



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

CRIMINAL APPLICATION (BA) NO.892 OF 2024
(Ravi @ Revnath Nanaji Sahare Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.V. Rai, Advocate for the applicant.
Mr. S.V. Narale, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- OCTOBER 9, 2024.

The applicant came to be arrested on 10/12/2023 in connection with Crime No.612/2023, registered with Police Station Brahmapuri, District Chandrapur for the offence punishable under Section 302 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Parag Gurudeo Dhote who is the brother of the deceased on an allegation that his brother was doing a labour work. On 09/12/2023 at about 8.00 AM present applicant took his brother along with him and thereafter his brother informed him that he would be late to reach at home. On 10/12/2024 he received the message that his brother is lying in a dead condition near the office of Wakhar Mahamandal. He immediately rushed towards the spot wherein police were already gathered. On seeing the dead body it reveals to him that he has sustained the injuries and succumbed to the death. He also received the information from one person that present applicant has

assaulted him and there was a dispute between them on account of consuming liquor. On the basis of the said information, crime is registered against the present applicant. During investigation, the Investigating Officer has recorded the statement of one eyewitness namely Sunil Damodhar Meshram. The postmortem report was also collected during the investigation and after completion of the investigation, charge-sheet is filed against the present applicant.

3. Learned Counsel for the applicant submitted that in a sudden fight and sudden quarrel, death of the deceased is caused. There was no intention to commit the murder of the deceased. On account of quarrel between them, there was a fight and during that fight the death of the deceased is caused. Thus, considering there was no intention to eliminate the deceased but there was only knowledge. The act of the present applicant covers under Section 304 Part II of the Indian Penal. He submitted that considering now the investigation is completed, charge-sheet is filed and if the offence comes under Section 304 Part II of the IPC the punishment provided is imprisonment upto 10 years.

4. Learned Additional Public Prosecutor strongly opposed the application and submitted that from the postmortem report it reveals that deceased has sustained grievous injuries during the assault which resulted into the death of the deceased. Thus, the intention of the of the

present applicant can be gathered from the circumstances. The applicant has not shown any remorse to the deceased and continuously assaulted to him which resulted into his death. In view of that, the intention of the applicant reveals, and therefore, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the FIR is lodged by the brother of the deceased on the basis of information received by him regarding the alleged incident. During investigation, the Investigating Officer has recorded the statement of the sole eyewitness from which it reveals that there was a quarrel between the deceased and the present applicant and the present applicant was assaulted him by fist and kick blows due to which the deceased has sustained the injuries in the nature of abrasion, contusion. He has also received the injury of a fracture of 4th rib. As far as the cause of death is concerned which is due to haemorrhagic shock due to injury to vital organ and fracture of the left 4th rib. Thus, considering the manner in which the alleged incident has taken place it reveals from the statement of the sole eyewitness and the injuries sustained by the deceased that during the sudden fight, sudden quarrel the applicant has assaulted the deceased. Admittedly, there was no premeditation as no weapon is used by the applicant.

6. Learned Counsel for the applicant submitted that the offence at the most covers under Section 304 Part II of the IPC. In ***Ajmal Vs. State of Kerala [2022 (3) Bom.C.R.(Cri.) 313]*** the Honourable Apex Court has distinguished the culpable homicide amounting to murder and not amounting to murder and while distinguishing the same in para No.17 it is observed that distinctive features and the considerations relevant for determining a culpable homicide amounting to murder and distinguishing it from the culpable homicide not amounting to murder has been a matter of debate in large number of cases. Instead of referring to several decisions on the point reference is being made to a recent decision in the case of ***Mohd. Rafiq Vs. State of M.P [(2021) 10 SCC 706]***, wherein Justice Ravindra Bhatt, speaking for the Bench, relied upon two previous judgments dealing with the issue as narrated in paragraph nos.11, 12 and 13 of the report which are reproduced below:

“11. The question of whether in a given case, a homicide is murder 3, punishable under section 302 IPC, or culpable homicide, of either description, punishable under section 304 IPC has engaged the attention of courts in this country for over one and a half century, since the enactment of the IPC; a welter of case law, on this aspect exists, including perhaps several hundred rulings by this court. The use of the term “likely” in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines murder, however refrains from the use of the

term likely, which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes. This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes.

12. The decision in State of (Andhra Pradesh v Rayavarapu Punnayya & anr.) 1976 (4) SCC 382 notes the important distinction between the two provisions, and their differing, but subtle distinction. The court pertinently pointed out that: "12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of section 304..

13. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The

confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of sections 299 and 300."

13. The considerations that should weigh with courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder, were outlined in (Pulicherla Nagaraju @ Nagaraja Reddy v State of Andhra Pradesh) (2006) 11 SCC 444. This court observed that:

"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."

Thus, the academic distinction between "murder" and "culpable homicide not amounting to

murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of sections 299 and 300. Therefore, the considerations which are required to be taken into consideration while ascertaining whether an act is punishable as "murder" or "culpable homicide" not amounting to murder. 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. As far as whether case covers under Section 304 Part I or 304 Part II or 302 of the IPC is a matter of evidence. At this stage, what is to be considered is that whether there was 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.

7. In the light of the above preposition, if the facts of the present case are considered admittedly, there was a sudden fight sudden quarrel between the deceased and the present applicant and during that sudden fight sudden quarrel the present applicant has assaulted the deceased by means of fist and kick blows which resulted into his death. Admittedly, there was no premeditation. The vital parts of the body are not targeted by the applicant while assaulting him but due to the assault the deceased has succumbed to the death admittedly, there was a knowledge. The evidence sufficiently shows that the applicant was having knowledge that his act may cause death of the deceased but now investigation is already completed and charge-sheet is filed. Considering the role of the present applicant and the circumstances under which the alleged incident has taken place, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Ravi @ Revnath Nanaji Sahare in connection with Crime No.612/2023, registered with Police Station Brahmapuri, District Chandrapur for the

offence punishable under Section 302 of the Indian Penal Code, be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the proceedings before the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*