



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.540 OF 2024

Ramer @ Ram Gajesing Bot,
Age : 39 years, Occ. Labour,
r/o. Sakhar Karkhana Colony,
MIDC Paithan, Tq. Paithan,
Dist. Aurangabad

..Appellant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Police Station, M.I.D.C. Paithan,
Dist. Aurangabad

..Respondents

Mr.N.S.Ghanekar, Advocate for appellant
Mrs.Kalpalata Patil - Bharaswadkar, APP for respondent - State

CORAM	:	R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.
RESERVED ON	:	FEBRUARY 13, 2025
PRONOUNCED ON	:	APRIL 01, 2025

JUDGMENT (PER R.G.AVACHAT, J.) :-

The challenge in this appeal is to the judgment of conviction and the order of consequential sentence passed by learned Addl. Sessions Judge, Aurangabad, on 21.05.2024 in Sessions Case No.158 of 2023, whereby, the appellant has been convicted for the offence punishable under Sections 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life, with default stipulation.

2. The facts giving rise to the present appeal are as follows:-

The appellant along with his friend was present at an Egg-Omlettee vending stall. Abdul (deceased) came there. A quarrel took place between the appellant and Abdul (deceased). The appellant picked up a knife from the stall and stabbed in the back of Abdul. The appellant gave one more blow with the knife. He then fled. Abdul was rushed to the hospital. He was, however, declared dead. Based on the FIR lodged by Shafiq (brother of deceased), a crime vide C.R. No.243 of 2022 was registered. The crime-scene panchnama (Exh.26) was drawn. Inquest and autopsy on the mortal remains of the deceased were conducted. The appellant was arrested. Statements of the persons acquainted with the facts and circumstances of the case were recorded. The seized articles were submitted to the F.S.L.. Reports thereof were received. Upon completion of the investigation, the appellant was proceeded against.

3. The prosecution, to bring home the charge, examined nine witnesses and adduced in evidence certain documents. On appreciation of the evidence in the case, the trial court passed the order impugned herein.

4. Heard learned counsel for the parties. Learned counsel for the appellant urged for converting the conviction of the appellant from the offence of murder to the offence of culpable homicide not amounting to murder. He would submit that the incident took place at a spur of moment. There was no premeditation. The appellant was not armed with any knife. He picked up the knife from the spot. He brought to our notice certain evidence indicating that it was the deceased who picked up quarrel with the appellant and even dashed against him. According to learned counsel, the appellant too suffered injuries. He relied on the judgments in the cases of (i) Surinder Kumar Vs. Union Territory, Chandigarh, 1989 1 AICLR 914; and (ii) Nilesh Ramdhan Gavai Vs. State of Maharashtra, 2023 2 BomCR (Cri) 299, to ultimately, urge for allowing the appeal in part.

5. Learned APP would, on the other hand, submit that the case would not fall within the exception 4 to Section 300 of the Indian Penal Code. According to her, one of the ingredients of the said exception is missing. The appellant acted in the cruel manner. He gave such a stab, whereby, tip of the knife came out from the other side of the body of Abdul (deceased). Learned APP, ultimately, urged for dismissal of the appeal.

6. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

7. The fact that Abdul met with homicidal death is undisputed. The post mortem examination report (Exh.52) disclosed the cause of death as "*hemorrhagic shock due to stab injury over back*". The same indicates that although the deceased suffered two knife blows, the cause of death is attributed to one of the two injuries. PW8 - Kapileshwar testified that he noticed following external injuries on the person of the deceased (injury nos. 2 and 3 were treatment injuries):-

1. Multiple linear scratch abrasions present over right side lower half of chest of varying sizes of 1 cm. x 0.2 cm. to 3 cm. x 0,2 cm., all obliquely placed red.
2. Therapeutic operative exploratory laparotomy wound vertically placed over midline of abdomen of length 26 cm., cavity deep, surgically stapled pins are in situ and intact.
3. Therapeutic IV injection puncture wound present over dorsum of both hands and over right upper limb cubital fossa.
4. Perforating entry stab injury present over right side lower portion of back, 8 cm.

posterior to right iliac crest and 14 cm. right lateral to midline of size 2 cm. x 1.2cm x muscle deep, obliquely placed. The corresponding exit stab wound present over lateral aspect of lower abdomen 5.5 cm. right lateral to entry injury no.4 while 6 cm. above right iliac crest, of size 1cmx0.8cmxmuscled deep obliquely placed. Upper angles of both the entry and exit injuries are acute and the lower angles are obtuse compared to their upper angles. Both margins of the entry and exit are sharp. The entry and exit injuries are communicated continuously with each other through subcutaneous and muscular planes of the region.

5. Stab injury present over left side of back over lower thoracic region 4.5 cm left lateral to midline of size 2.3 cmx0.8cmxcavity deep, obliquely placed. The track of the stab injury passes through the corresponding 11th inter costal space of thorax, through left size of diaphragm up to the lesser sac in the abdomen. Lower angle of the injury is acute and upper angle is obtuse compared to the lower angle, both margins are sharp. The injury is surgically stapled with all the pins are in situ and intact.

6. Surgically debrided wound present over front aspect of left foot great toe, involving medial $\frac{3}{4}$ th portion of the toe, muscle deep, margins clean cut and the nail is missing over the wound portion.

7. Surgically debrided wound present over front aspect of left foot 2nd involving medial half portion of the toe, muscle deep, margins clean cut and the nail is missing over the wound portion.

8. PW1 – Shafiq, brother of the deceased lodged the FIR. He did not witness the incident. He was informed by Amol Jagdhane (PW4) that quarrel took place between the appellant and his brother in front of sugar factory, at Paithan, and in the said quarrel, the appellant stabbed his brother. As such, the testimony of PW1 – Shafiq is of little consequence to further the prosecution case. During his cross-examination, he admitted that his brother (deceased Abdul) was short-tempered. He used to quarrel with each other under influence of liquor.

9. PW2 – Pavan is witness to the inquest panchnama (Exh.24). PW3 – Punjaram is witness to the crime-scene panchnama (Exh.26).

10. PW4 – Amol is the eye-witness to the incident. It is in his evidence that on 18.10.2022 by 02.30 pm., he along with the appellant and Abdul (deceased) went to have snacks in the hotel of Gangadhar Jamadar. While eating snacks, altercation and hurling of abuses took place between the appellant and the deceased. It turned into the scuffle. The appellant picked up a knife, which was on the table in the hotel, and gave its blow in the back of Abdul. He and the hotel-owner (Gangadhar) tried to save Abdul. The appellant

caused injury to the thumb of Gangadhar with knife. He further testified that he along with his relations rushed Abdul to Ghati Hospital, Aurangabad. Abdul, unfortunately, succumbed to the injuries.

11. PW4 - Amol referred to his statement recorded under Section 164 of the Code of Criminal Procedure. He testified that the contents therein are true and correct. Perusal of the said statement would indicate that PW4 - Amol described the incident as under:-

.....तेथे आम्ही नाश्ता करण्यासाठी एका हॉटेलवर गेलो होतो. त्यावेळी मयत अब्दुल उर्फ सांडू शेख व आरोपी यांच्यामध्ये शाब्दिक बाचाबाची झाली. त्यावेळी मयत अब्दूलने आरोपीला धक्का दिला व त्यामुळे आरोपी खाली पडला. त्यावेळी आरोपीने टेबलवर असलेला चाकू उचलून मयत अब्दुलच्या पाठीत दोन तीन वेळेस मारला. पहिल्या वेळेस मारल्यानंतर आम्ही आरोपीला थांबवण्याचा प्रयत्न केला असता त्याने आम्हाला देखील जीवे मारण्याची धमकी दिली.

12. PW5 - Gangadhar is another witness. He is the eatable-stall (hotel) owner. He testified that in the process of rescuing Abdul, he suffered injuries to his right thumb. During cross-examination, he testified that both the deceased and PW4 - Amol were in the business of illicit liquor. He admitted that at the time of the incident, the deceased Abdul was under influence of liquor. According to him, the deceased Abdul and PW4 - Amol had come on motorbike. The appellant was already present at his stall with one Shinde.

13. We need not refer to the other evidence on record. The evidence referred to herein above indicates that the appellant was unarmed. He was present at the eatable stall. The deceased, who was under influence of liquor, arrived there. Oral altercation took place between the appellant and the deceased. It culminated into scuffle. It was the deceased who gave dash first to the appellant and then, the appellant took out the knife, which was on the table in the hotel (eatable stall) and assaulted therewith. In paragraph 11 of the judgment in the case of **Nilesh Ramdhan Gavai Vs. The State of Maharashtra, 2023 O Supreme (Bom) 334**, it has been observed thus:-

11. In Pulicheria Nagaraju Vs. State of Andhra Pradesh, (2006)11 SCC 444, the Hon'ble Apex Court in paragraph 29 of its judgment held and observed as under:

“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.”

14. Exception 4 to Section 300 reads thus:-

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

15. True, in the present case, the stab was with such a force that the knife got penetrated in its entirety and its tip came out of the body of the deceased. It would only suggest that the blow was with force. It is not that the appellant assaulted the deceased after he fell down nor there are such injuries, indicating the appellant to have acted in cruel manner. In our view, therefore, the case of the appellant does get covered by Exception 4 to Section 300 of Indian Penal Code. The appeal, therefore, requires to be partly allowed.

16. In the result, the appeal partly succeeds. Hence, the following order:-

(i) The appeal is partly allowed.

(ii) The conviction of the appellant for the offence punishable under Section 302 of Indian Penal Code and the consequential sentence to suffer imprisonment for life and to pay fine of Rs.1,000/-, with default stipulation, imposed vide order dated 21.05.2024, passed by learned Addl. Sessions Judge, Aurangabad, in Sessions Case No.158 of 2023, is hereby set aside.

Instead, the appellant hereby stands convicted for the offence punishable under Section 304 Part I of the Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for eight years and to pay fine of Rs.500/- in default, to undergo R.I. for ten days.

(iii) Rest of the terms of the impugned order to stand unaltered.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP