presence of Seema at the place of occurrence cannot be doubted since it was quite natural.

16. PW6 Seema has specifically deposed that while deceased Gajanan was talking with neighboring person, he has spitted Kharra that is why accused no.1, who was cutting firewood got annoyed and gave axe blow at the head of Gajanan. Her evidence is specific on the point of assault. She has particularly stated that axe blows was dealt at the backside of the head and then at thigh. Medical evidence clearly supports the ocular testimony of PW6 informant Seema.

17. Learned Senior Counsel Shri Manohar took us through the Postmortem notes, to impress that there was only single injury at the head and second at the shoulder. For this purpose he has shown the diagram, which is a supplement to column no.17 of the Postmortem notes. We are unable to find second head injury in the said diagram too. We cannot read diagram in isolation since postmortem note

specifically refers that second injury was over left occipito parietal region. Contextually we have gone through the evidence of PW11 Dr. Vishal Surwade, who equally stated about second head injury at occipito parietal region. Gajanan was initially examined by PW12 Dr. Yogita Mahakalkar. It has come in her evidence that second head injury was at the backside of the head, slightly away from the mid-line. PW6 informant Seema a village lady has particularly stated that the accused dealt axe blows twice at the head and then at thigh. Thus, we find no inconsistency in the evidence of sole eye-witness vis-a-vis medical report.

18. The Defence Counsel would submit that as per the evidence of PW6 Seema at relevant time deceased Gajanan was holding his minor daughter at his arms and thus, it is difficult for minor to escape unhurt. He endeavoured to impress that the incident as narrated by PW6 informant Seema is quite improbable. True, PW6 Seema admitted in cross-examination that at relevant time her daughter was at the arms of Gajanan. There are no set parameters to infer that whenever a person holds a child, he cannot sustain injuries without causing harm to a child. Always it depends upon the variety of factors like, the position of deceased and accused, the part of body where blow was given, the direction of blow and so on. Therefore, we are not ready to accede the submission that because of only the child remained unhurt, the story of

assault described by PW6 Seema is improbable.

19. It is argued that blood stained clothes of both children have not been seized during the course of investigation. Moreover, the defence has criticized for non-examination of minor son Suyog aged 6 years who was the eye-witness. The Investigating Agency could have done those things, however those lapses cannot be stretched to the extent of eclipsing the evidence of the informant, specifically stating the manner of assault. The prosecution case is tried to be impeach on some other grounds like FIR does not speak about names of neighbour or the passerby have not been examined, but to our mind these things are of miniscule nature which has no impact on the core issue.

20. Besides the direct evidence of (PW6) informant Seema, the prosecution has established that the blood stained clothes of the accused were seized. Moreover, axe with blood stains was seized at the instance of the accused. All these articles were sent for chemical analyzation. It was found that the blood of the deceased was of A positive group. Chemical Analyzers report indicates that blood found on the clothes of accused as well as weapon seized at his instance was also of group 'A positive'. Certainly this is a clinching piece of evidence which connects accused with the crime. The defence urged to discard

said material on account of want of proper sealing however we have examined the evidence of Investigating Officer from which we are convinced that the articles were properly seized and sealed. Learned Trial Judge has aptly dealt the said issue. The evidence of sole eye-witness is well supported by scientific evidence. Moreover, we are much impressed by the quick lodgment of FIR. As per the prosecution case, the incident took place on 09.06.2013 around 4.00 p.m., whilst FIR has been lodged within one hour with specific details about the act of the accused. Law always prefers quick lodgment of FIR which eliminates the chances of concoction. Herein though the informant's husband was on death bed, she assiduously rushed to the Police Station and ventilated her grievance. This circumstance of disclosing the complicity of accused to the Police within one hour, strongly supports the evidence of PW6 Seema in all respect. The evidence of sole eye-witness is natral credible and trustworthy. On re-examination of entire material, we have no doubt in our mind that the prosecution has duly established that Accused no.1 Ramesh has assaulted Gajanan by means of axe, which proved to be fatal.

21. This has occasioned us to deal with one more case where the Trial Court has not dealt with the crucial aspect while concluding that the offence of "murder" has been established. In several cases, the

Trial Courts after reaching to the conclusion that the act of accused resulted into causing death, has not further dealt as to how the said act constitutes the offence of murder. Like mathematical calculations the Trial Court has simplified the matter that act plus death is equal to the offence of murder. Certainly, the said mode is neither expected nor approvable under law. Reasons are necessary on two counts, firstly the Trial Judge shall satisfy himself that act of accused amounts to the offence of murder, and secondly the Appellate Court would be in a position to know the reasons as to why the offence of murder. On exemplary basis, we prefer to quote paragraph 80 of the decision by which the Trial Court concluded that the prosecution has proved the offence of murder.

“80. From the above discussion, it is clear that the prosecution has succeeded to prove that accused No.1 Ramesh assaulted deceased Gajanan by means of Axe. It has not brought on record through substantive evidence that accused No.2 had played active role in assault on deceased Gajanan. Therefore I hold only accused No.1 Ramesh guilty for the offence punishable u/s 302 of I.P.C. and accused No.2 Sugandhabai is liable to be acquitted from the said charge.”

22. Precisely, the Trial Court has not dealt with the issue as to how the offence of murder defined under Section 300 of the IPC has been established. As a matter of fact, when on facts it has been proved

that the act of the accused resulted into causing death, further inquiry is to be undertaken by the Courts that in legal parlance what offence has been committed. In given facts and circumstances, it has to be seen whether the act of accused falls within either of the parameters laid down for the offence of murder as defined under Section 300 of the IPC. Mere homicidal death is not enough to conclude that it is a case of murder. We expect from the trial Courts to deal this aspect with all seriousness.

23. Be that as it may, the question arose whether the act of the accused of causing death of Gajanan amounts to murder or culpable homicide not amounting to murder. On the basis of evidence, the pivotal question of intention is to be decided whether the case falls under Section 302 or 304 Part I or 304 Part II of the IPC. Murder is a gravest form of culpable homicide, which has its peculiar characteristic required to be proved before a person is to be held guilty for committing murder as defined under Section 300 of the IPC. It requires judicial scrutiny of the prevailing facts. Merely the fact that death of human being is caused is not enough to constitute offence of murder unless one of the mental status mentioned in ingredient of Section 300 is present. It must be proved that there was an intention to inflict the particular bodily injury actually found to be present. The intention of

the person causing the injury has to be gathered from careful examination of the facts and circumstances of each case. The intention to cause the requisite type of injury is a subjective inquiry and then there would be further inquiry whether injury was sufficient in ordinary course of nature to cause the death is of objective nature.

24. It is now well understood that in the scheme of the Indian Penal Code "Culpable homicide" is the genus and "murder" is the species and generally speaking culpable homicide sans special characteristics of murder is culpable homicide not amounting to murder. The Indian Penal Code recognizes three degrees of culpable homicide. The first degree of culpable homicide is "murder" which is defined by Section 300 and made punishable under Section 302 IPC. The second degree is culpable homicide as defined under Section 299 and made punishable under Section 304 Part I, IPC. The third degree of culpable homicide is made punishable under Section 304 Part II of the IPC. Whenever the accused causes the death of another and had no intention to kill, then the offence would be murder only if, (1) the accused knew that the intended injury would be likely to cause death, or (2) that it would be sufficient in the ordinary course of nature to cause death or, (3) that the accused knew that the act must in all probability would cause death, and if the case cannot be placed as high

as that and the act is only likely to cause death and there is no special knowledge, the offence comes under Section 304(II), I.P.C.

25. In order to ascertain the legal impact of the act of accused entire relevant material needs scrutiny. In this regard observations of the Supreme Court in case of ***Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444*** at paragraph 29 are worthy to note, which reads as below :

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the

weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

26. Reverting to the facts, it reveals that there was no deep rooted enmity between two brothers. Though both were not in cordial terms, however they were residing adjacent to each other. It emerges from the evidence that at relevant time accused Ramesh was cutting firewood across the road by an axe. When he saw his brother (deceased Gajanan) was spitting Kharra, he conceived the impression of teasing and thus, by same axe immediately gave two axe blows at the head of Gajanan. Evidence of Seema unfolds that while assaulting, the accused said that ‘माझाकडे पाहून थुंक्तोस काय?’ which clearly indicates that because

of spitting only, the accused got annoyed and reacted in such manner. Apparently it was not a pre-planned attack nor it can be said that the accused was carrying a dangerous weapon with a specific intent. The things were quite normal for the accused Ramesh since as usual he was cutting firewood by axe. Therefore, possession of axe which is implement generally used in villages for cutting wood cannot be construed that the accused was carrying weapon at relevant time. The things indicate that since the accused saw that the deceased Gajanan spitted, may be under misconception, rather due to bitterness found it humiliating and by loosing temper ran and gave two blows by same axe. Certainly, the act was not at all premeditated but by loss of temper on momentary things he dealt axe blows. At the moment whatever was available at his hand was used to vent the grievance. In above context it cannot be said that the accused carried a weapon at relevant time with specific intent.

27. Though the accused gave blows at the head which is a vital part of the body, however that alone cannot decide the nature but it is to be appreciated in context with other circumstances. The deceased Gajanan was holding his small child in arms rather that may have occasioned accused to hit at back side to avoid blow on a child. If the accused intended to cause death he could have easily dealt repeated

blows on the defenseless deceased, who was rather captivated by holding a child. Moreover, the accused has not assaulted indiscriminately which could have caused hurt to the child too. These circumstances indicate that in sudden occurrence the accused lost his mental balance by seeing his brother spitting and while cutting firewood dealt two blows at the backside of the head of deceased. Nobody has intervened but after giving two blows the accused remained there only which also assumes significance.

28. The given facts nowhere suggest that either accused Ramesh intended to cause death or intended to cause such bodily injury coupled with a knowledge it could likely to cause death or even intentionally caused said bodily injury which is sufficient in ordinary course of nature to cause death. Moreover, it is quite apparent that unpredictably everything was happened. No sooner deceased spitted, accused got annoyed and suddenly while cutting wood diverted to deceased and by same axe gave blows. There was total absence of prearranged plan nor evidence suggests so. Thus in heat of passion upon sudden occurrence, accused reacted in the shape of inflicting axe blows. There is total absence of intention on the part of the accused Ramesh. However, the act of inflicting axe blow at the head of deceased Gajanan in sudden occurrence would definitely attract the knowledge

that his act is likely to cause death and it would squarely fall within the clause [c] to Section 299 of IPC.

29. The above discussion firmly establishes that the act of Ramesh would fall in the third degree of culpable homicide not amounting to murder. Section 222 of Cr.P.C. permits court to convict accused for minor offence though he was not charged for the same. The Code never specifies as to which are the minor offences corresponding to major offences. The offence of culpable homicide not amounting to murder of third degree would be well construed as minor offence of Section 302 of the Indian Penal Code. Therefore, the act of accused No.1 Ramesh would fall in the category of latter part of culpable homicide not amounting to murder which is punishable U/s 304 Part-II of the Indian Penal Code.

30. As regards to the case of accused no.2 Sugandhabai, the learned Counsel appearing for the defence besides claiming leniency and reduction in sentence, has not advanced any other submissions. The prosecution evidence is sufficient to hold that accused no.2 Sugandhabai caused hurt to PW6 Seema by means of dangerous weapon, and therefore, the conclusion of the Trial Court to that extent needs no interference.

31. Coming to the point of sentence, the learned Senior Counsel Shri Manohar would urge for taking lenient view. It is submitted that the accused no.1 Ramesh is behind bars from last four years. He belongs to the poor strata of the society and shouldering responsibility of his family. The occurrence was unfortunate outcome of loss of temper. Reliance has been placed on the decision of the Supreme Court in case of *Pop Singh and ors. vs. State of Madhya Pradesh 2023 (16) SCALE* to contend that in similar situation the Supreme Court while altering the punishment into the offence punishable under Section 304 Part II has imposed sentence for five years of rigorous imprisonment. We do not see any legal ratio as such in said decision. Though it is urged that the period already undergone is sufficient, however we are not in agreement since one person has lost his life for no reason. While imposing sentence, right balance is to be maintained. Concededly, there are no antecedents nor the accused Ramesh was having criminal tendency but as of sudden he took such a step by treating the instance of spitting as a provocation.

32. Having regard to the all above facts, we are of the view that seven years rigorous imprisonment would be just to balance the scale. As regards to accused no.2 Sugandhabai, it is informed that she has already undergone 79 days of imprisonment. Having regard to the

period of incarceration and her gender coupled with the act, we are of the view that the said incarceration would be sufficient for the offence punishable under Section 324 of the IPC.

33. In view of the above, Criminal Appeal is partly allowed. We hereby modify the impugned judgment and order dated 25.07.2022 passed in Sessions Case No.17 of 2017 to the extent of altering conviction of accused no.1 Ramesh @ Shayama s/o Pandharinath Gawande from Section 302 of the IPC, to Section 304 Part II and sentence him to suffer rigorous imprisonment for seven years along with fine and default clause as imposed by the Trial Court.

34. We also modify the sentence of accused no.2 Sugandhabai wd/o Pandharinath Gawande for the offence punishable under Section 324 of the IPC and sentence her for the period which she has already undergone, along with fine and default clause as imposed by the Trial Court.

35. The appeal stands disposed of in the above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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