



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

CRIMINAL APPEAL NO.800 OF 2023

Jagannath Pralhad Navale
Aged about 40 years,
Occupation – Agriculture
R/o Ghatbori, Tah. Mehkar,
Buldhana

...APPELLANT

VERSUS

1. State of Maharashtra,
through P.S.O., P.S. Dongaon,
District Buldhana
2. Prakash Devram Zyate
Aged 55 years,
R/o. Nageshwadi,
Tah. Mehkar, District Buldhana

...RESPONDENTS

Mr. M.N. Ali, Advocate for the appellant.
Ms T.H. Udeshi, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : FEBRUARY 6, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. By preparing this appeal, the appellant has challenged the order passed by the Special Judge, Mehkar, District Buldhana in Bail

Application in Atro. Special Case No.34/2023 dated 01/09/2023 by which the application of the appellant for grant of bail is rejected.

3. The appellant is prosecuted of the offence punishable under Section 302 and 201 of the Indian Penal Code read with Section 3(2)(v) and 3(2)(v)(a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 vide Crime No.94/2023 at Dongaon police station, District Buldhana.

4. The crime is registered on the basis of report lodged by Prakash Devrao Zyate. It is alleged that on 23rd April, 2023 at about 6:00 p.m. the younger son of the informant namely Nitin has informed that quarrel took place between the brother Ankush at Nageshwadi and somebody has assaulted him. On the basis of information, the informant Prakash and his wife have gone to village Nageshwadi early in the morning. Ramdas Khillare and Ramdas Dakhore informed the informant that on 22th April, 2023 at about 3:00 p.m. when they along with the appellant Jagannath Navale and deceased Ankush Zyate were consuming the liquor in the field of Dhondu Chinku Nawale. The quarrel took place between Ankush Zyate and the present appellant on account of the amount of mobile. At that time, present appellant has assaulted the deceased Ankush by means of wooden stick on his head, stomach, face and hand due to which he sustained the grievous injuries and subsequently succumbed to the death. On the basis of said report, police

have registered the crime. During investigation, the Investigating Officer has recorded the relevant statements including the statements of the eye-witnesses. The appellant has filed an application for grant of bail. The learned trial Court has rejected the same by observing that there is a direct evidence on record against the present appellant which shows that the deceased was beaten by him mercilessly by means of wooden stick and thereby caused the death. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant.

5. Learned Counsel for the appellant submitted that even taking into consideration the facts as it is, at the most case of the present appellant covers under Section 304 Part II of the Indian Penal Code. There was a sudden quarrel between the deceased and the present appellant and the deceased has instigated the present appellant as present appellant was abused by the deceased. Thus, due to the grave and sudden provocation, the alleged incident has taken place. The case of the appellant covers under the Exception (1) given under Section 300 of the Indian Penal Code. Now, investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required and he be released on bail by quashing the order passed by the trial Court.

6. Learned Additional Public Prosecutor strongly opposed the appeal on the ground that there is a direct evidence on record

sufficiently shows that the deceased was mercilessly beaten by the present appellant. He submitted that even if it is considered that there was a grave and sudden provocation, but it is not the case of the single blow. As soon as the aspect of provocation vanishes, the appellant has to control himself and controls his acts which is not done by the present appellant, and therefore, the case does not cover under the Exception.

7. Learned Counsel for respondent No.2 also endorsed the same contention.

8. Learned Counsel for the appellant placed reliance on ***Ajmal Vs. State of Kerala [2022 (3) Bom.C.R.(Cri.) 313]*** and the order of this Court in Criminal Application (BA) No.61/2023.

9. After hearing both the sides and on perusal of the investigation papers it reveals that FIR is lodged by the informant on the basis of information received by him regarding the alleged incident. During investigation, the Investigating Officer has recorded the various statements of the eye-witnesses from which it reveals that the deceased and present appellant both were consuming the liquor and during that the quarrel took place between them. As per the statement, it was the deceased who started abusing the present appellant and both were under the influence of liquor. Thereafter present appellant has picked up the wooden log and assaulted the deceased repeatedly. Thereafter

deceased sustained the injuries and was lying at the said place and subsequently his dead body was found. The postmortem report is also placed on record which shows that the deceased has sustained in all 12 injuries which are in the nature of CLW just above right eyebrow laterally of size 9 x 2 x bone deep, laceration over forehead and other injuries. The internal injuries like haematoma under scalp frontal region of size 10 x 6 cm corresponding to frontal bone fracture are also observed. There is a laceration to the lower lobe laterally with corresponding to 8th, 9th rib fracture of size 5 x 1 x 1 cm. The death of the deceased is caused due to the head injury. Thus, the direct evidence as well as medical evidence sufficiently shows that death of the deceased is caused due to the assault at the hands of the present appellant. The statements of the eye-witnesses sufficiently shows that there was repeated blows on the person of the deceased.

10. In Ajmal Vs. State of Kerala (supra) 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. 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. 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.

11. For the above said reasons, if the facts are examined admittedly, the material on record shows that during investigation, the Investigating Officer has recorded the statements of the eye-witnesses which shows that the present appellant has given repeated blow on the person of the deceased due to which deceased has sustained the injuries all over the body. One of the injury which is sustained by the deceased is on the head which proves to be fatal and due to which the death of the deceased is caused. Thus, the intention of the appellant can be gathered from the circumstances that he has given a repeated blows i.e. also on the vital part of the body due to which the deceased has succumbed to the death. At this stage, this evidence is sufficiently shows there was an intention on the part of the accused and therefore, it is difficult to accept the contention of the learned Counsel for the appellant that the case covers under Section 304 Part I or 304 Part II of the Indian Penal Code.

12. In view of that, the present appeal is devoid of merits and liable to be dismissed.

13. Hence, the appeal is dismissed accordingly.

(URMILA JOSHI-PHALKE, J.)