



Judgment

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

CRIMINAL APPEAL NO.27 OF 2019

Mitaram s/o Tohidas Vaidya,
aged about 52 years, occupation : labour,
r/o Bagheda, tahsil Amgaon,
district Gondia. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
through the Police Station Officer,
Police Station Amgaon, district:
Gondia. **Respondent.**

Shri H.P.Lingayat, Counsel for the Appellant.
Mrs.Shamsi Haider, Additional Public Prosecutor for the
Respondent/State.

CORAM : URMILA JOSHI-PHALKE & NANDESH S.DESHPANDE, JJ.

CLOSED ON : 01/12/2025

PRONOUNCED ON : 11/12/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellant (the accused) has challenged judgment and order dated 27.11.2018 passed by learned Sessions Judge, Gondia (learned Judge of the trial court) in Sessions Trial No.72/2016.

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2. By the said judgment impugned in this appeal, the accused is convicted for offence punishable under Section 302 of the IPC and sentenced to undergo rigorous imprisonment for life and pay fine Rs.2000/-, in default, to undergo further imprisonment for 2 months.

3. Brief facts of the prosecution case are as under:

(A) The accused is father of Anmol (the deceased). He was residing along with his wife Dayawantabai, the deceased, another son Shailesh, and daughter Sangita. On 24.8.2016, during the night, the deceased demanded Rs.500/- from the accused and the accused told him that he is not having that much amount. On the next day, i.e. 25.8.2016, again, the deceased demanded amount to his father. He has also demanded amount Rs.20/- from his mother for recharging the mobile phone. After obtaining the money for recharging the mobile phone, the deceased was sitting at “chhapri” of the house and the accused was

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also sitting there. The deceased asked Rs.500/- as he was intending to go to Nagpur. The accused asked the deceased for what he is in need of such amount and festivals of “Marbat” and “Pola” are coming and he is not having such amount. The accused also abused the deceased and there was a quarrel between them. Thereafter, the accused went inside the house and again came in “chhapri” along with an “axe” and gave a blow of the “axe” on the head of the deceased. Due to the blow, the deceased sustained head injury. The “axe” was stuck in the head of the deceased. The mother of the deceased shouted for help. By hearing her shouts, neighbour came there. Son Shailesh pushed the accused and took out the “axe” from the head of the deceased. Again, the accused has snatched the said “axe.” Dayawantabai approached Police Patil and narrated the incident. Subsequently, though the deceased was taken to hospital, he succumbed to the injury on 26.8.2016. On the

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basis of the said report, the police registered the crime against the accused.

(B) After registration of the crime, the investigating officer visited the spot of the incident and drawn spot panchanama. The incriminating article weapon “axe” used in the commission of the offence was seized from the spot itself. The accused was arrested. The blood stained clothes of the deceased and the accused were seized. Inquest panchanama was drawn. The incriminating articles were forwarded to the Chemical Analyzer and after completion of the investigation, chargesheet was submitted against the accused.

(C) After committal of the case to the Court of Sessions, learned Additional Sessions Judge, Gondia has framed charge against the accused vide Exh.6. The contents of the charge are read over and explained to the

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accused. The accused pleaded not guilty and claimed to be tried.

(D) In support of the prosecution case, the prosecution has examined in 15 witnesses, they are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Shivlal Sarate, Police Patil	40
2	Urmila Sarate, pancha on spot	17
3	Seema Damahe, pancha on seizure of clothes of the accused	2
4	Dayawantabai Vaidya, the mother of the deceased and eyewitness	24
5	Dr.Zeba Qureshi, Medical Officer	26
6	Dr.Mohd Ekbal, Medical Officer	28
7	Pralhad Shende, Police Naik	31
8	Ganeshram Lilhare, carrier	33
9	Lochan Bhandarkar, pancha on seizure of clothes of the deceased	36
10	Raju Chouhan, villager	39
11	Rajkumar Meshram, pancha on inquest panchanama	40
12	Fulanbai Meshram	44

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13	Shailesh Vaidya, brother of the deceased	44
14	Sachin Sandbhor, Investigating Officer	46
15	Dr.Lokchand Bajaj	54

(E) Besides the oral evidence, the prosecution placed reliance on documentary evidence report Exh.15, spot panchanama Exh.18, seizure memo Exh.19, clothes seizure memo Exh.20, seizure memo Exhs.21-23, postmortem report Exh.27, medical certificate Exh.29, the FIR Exh.32, seizure memo Exh.37, inquest panchanama Exh.41, CA Reports Exhs.47-48, and intimation to police Exh.55.

(F) On the basis of this oral as well as the documentary evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt.

(G) Learned Judge of the trial court appreciated the evidence and held that involvement of the accused is

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established by the prosecution and convicted the accused as the aforesaid.

(H) Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused.

4. Heard learned counsel Shri H.P.Lingayat for the accused and learned Additional Public Prosecutor Mrs.Shamsi Haider for the State.

5. Learned counsel for the accused submitted that though the prosecution has claimed that PW4 Dayawantabai Vaidya is eyewitness, in fact, she has not witnessed the alleged incident. Thus, there is no direct evidence as far as involvement of the accused in the alleged offence is concerned. He submitted that though the prosecution has taken assistance of circumstantial evidence, that blood stained clothes of the accused are seized, the said circumstance is not sufficient to connect the accused with

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the alleged offence. He submitted that there is no dispute that the death of the deceased is homicidal one. However, the prosecution has to establish beyond reasonable doubt that it was the accused who has committed murder of the deceased. Even accepting the allegation as it is, from the evidence on record it shows that PW4 Dayawantabai Vaidya and the accused were not on good terms and, therefore, possibility of implicating the accused falsely cannot be ruled out. He further submitted that the deceased was demanding the money from the accused and the accused denied to pay the money and, thereafter, also the deceased was insisting him to pay the amount. Once the accused has denied to pay the amount, then also on the next day, the deceased was asking money and, therefore, the accused lost his control and the said act is committed at his hands. He submitted that the evidence of villager PW10 Raju Chouhan and brother of the deceased PW13 Shailesh Vaidya shows

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that the deceased was addicted to bad vices and was arrogant by nature. He had quarrelsome nature and had quarrels with many persons in the village. Similarly, PW13 Shailesh Vaidya also admitted that the deceased was of quarrelsome nature and, therefore, possibility of provocation at the hands of the deceased cannot be ruled out and, therefore, the case of the accused would cover under Exception-I to Section 300 of the IPC i.e. “sudden and grave provocation”. In view of that, the offence committed by the accused would be “culpable homicide not amounting to murder” and, therefore, the appeal deserves to be allowed.

6. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that from the entire evidence on record, it nowhere reveals that there was any sudden provocation at the hands of the deceased and, therefore, the accused has lost his control and gave blow on the person of the

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deceased. On the contrary, the evidence shows that after the quarrel, the accused went inside and, thereafter, the alleged incident has taken place. So, there was a gap between two incidents and, therefore, Exception-I to Section 300 of the IPC of “sudden and grave provocation” will not come into play. On the contrary, considering the nature of injury, which is on vital part of the body of the deceased, force used by the accused, which can be ascertained from the circumstances that the “axe” was found stuck in the head of the deceased, sufficiently shows his intention and knowledge as to the offence and for above these grounds, the appeal being devoid of merits is liable to be dismissed.

7. After hearing both the sides and after going through the entire record with the help of learned counsel for respective parties, it is to be seen, whether the death of the deceased is “homicidal” one.

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8. To establish the fact that the death of the deceased is “homicidal” one, the prosecution placed reliance on the evidence of PW6 Dr.Mohd Ekbal, which shows that on 25.8.2016, when he was serving as CMO, the deceased was brought to the hospital. He examined him and found incised wound over his head frontal region right side of size 10 cm x 4 cm, penetrating in skull with brain matter draining out. The injury was fresh. It might have been caused by sharp and heavy object. He referred the said patient for treatment to Super Specialty Hospital at Nagpur. Accordingly, he issued certificate Exh.29. His evidence shows that the patient was unfit for giving any statement. Despite his cross examination, nothing is brought on record to show that there is any other reason for causing the said injuries.

9. Another medical practitioner PW15 Dr.Lokchand Bajaj is examined vide Exh.54. As per his evidence, on

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25.8.2016, the deceased was admitted in his hospital with history of assault. He intimated the said fact to the Ram Nagar Police Station. The said intimation is at Exh.55. He also deposed that the deceased was unable to give statement. His cross examination shows that the history was disclosed by mother of the deceased PW4 Dayawantabai Vaidya.

10. PW5 Dr.Zeba Qureshi, is the another medical officer who has conducted the postmortem. She deposed vide Exh.26 that on 26.8.2016 the Ram Nagar Police referred the dead body of the deceased for postmortem. On examination, she found following injuries on her person:

“Deep incised wounds with fracture of right temporal bone with expulsion of brain tissue of size 8 x 3 cm.”

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She opined that the deceased died due to hemorrhagic shock due to head injury. Accordingly, she prepared postmortem notes Exh.27.

Her cross examination shows that such injuries are not possible due to fall on sharp object. Thus, suggestion that such injuries are possible by fall on sharp object, is denied by this witness.

11. The evidence of PW6 Dr.Mohd Ekbal further shows that on 31.8.2018, the investigating officer has referred him the “axe” with wooden handle and he opined that the injures sustained by the deceased are possible by the said weapon. Again, that weapon was sealed and handed over to the investigating officer and query report is at Exh.30.

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12. To establish the fact of “homicidal” death, the prosecution further placed reliance on the evidence of PW11 Rajkumar Meshram, who acted as pancha on inquest panchanama. His evidence shows that he was called as police to act as pancha. He was taken to Mortuary wherein the dead body of the deceased was lying. The deceased has sustained the head injury. Accordingly, inquest panchanama was drawn, which is at Exh.41. His cross examination shows that panchanama was not read over to him.

13. Thus, considering the material evidence of Medical Officers PW5 Dr.Zeba Qureshi and PW6 Dr.Mohd Ekbal, it shows that the death of the deceased is due to head injury, which is caused due to the blow of “axe” on his head.

Though these witnesses are cross examined, the evidence adduced by the prosecution is not shattered during the cross examination, which sufficiently shows that the

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death of the deceased is caused due to the injury sustained by him and, therefore, we have no hesitation to hold that the death of the deceased is “homicidal” one.

14. Whether the accused is perpetrator of the crime as far as the assault on the deceased is concerned. To establish the death of the deceased at the hands of the accused, the prosecution has adduced the evidence of PW1 Shivlal Sarate, who is Police Patil of the village. His evidence shows that on 25.8.2016, at about 8:30 am, PW4 Dayawantabai Vaidya approached him and disclosed that the accused had committed the murder of her son. He immediately went to her house. The deceased was lying in a pool of blood. He immediately sent a message for an ambulance and also intimated the police. The deceased was sent through the ambulance for treatment and he lodged the report Exh.15.

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His cross examination shows that there were houses adjacent to the house of the accused. As far as the evidence, regarding disclosure by PW4 Dayawantabai Vaidya, is concerned, it is not shattered during the cross examination.

Recital of the FIR lodged by him also discloses the same that as PW4 Dayawantabai Vaidya approached him and disclosed that her son was assaulted by the accused, he immediately rushed to the spot and, thereafter, intimated the police.

15. As per the prosecution, PW4 Dayawantabai Vaidya is material witness, who is mother of the deceased. She testified that on 25.8.2016, the incident occurred. Prior to that, in the night of 24.8.2016, the deceased demanded Rs.500/- from his father. The father denied to pay the amount on the pretext that he is not having that much

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amount. In the next morning, again, the deceased was demanding Rs.500 when they were sitting in “chhapri”. At that time, the deceased was telling that the amount earned by him is to be given to him. She assured the deceased to pay the amount. Initially, she paid Rs.20/- to recharge the mobile phone. When she paid the amount, the deceased was recharging his mobile balance. At the relevant time villager PW10 Raju Chouhan was asking for a needle and she asked him to wait and she went inside the house. At that time, the accused was possessing an “axe”. She enquired the accused where he is going. He replied that he is going to the land and the accused assaulted the deceased by the “axe”. She immediately rushed near the deceased. Her another son PW13 Shailesh Vaidya also ran towards the deceased. They made an attempt to remove the “axe” from the head of the deceased, but the accused was not allowing them to do so. The deceased has sustained bleeding

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injuries. She wrapped the clothes around his head and informed the police patil. Thereafter, the accused has also attempted to assault her. The deceased was taken to the hospital, but he died during the treatment in the hospital of Dr.Bajaj. Her cross examination shows that omission brought on record, that the deceased was asking the amount earned by him, is not stated by her before the investigating officer. She has also not stated that the “axe” was removed by PW13 Shailesh Vaidya. As far as the incident is concerned, there is absolutely no cross examination. Even, the accused has given a blow on the head of the deceased itself is not denied during the cross examination.

16. The other two material witnesses examined by the prosecution are, villager PW10 Raju Chouhan and PW13 Shailesh Vaidya.

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Villager PW10 Raju Chouhan has not supported the prosecution case as far as the incident is concerned. His evidence is only to the extent that at the time of the incident, he had gone towards the accused being he is relative. There used to be quarrels between the accused and the deceased. He has witnessed the deceased falling down. The accused had gone in his field and the deceased has received injuries. He specifically stated that he is not aware as to what happened on the day of the incident, but his cross examination shows that the deceased was arrogant by nature. He had quarrels with so many persons in the village. It further shows that there was dispute between the accused and wife PW4 Dayawantabai Vaidya.

The evidence of PW13 Shailesh Vaidya shows that he reached the spot when the deceased was lying and he has sustained bleeding head injury. As far as the incident is concerned, he stated that he is not aware how the said

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incident has occurred. His cross examination also shows that the deceased was of quarrelsome nature and his mother PW4 Dayawantabai Vaidya is not having good terms with the accused.

17. Besides the oral evidence of these witnesses, the prosecution also placed reliance on circumstantial evidence. PW2 Urmila Sarate is examined to prove the spot panchanama as well as the seizure panchanama. Her evidence shows that on 25.8.2016, at the spot, the “axe” and clothes were lying. The police have obtained the soil mixed with blood and the simple soil and accordingly, drawn spot panchanama Exh.18. The “axe” was lying in the courtyard. The police seized it and seizure panchanama was drawn Exh.19. Another seizure panchanama was drawn regarding the clothes which are seized from the spot Exh.20 and seizure memo of the “axe” is at Exh.21. Her cross examination shows that the spot panchanama was prepared

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between 2:00 and 4:00 pm. The “axe” was in the house of the accused as he was farmer. She specifically admitted that all panchanamas were prepared at the police station. Recital of the panchanama reveals that the alleged spot of the incident is in front of the house of the accused. Exh.19 is seizure memo of seizure of simple soil and the blood stained soil. Exh.20 is the seizure of the clothes found at the spot of the incident having blood stains on it. Exh.21 is seizure memo of the “axe” found on the spot itself.

18. The evidence of PW3 Seema Damahe, pancha on seizure of clothes of the accused, shows that in her presence, the police seized the clothes of the accused i.e. “baniyan” and “full-pant” and the said panchanama is at Exh.23. During the cross examination, she admitted that those clothes were of the accused, but she denied the suggestion that the clothes were not seized in her presence. Exh.23 is the seizure of the clothes of the accused, which

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are sky-blue colour “baniyan” having red stains on it and one cement colour “full-pant”.

19. PW7 Pralhad Shende, is the police naik, who has recorded the FIR of PW1 Shivilal Sarate, which is at Exh.15. His evidence is formal in nature. The FIR is at Exh.32.

20. PW8 Ganeshram Lilhare, is another police naik, who carried the muddemal to the C.A.Office. His evidence shows that on 3.9.2016 he has deposited the said muddemal with CA Office, which were two sealed cotton parcels and 8 packets. Additionally, he deposited 3 cotton parcels. The challan is at Exh.34 and duty certificate is at Exh.35.

21. PW9 Lochan Bhandarkar, is another pancha in whose presence the clothes of the deceased were seized by drawing panchanama Exh.37.

22. PW12 Fulanbai Meshram, has not supported the prosecution case and she specifically stated that she has not

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seen any incident and she is not aware how the deceased died.

23. Investigating Officer PW14 Sachin Sandbhor, examined vide Exh.46, narrated about the investigation carried out by him. His evidence shows that during the investigation, he prepared the spot panchanama, seized samples of the soil, clothes, and “axe” from the spot. The accused was arrested. His clothes were seized. As the deceased was reported to be dead, his dead body was referred for postmortem examination. He has forwarded the seized muddemal to the Chemical Analyzer and after completion of the investigation, he submitted the chargesheet against the accused. Though he is cross examined, except denial, nothing is brought on record.

24. C.A.Reports Exhs.47 to 49 are on record. Exh.47 shows that Blood Group of the deceased is “A”. Whereas,

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Exh.48 shows that the blood is detected on soil with blood, cloth pieces were found at the spot, the “axe” was found at the spot. Half “baniyan” and “full-pant” of the accused and Articles-8-11 clothes of the deceased, and articles soil, cloth of pieces were found at the spot. The “axe” seized, “full-pant” and clothes of the deceased are stained with Blood Group “A”.

25. Thus, the entire case of the prosecution is based on the sole eyewitness PW4 Dayawantabai Vaidya. Her evidence shows that the deceased was demanding money from the accused since 24.8.2016 and the accused was not ready to pay the amount. Her evidence shows that on the night of 24.8.2016, the deceased demanded amount Rs.500/- and the accused told him that he is not having that much amount. In the next morning, again, the deceased was demanding Rs.500/- and was asking the accused that

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the amount earned by him be given to him to proceed to Nagpur.

26. Thus, it is apparent from the evidence that the deceased was insisting for the money and the accused was not ready to pay the amount. During that altercation, the accused went inside and came with “axe” in his hands and gave blow on the head of the deceased. As far as this evidence is concerned, it is not shattered during the cross examination. Though an attempt was made to show that the evidence of PW4 Dayawantabai Vaidya, as to demand of money, is an omission, but, in fact, it is not an omission and that omission is also not put to the investigating officer and, therefore, the said omission is not proved by the defence. Unfortunately, the entire evidence recorded by the prosecution is in a very cryptic manner. Similarly, there is no cross examination on the incident itself. Despite the omissions are pointed out by the defence, the same are not

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proved by the defence and, therefore, the submission of learned defence counsel, that the evidence is suffering from improvements, is not acceptable. If this evidence is appreciated, in the light of the fact that PW10 Raju Chouhan, who is relative of the deceased, was present at the time of the incident and PW13 Shailesh Vaidya, who is brother of the deceased, shows that the deceased was of quarrelsome nature. The said evidence also shows that PW4 Dayawantabai Vaidya, who is mother of PW13 and the deceased, was not having good relation with the accused.

27. On the basis of the said evidence brought during the cross examination, learned defence counsel submitted that even accepting the evidence as it is, admittedly, there was no intention of the accused to commit the murder of the deceased. As the deceased was insisting to pay the money and the accused was denying the same on the pretext that festival of "Pola" is there and, therefore, money

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would be required for the said festival, it is apparent that due to provocation at the hands of the deceased, the accused lost self-control and gave blow of “axe” on his head. There was no intention on the part of the accused to commit the offence and, therefore, the act of the accused would cover under Section 304 Part-II of the IPC.

28. This submission is to be appreciated in the light of the evidence, which is adduced by the prosecution during the trial. Admittedly, except PW4 Dayawantabai Vaidya, there is no eyewitness to the said incident. The evidence of PW4 Dayawantabai Vaidya, discussed earlier, shows that since earlier night there was a demand from the deceased for amount of Rs.500/- and the accused was continuously refusing the same. Her evidence further shows that when PW10 Raju Chouhan had been to her house, she was searching a needle to give it to him. At the relevant time, the accused came out of the house along with the “axe” in

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his hands and gave a blow of the “axe” on the head of the deceased. Though she has made an attempt to resist the accused, the accused was not listening to anybody and the “axe” was stuck in the head of the deceased.

This fact is further corroborated by the evidence of PW1 Shivilal Sarate, who is Police Patil of the village. As per his evidence, PW4 Dayawantabai Vaidya came towards him and disclosed that the accused has murdered the deceased. Thereafter, he informed the police and also visited the spot of the incident.

The evidence of PW2 Urmila Sarate shows that at the spot of the incident, while drawing panchanama, the police seized soil mixed with blood and also seized simple soil. The blood stained “axe” was also seized from the spot of the incident. The blood stained clothes of the deceased as well as the accused are also seized from the spot of the

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incident. The evidence of Medical Officer PW6 Dr.Mohd Ekbal also shows that the deceased was initially examined by him and he witnessed incised wound over his head frontal region right side of size 10 cm x 4 cm, penetrating in skull with brain matter draining out, and the injury was fresh. It was by sharp and heavy object. It was grievous in nature. He has also received query from the investigating officer along with weapon and he has opined that the said injury is possible by the said weapon. The death of the deceased is due to hemorrhagic shock due to head injury.

29. The evidence of the prosecution witnesses is further substantiated by CA Report Exh.48, which shows that Exh.2 soil seized from the spot of the incident; Exh.3 cloth piece seized from the spot of the incident, Exh.4 cloth piece seized from the spot of the incident; Exh.5 the “axe” seized from the spot of the incident, Exh.6 half baniyan of the accused; Exh.7 full-pant of the accused; and Exhs.8-11

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clothes of the deceased are stained with blood. Except Exh.2, the blood group of all articles is determined as “A”. The blood group of the deceased is also “A”.

30. Thus, not only the evidence of PW4 Dayawantabai Vaidya, but also the circumstantial evidence also points out that it was the accused who has given the blow on the head of the deceased and the deceased has sustained the injuries. In the said circumstance, it has to be seen, whether the submission of learned counsel for the accused, that the case covers under Section 304 Part-II of the IPC is acceptable or not.

31. The “culpable homicide” is defined under Section 299 of the IPC and it is genus. Whereas, the “murder” defined under Section 300 of the IPC and it is specie. Under Section 299 of the IPC, whoever causes death with an intention or knowledge specified in that section, commits

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offence of “culpable homicide”. However, since “culpable homicide” is only genus, it includes two forms; one is a graver offence which amounts to ‘murder’ and lesser one which does not amount to ‘murder’. It can be seen that, therefore, though the offence of “culpable homicide” is defined, the said provision does not provide any punishment for that offence as such and, for the purpose of punishment, the court has to examine facts and find out whether the offence falls or does not fall under the definition of murder under Section 300 of the IPC. In view of this scheme, therefore, every act of homicide falls within the definition of “culpable homicide” under Section 299 of the IPC.

Section 300 of the IPC on the one hand mentions that a “homicide” is “murder”. However, in that section five exceptions have been given and these exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the

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intention or knowledge specified in Section 300 of the IPC. Therefore, it has to be seen; (1) what was the intention or knowledge with which the act was done and what are circumstances in which it was done, (2) if it is established that the offence is “culpable homicide”, but it does not fall within the definition of murder and if it falls under any of exceptions to that section, the offence is punishable under Section 304 of the IPC. Once, it is held that the offence falls under Section 304 of the IPC, the punishment differs, depending upon whether the death is caused with an intention or only with the knowledge and, therefore, if the element of intention exists, the offence is punishable under Part-I of Section 304 of the IPC, otherwise, the offence falls under Part-II of Section 304 of the IPC.

32. Learned counsel for the accused vehemently submitted that the case would fall under Exception-I to

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Section 300 of the IPC, which is reproduced hereunder for reference:

“300. Murder.

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) - If it is done with the intention

(Thidly) - If it is done with the intention of causing bodily injury

(Fourthly) - If the person committing the act knows

Illustrations. (a) A shoots Z with the intention of killing

(b) A, knowing that Z is labouring under such a disease

(c) A intentionally gives Z a sword-cut or club-wound

(d) A without any excuse fires a loaded cannon into a crowd

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Exception 1. -- *When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—*

(First) - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly) - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly) – That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact”.

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33. The Hon'ble Apex Court right from **K.M. Nanavati vs. State of Maharashtra, reported in AIR 1962 SC 605** onwards held that, "provocation itself is not enough to reduce the crime from murder to culpable homicide not amounting to murder. In order to convert a case of murder to a case of culpable homicide not amounting to murder, provocation must be such that would temporarily deprive the power of self-control of a "reasonable person". What has also to be seen is the time gap between this alleged provocation and the act of homicide; the kind of weapon used; the number of blows, etc. These are again all questions of facts. There is no standard or test as to what reasonableness should be in these circumstances as this would again be a question of fact to be determined by a Court".

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34. In order to bring the case within Exception-1 to Section 300 of the IPC, following conditions must be complied with:

“(i) The deceased must have given provocation to the accused;

(ii) The provocation must be grave;

(iii) The provocation must be sudden;

(iv) The offender, by reason of the sudden provocation, shall have been deprived of his power of self-control;

(v) He should have killed the deceased during the continuance of the deprivation of the power of self-control; and

(vi) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.”

35. To attract Exception-1 to Section 300 of the IPC, accused must establish that there was a provocation which was both grave and sudden; such provocation had deprived the accused of his power of self-control; and whilst the accused was so deprived of his power of self-control, he had caused the death of the victim.

36. The Hon'ble Apex Court in the case of **Vijay vs. State, represented by the Inspector of Police, MANU/SC/0085/2025** held in paragraph Nos.24, 25, and 26 as under:

“24. In order to bring his case under Exception 1 to Section 300 IPC the following ingredients:

(i) The provocation was sudden; (ii) the provocation was grave; and (iii) loss of self-

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control. These three ingredients may be considered one by one:

(i) Whether the provocation was sudden or not does not present much difficulty. The word 'sudden' involves two elements. First, the provocation must be unexpected. If an accused plans in advance to receive a provocation in order to justify the subsequent homicide, the provocation cannot be said to be sudden. Secondly, the interval between the provocation and the homicide should be brief. If the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation. If the man is killed six hours after the provocation, it is not a case of sudden provocation.

(ii) the main difficulty lies in deciding whether a certain provocation was grave or not. A bare statement by the accused that he regarded the provocation as grave will not be accepted by the court. The court has to apply

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an objective test for deciding whether the provocation was grave or not. A good test for deciding whether a certain provocation was grave or not is this: "Is a reasonable man likely to lose self-control as a result of such provocation?" If the answer is in the affirmative, the provocation will be classed as grave. If the answer is in the negative, the provocation is not grave. In this context, the expression 'reasonable man' means a normal or an average person. A reasonable man is not the ideal man or the perfect being. A normal man sometimes loses temper. There is, therefore no inconsistency in saying that, a reasonable man may lose self-control as a result of grave provocation. A reasonable or normal or average man is a legal fiction. The reasonable man will vary from society to society. A Judge should not impose his personal standards in this matter. By training, a Judge is a patient man. But the reasonable man or the normal man need not have the same standard of behaviour as the judge

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himself. The reasonable man under consideration is a member of the society, in which the accused was living. So, education and social conditions of the accused are relevant factors. An ordinary exchange of abuse is a matter of common occurrence. A reasonable man does not lose self-control merely on account of an ordinary exchange of abuses. So, courts do not treat an ordinary exchange of abuses as a basis for grave provocation. On the other hand, in most societies, adultery is looked upon as a very serious matter. So, courts are prepared to treat adultery as a basis for grave provocation.

(iii) the question of loss of self-control comes up indirectly in deciding whether a particular provocation was grave or not. So, if it is proved that the accused did receive grave and sudden provocation, the court is generally prepared to assume that homicide was committed while the accused was

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deprived of the power of self-control. In some cases, it may be possible for the prosecution to prove that the accused committed the murder with a cool head in spite of grave provocation. But such cases will be rare. So, when the accused has established grave and sudden provocation, the court will generally hold that he has discharged the burden that lay upon him under Exception 1 to Section 300 IPC”.

25. What should be the approach of the court? The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The Court has to consider whether a reasonable person placed in the same position as accused would have behaved in the manner in which the accused behaved on receiving the same provocation. If it appears that the action of the accused was out of all proportion to the gravity or magnitude of the provocation offered, the

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case will not fall under the exception. The case can only fall under the exception when the court is able to hold that provided the alleged provocation is given, every normal person would behave or act in the same way as the accused in the circumstances in which the accused was placed, acted.

26. In the words of Viscount Simon: "The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negatived. Consequently, where the provocation inspires and actual intention to kill, or to inflict grievous bodily harm the doctrine that provocation may reduce murder to manslaughter seldom applies".

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37. In view of Section 105 of the IPC, burden of proof castes on accused. Being an exception, burden of proving the circumstances covered by Exception-1 is on the accused. Where the prosecution prima facie proves that the act was committed by the accused which had resulted in the death of the deceased and the accused pleads that the case falls within one of the exceptions, it is for him to prove that. It is for accused who seeks to reduce the nature of his crime by bringing his case under Exception-1, to prove that the provocation received by him was such as might reasonably be deemed sufficient to deprive him of self- control, and that the act of killing took place whilst that absence of control was in existence and may fairly be attributed to it.

38. Thus, to bring the case within the ambit of “culpable homicide not amounting to murder”, it could have invoked on the basis of evidence.

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39. As far as the present case is concerned, admittedly, there is nothing on record to show that what actually happened between the deceased and the accused, which provoked the accused and he lost his self-control and he was deprived of power of self-control and caused death of the deceased who gave the said provocation.

40. Thus, in absence of evidence, that what actually provoked the accused to lose his self-control, itself is absent in the present case and, therefore, the contention of learned counsel for the accused that the case would cover under Exception-1 to Section 300 of the IPC, “sudden and grave provocation”, is not acceptable.

41. Whether the offence is “culpable homicide” or “murder”, the Hon’ble Apex Court in the case of **Ajmal vs. State of Kerala**, reported in (2022)9 SCC 766 has held that, “the academic distinction between "murder" and "culpable

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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”.

It has been further held that, “the court should proceed to decide the pivotal question of intention with care and caution so that will decide whether the case falls under Section 302 or under Section 304 Part-I or Part-II of the Indian Penal Code. 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

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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 of the Indian Penal Code”.

The Hon’ble Apex Court further held that “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

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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 circumstance 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”.

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42. By applying these principles to the facts of the present case in hand, if the evidence in the present case is assessed, the weapon used was an “axe”. The description of the weapon and the injuries sustained by the deceased, described by the medical officer, show that the deceased has sustained, “*incised wound over his head frontal region right side of size 10 cm x 4 cm, penetrating in skull with brain matter draining out caused by sharp and heavy object*”, which sufficiently show the force used by the accused. The injury is on vital part of the body of the deceased. The injury was inflicted with such a force, which shows intention of the accused. While giving the said blow, no remorse is shown to the deceased. It was certainly an act, which can be termed as, “*act with an intention.*”

43. Thus, there is no cause made out for application of Exception-I to Section 300 of the IPC.

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44. A sympathy to the father in such a scenario would be miscarriage of justice.

45. The deceased and the accused are son and father. Though the accused accepted that he got annoyed, there is nothing on record to show that as something happened, he lost his self-control and gave a blow of “axe” to the deceased. However, circumstances on record show that the blow was so forceful, from which no other inference, but intention of the accused can be gathered.

46. Thus, for all above reasons, we do not find any merits in the submissions canvassed by learned counsel for the accused. Though the evidence of the prosecution witnesses is cryptic, it is consistent and sufficient to hold the accused guilty for the offence punishable under Section 302 of the IPC. Learned Judge of the trial court has rightly appreciated the same and, therefore, we find no merits in

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the appeal and, therefore, the appeal deserves to be dismissed. Hence, we proceed to pass following order:

ORDER

(1) The Criminal Appeal is **dismissed**.

(2) The accused, who is on bail, shall surrender before the Superintendent of the District Prison at Gondia on 16.12.2025.

(3) The bail bonds of the accused stand cancelled.

(4) The Superintendent of the District Prison at Gondia shall submit compliance report before the District and Sessions Judge at Gondia.

(5) If the accused fails to surrender before the Superintendent of the District Prison at Gondia on 16.12.2025, the District and Sessions Judge at Gondia shall issue conviction warrant against the accused.

Judgment

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(6) The R&P be sent back to the trial court.

Appeal stands **disposed of**.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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