

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 797 OF 2024
AND
INTERIM APPLICATION NO. 2927 OF 2024

Sanjaykumar Bhatel Padihari,
Age: 32 years, Occu: Labour
R/o B/162, Shastri Nagar,
Pratiksha Nagar, Sion, Mumbai
Native Place: At Post Manik Bazar,
Near Hari Mandir, Beside Three Floor Bldg.,
Sarekala, Dist.: Sarekala, Khensua,
State: Jharkhand
(At present lodged at Mumbai Central Prison)

...Appellant/
(Orig. Accused)

~ versus ~

The State of Maharashtra,
Through Wadala TT Police Station.

...Respondent

APPEARANCES

**For the Appellant/
Orig. Accused**

Mr Murtuja Najmi, with Sheyash V
Chaturvedi, Nancy Kanungo &
Ratnesh Dube.

For The Respondent-State

Mr KV Saste, Additional PP

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CORAM : SUMAN SHYAM &
SHYAM C. CHANDAK, JJ

RESERVED ON : 6TH AUGUST 2025.
PRONOUNCED ON : 26TH AUGUST 2025.

JUDGMENT (Per Suman Shyam, J):-

1. Heard Mr Murtuja Najmi, learned counsel appearing along with Sheyash V Chaturvedi, Nancy Kanungo & Ratnesh Dube for the Appellant. Also heard Mr KV Saste, learned Additional PP for the Respondent-State.

2. This Appeal filed by the sole Appellant, viz., Sanjaykumar Bhatel Padihari, is directed against the Judgment dated 30th April 2024 passed by the learned Additional Sessions Judge, Greater Bombay, in Sessions Case No. 1622 of 2019 convicting the Appellant for committing offences punishable under Sections 302, 316, 498A and 319 of the Indian Penal Code 1860 (“IPC”) and sentencing him to undergo imprisonment for life and also to pay fine of Rs. 5,000/- for committing offence punishable under Section 302 of the IPC; rigorous imprisonment for a term of seven years and to pay fine of Rs. 2,000/-, for committing offence punishable under Section 316 of the IPC; rigorous imprisonment

for a term of one year and to pay fine of Rs.1,000/- for committing offence punishable under Section 498A of the IPC and rigorous imprisonment for a term of six months for committing offence punishable under Section 309 of the IPC

3. The prosecution case, in a nutshell, is that the Appellant, in a state of intoxication, has caused death to his wife by causing cerebral injury upon her. On 19th May 2019, the bypassers had noticed foul smell emanating from the house of the Appellant. On further enquiry, the decomposed dead body of the victim was found in the house of the appellant. It was found that the dead-body of the deceased was lying on the floor of the house and the Appellant was sleeping besides the body by putting his hand on the body of his deceased wife.

4. Complaint was filed at Wadala T. T. Police Station on 21st May 2019. Thereafter, C.R 158 of 2019 was registered and the matter was taken up for investigation. On completion of investigation, the police had submitted charge-sheet against the Appellant. Based on the charge-sheet submitted by the police, the learned Trial Court had framed charges under Sections 302, 316,

498A and 319 of the IPC against the accused. Since the accused had pleaded not guilty, he was made to face trial.

5. The prosecution side has examined as many as six witnesses, including the SHO (PW-1), the Doctor, who had conducted the postmortem on the body of the deceased (PW-3), the Investigating Officer (PW-4), who completed the investigation and submitted charge-sheet. The case of the prosecution is entirely based on circumstantial evidence. The case of the Accused/Appellant is, one of total denial. However, the Accused/Appellant did not adduce any evidence in his defence.

6. After taking note of the evidence available on record, the learned Trial Court had convicted the Appellant under Sections 302, 316, 498A and 319 of the IPC and sentenced him to suffer the major punishment of life imprisonment.

7. Assailing the impugned Judgment and Order dated 30th April 2024, Mr Murtuja, learned counsel appearing for the Appellant has submitted that having regard to the evidence available on record, it is established beyond doubt that there was no intention on the part of the Appellant to cause death to his wife.

According to Mr. Murtuja, the mere fact that the Appellant had remained lying by the side of the dead-body of his wife for two days and had actually made an attempt to end his life by cutting the veins on his wrists by a blade, clearly demonstrates the remorse on his part. Contending that this is not a case where the Accused had made any attempt to flee or to remove/conceal the dead-body of his wife after the incident, further goes to show that there was lack of intention on the part of the accused to cause death to his wife. On such count, submits Mr Murtuja, even if it found that the accused was responsible for the death of his wife, even then, this case will come under the purview of Section 304, Part-II. Therefore, submits the learned counsel, the Appellant deserves a lessor sentence.

8. In support of his above arguments, Mr Murtuja has placed reliance on the decisions of the Supreme Court in case of *Jagrup Singh vs State of Haryana*,¹ as well as the decision in case of *Jaggu & Ors vs State of Punjab*,² to submit that from the material on record, it is established that the incident took place in a spur of the moment and without any premeditation on the part of the accused

1 (1981) 3 SCC 616.

2 (1952) 1 SCC 759.

to cause death to his wife. Hence, the conviction of the Appellant under Section 302 of the IPC would not be sustainable in Law. According to Mr. Murtuja, if there is some doubt on the actual circumstance of the incident, benefit of such doubt must go in favour the Accused.

9. Resisting the above arguments, Mr Saste, learned APP appearing for the Respondent-State, has argued that the medical evidence has clearly established the homicidal death of the deceased. The Accused was admittedly in his house when the incident took place, but he has failed to offer any plausible explanation as to the circumstance under which the victim had sustained fatal injuries. According to Mr. Saste, the attempt on the part of the Accused to end his life by committing suicide does not in any manner, absolved him of the murder charge.

10. Mr Saste has further argued that having regard to the bulk of evidence brought on record, this is a clear case where the charge levelled against the Accused/Appellant under Section 302 of the IPC read with Section 309 had been clearly established by the prosecution. Contending that the intention of the Appellant to cause death to his wife is writ large on the face of the evidence

brought on record, the learned APP has argued that the present is not a case of conversion of conviction of the Appellant to one punishable under Section 304 Part-II of the IPC, as has been urged by the Appellant's counsel.

11. We have considered the arguments advanced by the learned counsel for both the sides and have carefully examined the material available on record.

12. The circumstances under which the dead-body of the deceased was recovered, comes out from the testimony of PW-1, viz. Vishnu Shivaji Tone, who was attached to the Wadala TT Police Station and was on duty as SHO on the 21st May 2019. PW-1 has deposed that at round 17.10 hrs on that day, he had received a phone call, through which, information was given that stinky smell was emanating from a house at Shastri Nagar, Pratiksha Nagar. Immediately on receipt of the information, he had informed the matter to the senior officer and thereafter, rushed to the spot. On reaching room No. B/162, Ground floor, he found the dead-body of a lady and he saw that one person was sleeping beside the body by putting his hand on her body.

13. PW-1 has further deposed that on inspection of the spot, he had noticed fresh cut injuries on both the wrists of the person found near the dead-body. He was immediately taken to Sion Hospital for treatment. From the Adhaar Card found at the spot, the Appellant could be identified. PW-1 also came to know that the dead body was of Suman Wagheri, who was the wife of the Appellant. This witness has proved the inquest panchanama (Exh.16), which is admitted by the defence.

14. Shri. Sagar Bhimrao Chavan was examined as PW-2. He has deposed that on 21st May 2019, at around 12:30 hours, one person came to his shop and purchased blade. He could identify the accused as the same person who had purchased the blade.

15. PW-3 Dr. Narendra Baluram Kumar had conducted Postmortem examination on the deadbody of the victim. He was working as an Assistant Professor in the Department of Forensic Medicine, Sion Hospital on 24th May 2019, when the dead body of the victim was brought to the hospital for postmortem examination. PW-3 has deposed that the body was in a

decomposed condition. In the postmortem examination the following injuries were found on the dead body.

During internal examination, the doctor has found following injuries:-

1. Underscalp haemorrhage on left fronto-parieto-temporo-occipital region of size 15cm x 10cm, dark red.
2. On skull Linear displaced fracture of sella turcica extending into left middle cranial fossa of length 4 cm, blood infiltration along margins.
3. In brain duramater-Intact.

Subdural haematoma over left temporo-parietal region weighing 100 cc dark red.

Diffuse Subarachnoid haemorrhage on whole of cerebral cortex, dark red.

Brain-Intact, soft.

No internal injury were seen in chest or abdomen.

Her uterus was intact measuring 22 x 8 x10 cm., on cut section a male fetus was seen in vertex position. Length of the fetus-33 cm, eyebrows present, nails reaching beyond tip, lanugo hairs present.

Her viscera, blood and nail clippings were preserved for chemical analysis.

16. The doctor has opined that the death was due to shock due to cranio-cerebral injury following hard and blunt impact (unnatural).

17. PW-5 Manoj Bharat Merdhekar is the person, who had initially noticed the foul smell emanating from the house of the Appellant. PW-5 has stated that he had peeped into the room of the Appellant on 21st May 2019 at about 5:00 p.m. and noticed blood on the floor. He could also sense a foul smell. This witness has deposed that he, along with his two friends, had noticed one female in decomposed condition and one male person by her side. Thereafter, he informed the matter to the police.

18. Shri. Dyaneshwar Dattatray Argade (PW-4) was entrusted with the investigation of the case. On completion of investigation, he had submitted charge-sheet (Exh.1). PW-4 has deposed as regards the usual steps taken by him during the investigation of the case which included recording of statements of the witnesses, collecting the postmortem report as well as FSL report. PW-4 has narrated his findings revealed after the investigation, according to which, the accused person had mercilessly beaten his wife and committed her murder. Thereafter, he also tried to commit suicide by inflicting cut injuries on both his wrists.

19. PW-6 Mithun Sahu is the brother of the deceased. He has deposed before the Court that deceased Suman got married to the accused on 21st June 2018, which was about a year before the incident. According to PW-6, there used to be frequent quarrels between the accused and the deceased. They had also come to know that the accused had a habit of drinking alcohol and under the influence of alcohol, he used to frequently quarrel with the deceased, which fact was informed to him and his mother by the deceased.

20. We have carefully examined the evidence on record in the light of the submission made at the Bar. From the medical evidence brought on record, there can be no element of doubt about the fact that the deceased had suffered a homicidal death which took place around 19th May 2019 in the confines of her home wherein, she was living with her husband. Evidence on record further go to show that save and except the Appellant and his deceased wife, there was no other person present in the house on the date of occurrence. Notwithstanding the same, the Appellant has failed to offer any explanation as to the circumstances under which the deceased had suffered fatal injuries leading to her death.

21. Be that as it may, from the evidence brought on record, more particularly, the testimonies of PWs-1, 3 and 4, it is clearly established that the deceased had died a homicidal death inside her house wherein the Appellant was present. The evidence on record also firmly establishes the fact that none other than the Appellant is responsible for causing the death of his wife. The only question, that would, therefore, arise for determination in this case is as to whether, this case would come under any of the exceptions laid down in Section 300 of the IPC.

22. From the evidence on record, it appears that after the death of his wife the Appellant had purchased blade and had made an attempt to commit suicide by cutting his veins on both the wrists, as a result of which, he had received six stitches on his left wrist and three stitches on his right wrist. The appellant was admitted in the hospital as an indoor patient for ten days for receiving treatment for his above injuries. From the above circumstances, it is clear that after the death of his wife, the Appellant had attempted to end his life by committing suicide. Therefore, the findings recorded by the learned Trial Court on such count, holding

the Appellant guilty of offence punishable under Section 309, in our opinion, do not warrant any interference by this Court.

23. Having observed above, we now propose to deal with the submission made by the Counsel for the Appellant that there was no intention on the part of the Appellant to cause death to his wife.

24. Medical evidence adduced by the prosecution suggest that death of the deceased was caused by a single fatal injury on head caused due to blunt impact. No weapon explaining the injury could be seized in this case. Therefore, it appears that the deceased, in all likelihood, had suffered the head injury due to banging of her head against the wall. It is possible that in a state of inebriation, the Appellant had pushed the deceased so hard that her head had hit the wall leading to the fatal injury.

25. From the evidence available on record, it is also established that the Appellant was in the habit of consuming alcohol on regular basis and on such count, there used to be frequent quarrel between him and his wife which fact was made known by the deceased to her brother and mother from time to time.

26. It is also evident from the medical evidence available on the record that the victim was pregnant at the time of her death and she was in the second trimester of her pregnancy, when the incident took place. The Appellant has allegedly disclosed before the SHO-PW 1 that on the day of the incident when he found that his wife had not taken medicine, he had slapped her. Later on, he found out that the deceased had died due to injuries sustained by her.

27. It also appears from the evidence on record that the death of the deceased, in all probability, took place on the 19th May 2019. However, the Appellant, who was the only person aware about the incident, did not make any attempt to flee or to conceal the dead body. Rather, the fact that he remained lying by the side of the dead body of his wife clearly goes to show that there was a deep sense of remorse on his part and the Appellant was in a highly emotive state of mind after the incident. The Appellant was in fact diagnosed with “adjustment disorder with depressed mood” and referred to the Department of Psychiatric, (LTMMC). These facts, indicate in no uncertain terms that there was no premeditation on the part of the Appellant to commit the murder of his wife but the

incident took place in a spur of the moment, when the Appellant, in a state of inebriation, due to the quarrel between the Appellant and his wife had assaulted her. The Appellant did not take undue advantage of the situation and did not act in a cruel manner.

28. The Appellant was aware that his wife was 33 weeks pregnant and there is nothing to show that he had any objection to the pregnancy of his wife. Rather, the evidence on record indicates that the Appellant was concerned about the well being of his wife. In such circumstances, it is difficult to presume that the Appellant had deliberately indulged in activities, which would not only harm his wife but also the fetus in the womb. In other words, from the circumstances of case, discernible from the evidence on record, we are of the opinion that death of the deceased was caused accidentally, without their being any pre-meditation or intent to cause death. If that be so, the present, in our considered opinion, is not a case of culpable homicide amounting to murder. Rather, we are of the view that this case would come within the fold of Exception-4 of Section 300 of the IPC, which is reproduced herein below:

“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.”

29. Having regard to the facts and circumstances of this case as well as the observations made hereinabove, we are of the unhesitant opinion that the evidence on record would at best justify the conviction of the appellant under Section 304 (Part-II) of the IPC and not under Section 302 of IPC.

30. Section 304 of the IPC, reads as follows:

“304. Punishment for culpable homicide not amounting to murder — Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

31. The learned counsel for the Appellant has not advanced any argument assailing the conviction of the Appellant under the other provisions of the Code, save and except under Section 302 of the IPC. We also do not find any cogent ground to interfere with the conviction of the Appellant under Sections 316, 309 and 498-A of the IPC.

32. For the reasons stated hereinabove, we set aside the conviction of the Appellant under Section 302 of the IPC and instead, convict him under Section 304 (Part-II) of the IPC. Accordingly, the sentence of life imprisonment imposed upon the Appellant by the learned trial Court for committing the offence under Section 302 also stands set aside. The Appellant is awarded the sentence of rigorous imprisonment for a period of 10 (ten) years. The period undergone by the Appellant in jail custody shall be set off against the jail sentence imposed upon him in this order. The rest of the conviction and sentences imposed upon the Appellant by the learned Court below to remain unaltered.

33. The Appeal stands partly allowed. In view of this, the Interim Application does not survive and is disposed of as infructuous.

34. Sent back the Record and Proceeding with paperbooks.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)