



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 209/2019.

Krishna s/o Sahadeo Vaidya,
Aged about 38 years, Occupation -
Agriculturist, resident of Adasa,
Tahsil Mauda, District Nagpur. ... **APPELLANT.**

VERSUS

State of Maharashtra,
through the Officer In Charge
Police Station, Aroli,
District Nagpur. ... **RESPONDENT.**

Mr. M.N. Ali and Ms S. Chavan, Advocates for the Appellant.
Mr. G. Umale, A.P.P. for the Respondent.

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.

DATE : FEBRUARY 03, 2025.

ORAL JUDGMENT (Per Nitin B. Suryawanshi, J.) :

1. This appeal challenges the judgment and order of

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conviction passed by learned Additional Sessions Judge, Nagpur in Sessions Trial No.12/2014 dated 17.01.2017, thereby convicting the appellant under Section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- with default clause.

2. Facts of the prosecution case in nutshell are as follows – Sanjay Kharabe (P.W.1) son of the deceased lodged first information report alleging that on 12.09.2013, when he was at Bhandara, his cousin informed him on telephone that accused has committed murder of his father on account of distribution of water from canal. He therefore, returned to the village at 12 p.m. thereafter Vinod Waghmare told him that at about 11 a.m. when the deceased was turning water of canal towards his field by spade, accused Krishna Sahadeo Vaidya, who was carrying an axe with him, asked the deceased as to why he is turning water towards his field and not letting water flow towards his field and quarreled with him. Vinod tried to pacify the matter, but, accused no.2 Gaurishankar Krishna Vaidya also came there and when the deceased was turning water towards his

field, accused no.1 gave blows of axe on face and head of the deceased. At that time accused no.2 was giving instigation to accused no.1. Deceased sustained bleeding injuries and fell down in the canal. Thereafter due to fear Vinod Waghmare (P.W.3) and Surendra Mehar (P.W.4) ran away from the spot. On the basis of the report Crime No.34/2013 was registered by Aroli Police Station under Section 302 read with Section 34 of the Indian Penal Code. On completion of investigation, charge sheet was filed and both accused were charged under Section 302 read with Section 34 of the Indian Penal Code. In support of its case, prosecution has examined 12 witnesses. The defence of accused was of total denial and of false implication. The trial Court has acquitted accused no.2 and convicted the appellant. Hence this appeal.

3. Heard learned Counsel appearing for the appellant, learned A.P.P. for the respondent State and perused record.

4. Learned Counsel appearing for the appellant submitted that the trial Court has erred in convicting the appellant by relying on

the evidence of eye witnesses i.e. P.W.3 Vinod and P.W.4 Surendra, since they have not disclosed the incident to anybody in the village, hence their conduct is unnatural and it is doubtful whether they have really witnessed the incident, therefore, they should be disbelieved. According to him, prosecution has failed to prove the charge of murder beyond reasonable doubt.

In the alternative, he further submits that even if prosecution case is accepted as it is, the conviction cannot be beyond Section 304 Part I or II of the Indian Penal Code. In support of this submission, learned Counsel for the appellant has relied on following decisions.

- (1) Criminal Appeal No.473/2014 decided on 10.08.2016 (Nagpur Bench) – Pappu @ Deoman Rambhau Borate .vrs. The State of Maharashtra.
- (2) 1998 All MR (Cri) 1158 – Mirchu Gumanmal Damnani .vrs. State of Maharashtra.
- (3) 2018 All M.R. (Cri) 1372 (SC) – Atul Thakur .vrs. State of Himachal Pradesh.
- (4) Criminal Appeal No.3598/2023 (Supreme Court) decided on 24.11.2023 – Mariappan .vrs. State Rep. By Inspector of Police.

5. Per contra, learned A.P.P. supported the judgment of trial Court by relying on following decisions.

- (1) [2002] 3 SCC 341 – Virender .vrs. State (NC) of Delhi.
- (2) [2001] 3 SCC 439 – Ramashraya and another .vrs. State of M.P.
- (3) [2000] 4 SCC 198 – Rajender Singh and another .vrs. State of Bihar.

He submits that taking into consideration number of injuries inflicted on the deceased by appellant, and the fact that appellant had come their with an axe, the action of accused was premeditated and therefore, trial Court is justified in convicting the appellant/accused under Section 302 of the Indian Penal Code.

6. We have carefully scrutinized the evidence on record. Homicidal death of deceased is proved by prosecution by examining P.W.5- Dr. Pravin Salame, who has proved postmortem report (Exh.41). Cause of death is mentioned as “asphyxia with head injury, multiple fractures with cut throat injury”. The defence has not seriously disputed the homicidal death.

7. P.W.3 Vinod and P.W. 4 Surendra are eye witnesses of the assault. They have deposed that there was a quarrel between deceased and appellant, as deceased was not letting anybody else to take water and he was diverting water only to his field. When asked by the appellant as to why he is not allowing water to come to their field, deceased told that first he will water his entire field and then only water can be taken by other agriculturists. Being enraged with the same, the appellant started assaulting him, due to which 8 injuries were caused to the deceased and he fell on the spot. Their evidence is not shattered in cross-examination and they have supported the prosecution case. There is no merit in the submissions of learned Counsel for the appellant that their evidence is not liable and should not be believed.

8. Blood stained axe is seized at the instance of appellant, he has gone to the police station along with the axe immediately after the incident. Seizure of axe is proved by P.W.8 Yogeshwar Thote, Investigating Officer and P.W.9 Nandkishor Mehar. Recovery of

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weapon used in the crime at the instance of appellant further corroborates prosecution case. Thus, prosecution has clearly established that appellant is the author of injuries sustained by the deceased. Now the question which remains to be considered is – Whether the appellant is liable to be punished under Section 302 or his case falls within Exception I of Section 304 of the Indian Penal Code.

9. It has come in the evidence of P.W.3 Vinod and P.W.4 Surendra that since deceased Baburao had turned entire water of canal to his field since last 4 days, appellant requested him to give some water for his field. On that deceased Baburao said that unless his entire field is provided with sufficient water, he will not give water to anybody. Therefore, quarrel took place between Baburao and accused and all of a sudden appellant gave blow of axe on the head of Baburao. Baburao fell down in the canal, appellant had given 7-8 blows to him by axe. It is therefore clear that because of quarrel and grave and sudden provocation given by the deceased, appellant lost his control and at a spur of moment he has assaulted the deceased with axe and

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inflicted 7-8 blows on deceased.

It is argued by the learned A.P.P. that appellant was carrying axe when he arrived at the spot of incident, it is sufficient to show that he had arrived there with an intention to kill the deceased. The said argument is liable to be rejected in view of the admission given by P.W.3 – Vinod, an eye witness to the incident that axe (Article 14) and Spade (Article 8) are generally found in the house of agriculturists. It is a matter of common knowledge that axe and spade are instruments used in agricultural operations and every agriculturist possess these instruments. Therefore, merely because appellant arrived at the spot with an axe, no intention to commit offence can be attributed to him, particularly in view of the quarrel which preceded the incident of assault.

10. In Criminal Appeal No.473/2014 [supra], this Court (Nagpur Bench) has in paragraph no.12 held as under :

“12. Once a person loses his self control due to sudden provocation resulting into the assault, especially when a rustic person, then in such a situation measured retaliation cannot be expected.

Therefore, the injuries appearing on the deceased, in our view, cannot be a criterion.”

11. In Atul Thakur [supra], it was observed that :

“11. Taking into account the events as unfolded, it leaves no manner of doubt that the appellant had no intention to cause the death of Hitesh Thakur. The incident happened without any premeditation in a sudden fight between Hitesh Thakur and the appellant and in heat of passion the appellant inflicted six knife blows on Hitesh Thakur. On the contrary, after realising his mistake, he immediately offered water to Hitesh Thakur and also took him to hospital and stayed there till his last rites were performed. PW-2 father of deceased Hitesh Thakur also corroborates the position that the appellant had contacted him to inform that Hitesh had been brought to the hospital in serious condition.

12. Taking overall view of the matter, the facts of the present case warrant invocation of Exception 4 to Section 300 of IPC. For, it is a case of culpable homicide not amounting to murder inasmuch as the incident happened on account of sudden fight between the friends who had gathered for a drink party arranged at the behest of Hitesh Thakur. There was no pre-mediation and the act done by the appellant was in the heat of passion without the appellant taking any undue advantage or acted in a cruel manner. The number of wounds caused by the appellant, it is a well established position, by itself

cannot be a decisive factor. The High Court committed manifest error in being influenced by the said fact. What is relevant is that the occurrence was sudden and not premeditated and the offender acted in the heat of passion. The evidence supports the case of the appellant in this behalf. The fact that the appellant used weapon such as knife, is also not a decisive factor to attract Section 302 of IPC. Neither the use of a knife in the commission of offence nor the factum of multiple injuries given by the appellant would deny the appellant of the benefit of Exception 4.

12. In Mirchu Damnani [supra], this Court (Bombay) has held as under :

“6. But one should look the offence in all its perspective. Though the court below has rejected the defence taken by the accused, it has failed to notice an important aspect of this case. It is established that the deceased was notoriously using filthy language to those persons who tried to persuade him to stop shouting and told him to go away. When the accused also told the deceased the same way as others did and persuaded the deceased to stop shouting and go away from that place, the deceased has used filthy language involving his mother and sister. Naturally the abusive words involving one’s mother and sister will definitely provoke a human being, though impact of the provocation and the intensity of the emotions

developed in a particular individual may vary on such provocation from person to person. Overt act or reaction of such person who hears such vulgar outburst may not be uniform. However, it definitely will make the person suddenly provoked. All the witnesses in this case are unanimous on the fact that the deceased was using filthy language and abusive words on the mother and sister of the accused. These abusive words must have created a sudden and immediate provocation in the accused to commit the offence. Therefore, on the facts and circumstances of this case it is clear that the appellant is entitled to the protection of Exception 1 of Sec.300 of I.P.C. which reads as follows :

“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 a person who gave the provocation or causes the death of any other person by mistake or accident.”

7. The limitations put to this exception clause I of Section 300 has no relevance as far as commission of the offence in this case is concerned. None of the provisos to Exception I is happened in this case. Therefore, the abusive words used by the deceased will be sufficient to deprive of the power of self control of the accused by grave and sudden provocation. Therefore, the matter has squarely come under Exception Clause I of Section 300 I.P.C.”

13. Aforesaid observations are squarely application to the facts of present case and it is clear that due to grave and sudden provocation given by the deceased, at a spur of moment appellant assaulted the deceased. Therefore, knowledge can be attributed to the appellant that, assaulting deceased with an axe is likely to cause his death, but, it was done in a fit of anger and at a spur of moment, without any premeditation hence, appellant is liable to be convicted under Section 304 Part-I of the Indian Penal Code.

14. In Virender [supra], relied upon by learned A.P.P. no facts are discussed. What appears from the said decision is that appellant had inflicted stab injuries on the deceased and trial Court as well as High Court believed the testimony of the eye witnesses. In these facts the Apex Court refused to give benefit of Exception 4 of Section 300 of the Indian Penal Code to the appellant therein.

15. In Ramashraya and another [supra], it is held as under :

“12. In all the cases referred to above, the facts and

circumstances show that the occurrence took place all of a sudden and there was no pre-meditation on the part of the accused. From the nature of the injury also, it would be observed that the accused had only the knowledge that the injury was likely to cause death, but intention as such cannot be attributed to them. The second part of Section 304 speaks of 'knowledge' and does not refer to 'intention', which has been segregated in the first part. But the knowledge is knowledge of the likelihood of death. In order to bring the offence under clause (3) of Section 300, the prosecution must establish, quite objectively, that a bodily injury is present and the nature of injury must be proved."

In case in hand, it is already observed that assault on the deceased was on account of quarrel and due to grave and sudden provocation on the part of the deceased, therefore, this citation is of no help to the prosecution.

16. In Rajender Singh [supra], while the prosecution party was ploughing their land, accused party asked them not to do so and when protested, accused fetched weapons from their nearby plot and inflicted injuries causing death of one person and injuries to others. In these facts it was held that Exception 4 of Section 300 is not

attracted. Such are not the facts of the present case, hence this case is also of no help to the prosecution.

17. Appellant was arrested on 12.09.2013 and since then he is in jail, thus, so far appellant/accused has completed more than 11 years in jail.

18. In the result, we pass the following order.

ORDER

- (1) Criminal Appeal is partly allowed.
- (2) The conviction of appellant/accused under Section 302 awarded by the Additional Sessions Judge, Nagpur in Sessions Trial No.12/2014 dated 17.01.2017 is hereby quashed and set aside.
- (3) The appellant/accused is convicted under Section 304 Part-I of the Indian Penal Code, and is sentenced to suffer imprisonment for the period already undergone by him.
- (4) The appellant/accused to execute bail bonds under Section 437 of the Criminal Procedure Code.

- (5) The appellant/accused be released forthwith, if not required in any other case.
- (6) Muddemal property be dealt with in accordance with law.

JUDGE

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