



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.777/2023

Amit S/o Kishor Salmake,
aged about 33 Yrs., R/o Vilayatpura,
Near Bagve's Flour Mill, Achalpur,
Dist. Amravati.
At present in Central Jail, Amravati.

... Appellant

- Versus -

The State of Maharashtra,
through Police Station Officer,
Rajapeth Police Station, Rajapeth
Amravati, Tq. & Dist. Amravati.

... Respondent

Mr. D.S. Khushalani, Counsel for the Appellant.
Mr. A.B. Badar, A.P.P. for the Respondent.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED: 29.1.2024.

ORAL JUDGMENT (Per Vinay Joshi, J.)

Heard Mr. D.S. Khushalani, learned Counsel for the
Appellant and Mr. A.B. Badar, learned A.P.P. for the Respondent.

2. The husband was facing a trial for committing the homicidal death amounting to murder of his mother-in-law namely Kalawati in Sessions Case No.323/2021. The learned trial Court relying on the evidence of eye witnesses, recorded the finding of guilt vide impugned judgment and order dated 10.10.2023 and thereby imposed sentence to undergo imprisonment for life along with fine for the offence punishable under Section 302 of the Indian Penal Code.

3. The prosecution case in nutshell is that the appellant (accused) was son-in-law of deceased Kalawati. On 27.11.2020 around 9.30 p.m. domestic quarrel occurred in between husband and wife i.e. accused with his wife in which deceased Kalawati intervened. The accused picked up an iron rod lying in the house and gave a forcible blow at the head of Kalawati which proved to be fatal. On the basis of information given by relative of deceased - Priti, report has been initially lodged for the offence punishable under Section 307 of the Indian Penal Code. Later on

it was converted into offence punishable under Section 302 of the Indian Penal Code. The police carried out panchanama of the scene of offence. Dead body was sent for post-mortem examination. Accused was apprehended. Weapon namely rod was seized and after completing formalities of investigation chargesheet has been filed. In order to bring home the guilt of accused, prosecution has examined in all seven witnesses and relied on certain documents. The trial Court relied on ocular testimony and on that basis recorded the finding of guilt as aforementioned.

4. The learned Counsel appearing for accused has criticised the judgment of trial Court firstly on the ground of inadequacy of evidence, and secondly contended that the offence of murder cannot be inferred from the occurrence. With the assistance of both sides we have examined the entire evidence. The prosecution mainly relied on the evidence of P.W.2 Priti (informant), P.W.3 Deepali and P.W. 4 minor Prachi to establish

the guilt. The informant Priti was residing just adjacent to the house of accused. It is her evidence that on the date of occurrence elder daughter of Deepali came informing that a quarrel was going on in between her parents i.e. accused and Deepali in the neighbouring house. Immediately informant Priti and other relatives rushed to the nearby house and saw that accused was quarrelling with his wife Deepali. Informant saw that since deceased Kalawati intervened, the accused took out iron rod and hit at her head and fled. She has been cross-examined, however, her evidence withstood the prosecution case.

5. The most crucial evidence is of P.W.3 Deepali (wife of deceased) and P.W.4 Prachi (daughter of deceased). Deepali equally stated that accused who is her husband was quarrelling at relevant time. Kalawati and minor Prachi were at the house. In said quarrel accused hit at the head of Kalawati by means of rod and ran away. Minor Prachi also deposed in the same fashion.

6. We have considered the defence submission, however, unable to convince as to why these family members are to be disbelieved. The presence of these three eye witnesses on the spot is quite natural. Particularly the wife as well as daughter of accused deposed against him. They have no reason to falsely implicate their own kin for the offence of murder. The evidence of these three eye witnesses is cogent, consistent and reliable. We are fully satisfied that by leading consistent evidence of three reliable witnesses the prosecution has duly established the act of assault at the hands of accused.

7. The trial Court has evaluated the entire material and finally came to the conclusion that it is only the accused who has assaulted Kalawati by means of iron rod and thus caused serious injury which resulted into death and, therefore, the offence of murder punishable under Section 302 of the Indian Penal Code has been proved. The learned Counsel for the accused would submit that the trial Court has not considered the material in

proper perspective to find out as to what offence has been committed by the proved act. True we are in disadvantage since the impugned judgment does not spell-out as to how the finding of murder has been arrived. It is argued that the incident was at the spur of moment, the accused was not carrying any weapon, there is total absence of premeditation and a single blow was inflicted. Certainly these are the vital parameters to decide whether the accused intended to kill Kalawati. In order to constitute an offence of murder one of the ingredients as set out in Section 300 has to be made out. In the absence, offence of culpable homicide cannot be termed as a murder punishable under Section 302 of the Indian Penal Code. While considering the said aspect totality of circumstances have to be considered together.

8. 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.

9. Be that as it may, the question arose whether the act of the accused of causing death of Kalawati 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.

10. It is now well understood that in the scheme of the Indian Penal Code "Culpable homicide" is the genesis 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.

11. 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.”

12. Reverting to the facts, it reveals from the evidence that initial quarrel was in between husband and wife. During said quarrel Kalawati (mother-in-law) intervened which has enraged accused who at the spur of moment picked up an iron rod lying nearby and hit at the head of deceased. The evidence itself discloses that accused was not carrying weapon at relevant time.

All it was happened that during quarrel he just picked up a nearby lying rod which itself is an indicator to show that there was lack of premeditation. Moreover the accused has no cause to assault Kalawati, however, as she intervened into the quarrel between husband and wife, the accused gave a blow at her head.

13. We have examined the postmortem notes from which it is evident that there was only single injury at the parietal region of the deceased. Thus in the spur of moment the accused gave a single blow that too by iron rod lying in the house itself. Had it been the fact that the accused intended to kill deceased, he would have inflicted more blows but instead of that after inflicting a single blow he ran away. The entire evidence nowhere suggests that accused intended to kill deceased, however, from his act of hitting at the head by iron rod it can be inferred that he had knowledge that his act would be likely to cause death and thus the case squarely falls under Section 304 II of the Indian Penal Code. In view of the above discussion, we differ from the view taken by

learned trial Court and hold that it is a case punishable under Section 304 II of the Indian Penal Code.

14. It takes us to consider the aspect of imposition of punishment. Always it is a delicate issue to impose appropriate punishment upon the accused. At this juncture, Court has to take a survey of entire occurrence to decide the quantum of punishment. As stated above, it was not a premeditated assault and iron rod lying in the house was used as a weapon. The accused never aimed to cause injury to his own mother-in-law, but as she intervened into the quarrel he reacted in such a way. The accused is having two minor daughters as well as shouldering responsibility of age old father. It is not the case where the accused acted in cruel manner or has doctored the act of eliminating his own mother-in-law. The accused is in jail from last three years. To our mind some more incarceration is necessary since an innocent lady has lost her life. In our

considered view seven years of imprisonment would meet the ends of justice.

15. In view of the above, the appeal is partly allowed.

We convert the conviction from Section 302 of the Indian Penal Code to Section 304 II of the Indian Penal Code and direct the accused to undergo the rigorous imprisonment for seven years along with fine and default clause as imposed by trial Court.

Appeal stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)