



Niti

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO.31 OF 2024**

Mr Gangadhar @ Dnyaneshwar
Kerkar

S/o late Vasant Kerkar, 53 years,
Male, Indian, r/o. H.No.132, Acoi,
Mapusa, Bardez-Goa.
Presently lodged in Judicial Custody,
Central Jail, Colvale,
Bardez, Goa.

....APPELLANT***Versus*****1. STATE**

Through Mapusa Police Station,
Goa Police.

2. Through Public Prosecutor,
High Court of Bombay at
Porvorim, Goa.

.... RESPONDENTS

Mr Arun Bras De Sa with Mr Mark Valadares and Mr C. Franco,
Advocates for the Appellant.

Mr Pravin Faldessai, Additional Public Prosecutor with Ms S.
Falcao, Advocate for the Respondents.

**CORAM : SARANG V. KOTWAL &
ASHISH S. CHAVAN, JJ.**

DATE : 19th NOVEMBER 2025

JUDGMENT : (Per Sarang V. Kotwal, J.)

1. The Appellant has challenged the judgment and order dated 01.12.2023, passed by the learned Sessions Judge, Panaji, in Sessions Case

No.9/2020. By the impugned judgment and order, the Appellant was convicted for commission of offence punishable under Section 302 of IPC and was sentenced to suffer rigorous imprisonment for life and to pay fine of ₹25,000/- and in default of payment of fine to undergo further imprisonment for one year. Out of the fine amount, if deposited, the amount of ₹20,000/- was directed to be paid to PW1 as compensation. The Appellant was also convicted for commission of offence punishable under Section 323 r/w Section 34 of IPC and was sentenced to suffer rigorous imprisonment for one month.

2. The Appellant's brother, Vinod, was the accused no.2 in this case. He was also charged for commission of offence punishable under Section 302 of IPC but he was acquitted from those charges and instead he was convicted for commission of offence punishable under Section 304 of IPC. It is not clarified whether the conviction was recorded under Section 304 Part I or Part II. However, the discussion regarding the sentencing records submissions of the learned PP and from that it is indicated that he was convicted for commission of offence punishable under Section 304 Part I. He was sentenced to undergo the sentence for the period he was in custody from 23.12.2019 till 24.08.2023. The accused no.2, Vinod, was also convicted under Section 323 r/w 34 of IPC, but he was not sentenced to suffer any further imprisonment.

3. Heard Mr Arun Bras De Sa along with Mr Mark Valadares, learned Counsel for the Appellant and Mr Pravin Faldessai, learned Additional Public Prosecutor for the Respondents.

4. The prosecution case in brief is that both the accused and the deceased Vilas were brothers. They were residing together with their unmarried sister Geeta. There used to be quarrels between the accused and the deceased. On 22.12.2019 at about 9.00 p.m., there was some quarrel between the deceased Vilas and accused no.2 Vinod on some petty issue. Vilas abused the accused no.2 Vinod in filthy language. After some time, Geeta was told by her niece Varsha, who had visited her, that some quarrel was going on in the courtyard. Geeta and Varsha, both rushed to the courtyard. They saw that both the accused were assaulting the deceased. The accused no.1, i.e. the present Appellant, was assaulting him with a wooden log and accused no.2 was assaulting Vilas with a PVC pipe. Geeta sought help from the neighbours but they could not go near the accused as the accused no.2 threatened them. Varsha, in the meantime, telephonically called her brother, Vijit, who came at the scene of offence. He took Vilas to the hospital but he was declared dead. Geeta lodged the FIR. The investigation commenced and spot Panchanama was conducted. The wooden log and the PVC pipe were found on the spot. The Appellant and the co-accused were arrested subsequently. The statements of various witnesses were recorded. Different Panchanamas were carried out, and at the conclusion of the

investigation, the chargesheet was filed. The case was committed to the Court of Sessions.

5. In support of its case, the prosecution examined eight witnesses, including PW1/Geeta, PW3/Varsha, Vijit and the neighbour Asgar Ali. The Doctor who had examined Geeta and the Doctor who had conducted the post-mortem examination were also examined. Apart from that, the Investigating Officer and one more Police Officer were also examined. The defence of the Appellant and the co-accused was of total denial. The learned Judge relied on the evidence of PW1/Geeta and PW3/Varsha in particular. He made a distinction between the prosecution case against the Appellant and the prosecution case against the accused no.2. According to the learned Judge, the evidence showed that there was grave and sudden provocation for accused no.2 to assault the deceased Vilas as Vilas had picked a quarrel with Vinod and had abused Vinod in filthy language. However, the same beneficial consideration was not extended to the Appellant and he was convicted under Section 302 of IPC on the basis of the evidence of the same witnesses.

6. One of the important witnesses is PW1/Geeta Kerkar. She was the sister of the deceased and the Appellant. She had lodged the FIR. She deposed that she was residing with both the accused and Vilas, who were her brothers. The deceased was working as a welder. Both the accused were unemployed. All the brothers were in the habit of consuming liquor

daily during night time and there used to be quarrel between them. The Appellant was not on talking terms with her. He was also not on talking terms with the accused no.2 and the deceased Vilas. The incident occurred on 22.12.2019 at around 9.00 p.m. At that time, the Appellant was sitting in Acoi club. Vilas, the accused no.2 as well as her niece Varsha were in the house. At about 9.15 p.m., the accused no.2 Vinod went to take a bath. He asked for towel from PW1. Vilas went to wash his hands and he abused Vinod as according to Vilas it was indecent on his part to ask for towel from his sister while he was taking bath. Therefore, he abused Vinod in filthy language. Vinod did not react immediately. PW1 pacified both of them and asked Vinod to sit outside. After some time, Vinod told her to bring a soft drink. She went inside the house. After some time, Varsha came to her and told her that a fight was going on in the front side of the house. There was a courtyard on the front side. She went there and saw that Vilas was assaulting the accused no.2. She tried to separate them but at that time the Appellant came from the club side. Thereafter, the Appellant and accused no.2 started assaulting Vilas. The Appellant was holding a wooden log, whereas the accused no.2 was having a PVC pipe in his hand. Both of them assaulted Vilas on his head, back and also on the front portion. Vilas fell on the ground but the accused continued assaulting him. When she tried to intervene, the Appellant pushed her. She fell down and sustained injury on her right hand shoulder and head. Vilas started bleeding from his head and face. She shouted for help. Thereafter, her neighbours, Rafiq and his brother,

came at the spot and tried to intervene but the accused threatened them. According to her, the Appellant was under the influence of liquor and he was furious. In that state, he was assaulting Vilas. After that Varsha telephoned her brother Vijit, who came in his car and took Vilas to the hospital. He succumbed to the injuries. PW1/Geeta then lodged the FIR at around 1.00 a.m. on 23.12.2019. The FIR is produced on record at Exhibit 13. Her clothes were seized. She was present at the time of carrying out of spot Panchanama.

7. It can be seen that she has made no distinction between the roles played by the Appellant and the accused no.2 while deposing before the Court. She identified the PVC pipe and the wooden log, which were found at the spot.

In the cross-examination, she admitted that at the time of the incident, the deceased was under the influence of alcohol. According to her, all the brothers used to quarrel and fight with each other on petty matters and it used to happen more often after consuming alcohol. She did not know what arguments or discussion took place between the deceased and the accused before she reached at the spot at the time of the incident. She further admitted that when Vilas started abusing Vinod in filthy words, Vinod did not react but went away to sit outside.

8. PW3/Varsha Kerkar is another eyewitness. She has largely supported the deposition of PW1/Geeta. Their evidence is identical. In addition, she stated that the Appellant was assaulting Vilas continuously

on his face and the accused no.2 was assaulting him on his stomach. Her evidence is almost similar to that of PW1.

In her cross-examination, her attention was drawn to the omission in her Police statement as she had not stated that the Appellant was assaulting Vilas with a wooden log. She was given an opportunity to explain the omission amounting to contradiction. She could not explain but she reiterated that the Appellant was assaulting Vilas with a wooden log. Her Police statement also did not mention that the Appellant was found assaulting Vilas continuously on his face. Even this fact was not stated in her Police statement. She could not explain that omission, but she reiterated that she had stated so before the Police. She also admitted that after Vilas abused accused no.2 Vinod, even then Vinod had not retaliated and he had simply gone outside.

9. PW4/Vijit Kerkar had come to the spot after PW3/Varsha had informed him about the incident. He had carried the deceased in his car to the hospital. His evidence does not throw any further light on the prosecution case about the incident.

10. PW7/Asgar Ali had come to the spot on hearing the noise and shouts given by PW1/Geeta. He stated that when he went to the spot Vilas had suffered bleeding injury on his head and face. He was profusely bleeding. When he and Rafiq went towards Vilas, the accused no.2 returned back. After some time, Vijit came to the spot and took Vilas in his car to the District hospital.

11. PW5/PC Sandeep Malik had gone to the spot. He had deposed about the scene of offence, which is largely undisputed.

12. PW2/Dr Nutan Chodankar had examined PW1 and she had found that PW1 had suffered swelling on her left hand. She produced the injury certificate on record at Exhibit 19.

13. PW6/Dr. Ankush Patil is an important witness. He had conducted the post mortem examination. On examination, he found that there were nasal bone fractures. There were lacerations over oral aspects of both upper and lower lips with fracture dislocation of bilateral lower central and lateral incisors. There were 15 injuries mostly in the nature of abraded bruises and tramline bruises. They were on the face, chest, shoulder, abdomen, hands and legs. In short, there were injuries all over the body. There was a depressed comminuted fracture of nasal bone. There was no fracture of skull vault or base. There was subarachnoid haemorrhage over bilateral frontal and temporal lobes. According to him, the cause of death was "Aspiration pneumonitis (inflammation of the lung due to inhalation of the blood) associated with head injury vide injury numbers 1,2 and 3 collectively, caused by blunt hard object, which were antemortem and fresh at the time of death." The injury nos.1,2 and 3 are as follows:

- 1) Abraded bruise, reddish, 1.5x1 cms over nasal bridge with depressed fracture of underlying nasal bone with oozing of blood from nasal cavity.

- 2) Right black eye with split laceration 2cms x bone deep over anterolateral aspect of right eyebrow and abraded bruise reddish 1x1 cm below right eye over face.
- 3) Left black eye with split laceration 4cms x bone deep over anterolateral aspect of left eyebrow.

There are hardly any effective cross-examination of these witnesses.

14. PW8/PI Tushar Lotlikar was the Investigating Officer. After the FIR was registered vide CR No.274/2019, he took over the investigation. He deposed about the steps taken during the investigation. He had supervised the spot Panchanama. He had seized the articles, i.e. the wooden log and PVC pipe on the spot. He identified the wooden log as fire wood. He seized the clothes of the deceased and of PW1. He had referred PW1 for medical examination. His investigating team apprehended both the accused and brought them to the Police Station. They were put under arrest. Their clothes were seized. There were blood stains on their clothes. The articles were sent for chemical analysis. Statements of various witnesses were recorded.

This, in short, is the evidence led by the prosecution.

15. The learned Counsel for the Appellant submitted that the evidence shows that the eyewitnesses have described the incident in an identical manner as far as both the accused were concerned. The description is exactly the same. The role attributed to them is also the

same and, therefore, the learned Judge erred in convicting the Appellant for commission of offence punishable under Section 302 of IPC. He submitted that from the evidence, the learned Judge was convinced that the accused no.2 could only be convicted under Section 304 for culpable homicide not amounting to murder and, therefore, he should have applied the same yardstick and should have at the highest convicted the Appellant for the offence of culpable homicide not amounting to murder. There is no qualitative or quantitative difference in the evidence against both the Appellants. He submitted that there was a quarrel between the accused no.2 and the deceased. The Appellant is unnecessarily roped in by the eyewitnesses. PW1 had accepted that she was not on good terms with the accused no.1/Appellant as he was unhappy with her job. The evidence of PW3 is full of omissions on material aspects. As far as her Police statement is concerned, her improvement in the Police statement shows that she had tried to deliberately implicate the Appellant. The weapons were found on the spot. Therefore, it cannot be said that the Appellant was connected with the weapons found on the spot. In any case, the wooden log was a fire wood, which was found at the spot. It is not something which was brought by the Appellant with premeditated intention to mount assault on the deceased. He submitted that without prejudice to his contentions for acquittal, at the highest, it could be an offence of culpable homicide not amounting to murder, in view of Exception 4 to Section 300 of IPC.

16. Learned Additional Public Prosecutor on the other hand relied heavily on the evidence of the eyewitness PW1 and PW3. He submitted that both of them were closely related to the Appellant and therefore there was no reason to falsely implicate the Appellant. They have given a consistent and clear version of the incident. There is no contradiction between their evidence and, therefore, the prosecution has established that the Appellant had assaulted the deceased. He is attributed the major role of assaulting the deceased on his face and head, which ultimately led to the death of the deceased. He submitted that the Appellant's case would not fall within any of the Exceptions to Section 300 of IPC.

17. We have considered these submissions. The evidence shows that there used to be petty quarrels between the Appellant, the co-accused and the deceased particularly when they used to consume liquor. There was no particular motive for the Appellant or the co-accused to commit murder of the deceased. PW1 and PW3 have consistently deposed about the incident. As far as the incident in question is concerned, their evidence is quite consistent. There is no reason to disbelieve them that the Appellant and the accused no.2 both had assaulted the deceased. The Appellant was attributed a wooden log, which is mentioned as firewood wood and the co-accused was attributed with PVC pipe. Though PW3 has stated that the Appellant had given repeated blows on the face of the deceased, it is in the form of improvement in her Police statement. Therefore, there is no clear evidence that the Appellant had assaulted the deceased on his face. PW1 has not specifically described that the

Appellant had given a blow on the face of the deceased. Therefore, there is no clear and consistent evidence as to which of the accused had given the blow on the face leading to the death of the deceased. To that extent, both the accused had played equal roles and yet the learned Judge has given benefit only to the accused no.2.

18. From the evidence produced by the prosecution, the occurrence of the incident and the roles played by the Appellant as well as the co-accused cannot be doubted. The question would be whether it would be an offence punishable under Section 302 of IPC, i.e. murder, as defined under Section 300 or would it be an offence under Section 304 of IPC i.e. culpable homicide not amounting to murder. In this context, the entire evidence shows that there was no premeditation. The incident was a consequence of a quarrel between the deceased and the accused no.2 Vinod. The accused no.1 was not even present at the time of that quarrel. He came on the scene subsequently. By that time, the deceased Vilas had again picked up quarrel with Vinod. In that quarrel, the further incident took place when both the accused including the Appellant used the weapons, i.e. wooden log and PVC pipe. It is not the case of the prosecution that they brought those weapons from somewhere else or there was some premeditation or meeting of minds or that they had common intention to commit the murder of the deceased. The incident occurred as a result of a sudden quarrel. From the nature of injuries, it appears that one heavy blow was given on the nose causing fracture of nasal bone and haemorrhage of the brain. From the evidence

it is clear that the case would fall within Exception 4 to Section 300. Exception 4 to Section 300 reads thus:

“Exception 4 – 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”.

19. The assault had resulted mostly in bruises on the other parts of the body. The fatal blow was on the face. The evidence does not show clearly as to who had given that particular blow but from the evidence in this particular case it cannot be said that the Appellant had acted in unusual and cruel manner. From the facts of this case, Exception 4 to Section 300 is squarely applicable. There was no premeditation and no preparation to commit this offence. This is a case where Exception 4 to Section 300 squarely applies to the facts and circumstances of this case. Therefore, the learned Judge erred in convicting the Appellant for commission of offence punishable under Section 302 of IPC.

20. The next question is whether the offence would be under first part or second part of Section 304 of IPC. Since the blow was given on the face with force, causing fracture of the nasal bone and haemorrhage of the brain, it is necessary to hold that the Appellant had the requisite intention to cause such bodily injury as was likely to cause death.

21. In this view of the matter, in our opinion, the Appellant has committed the offence punishable under Section 304 (Part I) of IPC.

The Appellant has been in custody since 22.12.2019 till today, which would be more than 5 years and 10 months. The co-accused was in custody for a much lesser period and yet he was sentenced to suffer imprisonment, which he had already undergone. That period came to be around four years. Considering this discussion, in our opinion, the sentence of seven years of rigorous imprisonment would meet the ends of justice. The evidence shows that the offence under Section 323 r/w 34 is clearly proved and, therefore, we are not interfering with that part of the order.

22. Hence, we pass the following order:

ORDER

- (i) The Appeal is partly allowed.
- (ii) The judgment and order dated 01.12.2023 passed by the learned Sessions Judge, North Goa, Panaji, convicting the Appellant for commission of offence punishable under Section 302 of IPC and sentencing him to suffer life imprisonment is set aside.

Instead, the Appellant is convicted for commission of offence punishable under Section 304 Part I, and is sentenced to suffer rigorous imprisonment for seven years and to pay a fine of ₹25,000/-. If the fine amount is deposited, ₹20,000/- as directed earlier by the learned Sessions Judge shall be paid to PW1 so that there is no prejudice caused to her.

- (iii) The conviction and sentence recorded for commission of the offence punishable under Section 323 r/w 34 of IPC against the Appellant are maintained.
- (iv) Both the sentences shall run concurrently.
- (v) The Appellant shall be given set off for the period which he has undergone in custody from his arrest on 22.12.2019 till his conviction recorded on 01.12.2023 under Section 428 of CrPC.
- (vi) The Appeal is disposed of in the aforesaid said terms.

ASHISH S. CHAVAN, J.

SARANG V. KOTWAL, J.