



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

CRIMINAL APPEAL NO. 280/2018.

Gajanan s/o Jaganrao Nagose,
Aged 38 years, Occupation -
Labourer, resident of Dhotra, Post
Warha, Tq. Tiwsa, District Amravati. ... **APPELLANT.**

VERSUS

State of Maharashtra,
through P.S.O., Police Station
Kurha, Tq. Tiwsa,
District Amravati. ... **RESPONDENT.**

Mr. D.A. Sonwane, Advocate (Appointed) for the Appellant.
Mr. N. Joshi, A.P.P. for the Respondent.

CORAM : NITIN B. SURYAWANSHI AND
M. W. CHANDWANI, JJ.

DATE : JANUARY 23, 2025.

ORAL JUDGMENT (PER NITIN B. SURYAWANSHI, J.) :

This appeal challenges the judgment and order of conviction passed by the learned Additional Sessions Judge, Amravati in Sessions Trial No.284/2014 thereby convicting the appellant/accused for the offence punishable under Section 302 of the Indian Penal Code, sentencing him to suffer life imprisonment and imposing a fine of Rs.10,000/- with default clause. The appellant/accused is also convicted for the offence punishable under Section 326 of the Indian Penal Code, and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.3,000/- with default clause. The sentences are ordered to run concurrently.

2. The prosecution case in short is that, the appellant/accused is son of deceased Jagan and Laxmibai (P.W.2). Laxmibai lodged a report (Exh.17) alleging that on 27.05.2014 at about 6.30 a.m. when she and Jagan were having tea, at that time Chandrakala had been to their house to call Laxmibai for labour work. Thereafter the appellant/accused came there and asked Chandrakala to leave the

house. Accordingly Chandrakala left the house. Laxmibai accosted accused - Gajanan for asking Chandrakala to leave the house. Thereafter accused took out an axe from the house and inflicted injuries by means of said axe on her husband Jagan on the count that he invites people in the house. The accused inflicted injuries on head, neck, both hands and back of the deceased. When Laxmibai tried to intervene, the accused also assaulted her with axe. Ashok Mule and Laxman Lokhande intervened, separated the accused from the deceased and Laxmibai, and gave understanding to the accused.

3. Pursuant to lodging of the report, Kurha Police Station registered Crime No.61/2014 under Section 326 of the Indian Penal Code. During the course of treatment, Jagan expired. On completion of the investigation, charge sheet came to be filed and accused was charged under Sections 302 and 326 of the Indian Penal Code.

4. During trial prosecution has examined 7 witnesses in support of the charge. The learned Trial Judge found the accused guilty and therefore, sentenced him to suffer imprisonment as stated

above. Hence, this appeal.

5. We have heard the learned Counsel for the appellant/accused and learned A.P.P. for respondent – State. Perused the record.

6. Learned Counsel for the accused submits that the trial Court has failed to appreciate evidence on record in the proper perspective, and has wrongly convicted the accused under Section 302 of the Indian Penal Code. It is submitted that even if the prosecution case is accepted as it is, the offence committed by the accused does not go beyond Section 304 part-II of the Code. According to him, the accused is entitled to invoke the first exception of Section 300. In support of his contention, the learned Counsel for the accused has relied on the judgment of Apex Court in case of **Shahajan Ali and others .vrs. State of Maharashtra and others** reported at (2017) 13 SCC 481, **Ravi Kumar .vrs. State of Punjab** reported at AIR 2005 SC 1929 and **V. Sreedharan .vrs. State of Kerala** reported at AIR 1992 SC 754.

7. Learned A.P.P. on the other hand supported the impugned judgment and order of conviction. He submits that there was no grave and sudden provocation from the deceased to the accused, and therefore, he is not entitled to invoke first exception of Section 300 of the Code. In support of his contention the learned A.P.P. has relied on the judgment of Apex Court in case of **Vijay @ Vijaykumar .vrs. State represented by Inspector of Police (Criminal Appeal No.1049/2021 decided on 16.01.2025)**.

8. Homicidal death of Jagan is proved by the prosecution by examining Dr. Naidu (P.W.3), who has conducted autopsy of Jagan. During post-mortem he found the following injuries on the body of Jagan.

- (1) Incise wound on left side of neck region of size 5 cm x 1 cm.
- (2) Incise wound over forehead of size 05 cm x 05 cm.
- (3) Incise wound over right shoulder of size 9 cm x 02. cm.
- (4) Incise wound over back side of right shoulder of size 3 cm x 2 cm.
- (5) Abrasion over right arm of size 3 x 3 x 0.5 cm.

- (6) Lacerated wound over left fore arm of size 3 cm x 3 cm.
- (7) Incised wound over parietal region of size 4 cm x 02 cm.
- (8) Lacerated wound over left arm of size 4 x 0.5 cm.
- (9) Incised wound right elbow of size 2 x 0.5 cm.

In the post-mortem notes (Exh.25), the cause of death is mentioned as “head injury due to extradural hematoma”. He has further deposed that injuries mentioned in column no.17 were possible by a weapon i.e. axe. He also deposed that the injuries are likely to cause death of a person.

9. Perusal of the evidence on record, particularly of P.W.2 – Laxmibai, who is injured eye witness shows that while she was having tea along with her husband Jagan and Chandrakala Wanhkade, who had come to call her for labour work, at that time the accused entered the house and started assaulting her husband. She started shouting. Thereafter accused took out an axe and assaulted her, as to why she has raised shouts. Gajanan assaulted her husband, as she was shouting. He was continuously assaulting him. The accused also accosted Chandrakala as to why she had been to his house. Thereafter Police

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Patil and other villagers came there and took them to Kurha, where she has lodged report (Exh.17).

10. In cross-examination, P.W.2 Laxmibai has admitted that some times her husband used to drink liquor. She used to give understanding to her husband not to abuse the accused. She has also admitted that after the accused asked Chandrakala to leave their house, she had accosted the accused. Accused has also asked Jagan as to why he has called people in the house. She also admitted that she tried to intervene in the quarrel between the accused and Jagan, and in that course fell on turati kud and sustained injuries. She has also admitted that due to bleeding injury she became unconscious, and thereafter, she does not know as to what happened in between her husband and accused. Omission to the effect “accused started assaulting my husband” “I started shouting when accused was assaulting my husband” were brought on record in her cross-examination.

11. After the incident, P.W..2 Laxmibai and Jagan were taken

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to the hospital and P.W.5 examined them and issued injury certificate of Laxmibai (Exh.36) and injury certificate of Jagan (Exh.37). Thus, the prosecution has proved beyond reasonable doubt that Jagan expired due to assault by axe and Laxmibai (P.W.2) received injuries in the same incident. Thus there is evidence on record to show that Jagan died due to assault by the accused with axe and in the same incident Laxmibai (P.W.2) received injuries, as she was also assaulted by the accused with the same axe.

12. Prosecution has also examined P.W.6 – Chandrakala, who has only stated that she had been to the house of Laxmibai at 6 a.m. for agricultural work. At that time Laxmibai and Jagan were having tea. At that time accused came there and asked her as to why she came to his house, he asked her to leave the house. At that time Laxmibai told the accused that she was not there for lunch. There was quarrel between the accused and Laxmibai. Thereafter she went to her house. It is clear from her evidence that she has not witnessed the actual assault by the accused on Jagan or Laxmibai.

13. On careful analysis of the evidence brought on record by the prosecution, we are of the considered view that the prosecution has proved the manner in which incident of assault by appellant on deceased Jagan and P.W.2 Laxmibai has taken place. Injured P.W.2 Laxmibai has proved assault on her, as well as on her husband. Evidence of P.W.2 on the point of assault is reliable and she had no animus against her own son to falsely implicate him in the present crime. Prosecution therefore, has proved beyond reasonable doubt that appellant is author of the assault on Laxmibai and deceased, which has resulted into death of Jagan.

14. The question now falls for our consideration is – Whether the accused is liable to be punished for offence under Section 302 of the Indian Penal Code or the case falls in exception 1 to Section 300 of the Indian Penal Code ?

15. It has come in the evidence of eye witness Laxmibai

(P.W.2), that the quarrel preceded the assault by accused on Jagan and herself. Her admission in cross examination is that she used to give understanding to her husband not to abuse the accused. When the accused asked Chandrakala to leave their house, she has accosted the accused by saying “Tine kay tuzya ajaycha ata khalla ka”, probabilizes the defence of the accused that due to grave and sudden provocation because of quarrel, he assaulted Jagan and Laxmibai (P.W.2). She has further admitted that due to bleeding injury, she became unconscious and thereafter she did not know as to what happened in between her husband and accused. The omissions from her evidence that “accused started assaulting my husband” “I started shouting when accused was assaulting my husband” are also proved in the evidence of the Investigating Officer.

16. From above evidence it is clear that due to quarrel, the accused was deprived of power of self-control and in a fit of anger he assaulted Jagan and Laxmibai. There was no premeditation on the part of appellant to assault and cause death of his father Jagan. We are

therefore, of the view that first exception of Section 300 of the Indian Penal Code is applicable to the present case, he is therefore, guilty of culpable homicide not amounting to murder.

Accused is in jail since the date of his arrest i.e. from 25.07.2014. He has completed more than 10 years of sentence, which according to us is sufficient in the facts of the present case. Hence the following order.

ORDER

- (i) Criminal Appeal is partly allowed.
- (ii) The conviction of appellant/accused under Section 302 awarded by the Additional Sessions Judge-3, Amravati in Sessions Trial No.284/2014 dated 06.10.2017 is altered to conviction under Section 304 Part-II of the Indian Penal Code, and the appellant/accused is sentenced to suffer imprisonment for the period already undergone by him.
- (iii) The conviction of the appellant/accused under Section 326 of the Indian Penal Code is maintained.
- (iv) The appellant/accused be released forthwith, if not

required in any other case.

- (v) Muddemal property be dealt with in accordance with law.
- (vi) Professional fees of the learned Counsel appointed for the appellant/accused be paid as per Rules within a period of 4 weeks from uploading of this order.

JUDGE

JUDGE