

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 536 OF 2025
WITH
INTERIM APPLICATION NO. 2346 OF 2025
IN
CRIMINAL APPEAL NO. 536 OF 2025**

Chandu Jagan Dhulsada
Age : 40 years,
R/o: Aagwan, Shishupada,
Taluka : Dhanu, Dist. Palghar,
(At present lodged at Nashik Road
Central Prison, Nashik) Appellant

V/s.
The State of Maharashtra
Through Senior Inspector of Police
Dhanu Police Station, Palghar,
(in C.R.No.I-41 of 2017) Respondent

Smt. Nasreen Ayubi, appointed Advocate for the Appellant.
Mr. Ajay Patil, APP for the Respondent – State.

**CORAM: A.S. GADKARI AND
 SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 19th JANUARY, 2026
PRONOUNCED ON : 23rd FEBRUARY, 2026**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.] :-

1) The subject matter of challenge in this Appeal is the Judgment and Order dated 22nd July 2024, passed by the learned Additional Sessions Judge at Palghar, in Sessions Case No.44/2017, thereby, the Appellant-sole accused in the case has been convicted for the charge of offence punishable

under Section 302 of the Indian Penal Code, 1860 ('IPC') and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- with default stipulation. However, he has been acquitted of the charge of Section 506 IPC.

2) Heard Smt. Ayubi, the learned appointed Advocate for the Appellant and Mr. Patil, the learned APP for the Respondent, State. Perused the record.

3) The prosecution case was that, the informant Ramji Raghya Dhulsada (PW-3) used to reside at Shishupada, Taluka Dahanu. The Appellant was his nephew. The Appellant and his wife namely Shalu used to reside in front of PW-3's house. On 20th March 2017, at about 02:00 p.m., PW-3 heard a noise of quarrel. He, therefore, came out of the house. At that time, the Appellant and Shalu were engaged in a scuffle. PW-3 went there and persuaded them not to quarrel, but, the Appellant picked up a stone and threatened PW-3 not to intervene, otherwise he would kill him. PW-3, therefore held back and stood there. During the quarrel, the Appellant knocked Shalu to the ground and strangled her to death. PW-3 informed the villagers and the Police Patil about the incident. Thereafter, PW-3 and the Police Patil went to the Police Station where PW-3 filed his report (Exh.11) and narrated the aforesaid incident.

4) Said report came to be registered at FIR bearing C.R.No.I-41/2017 with Dahanu Police Station for the offence punishable under

Sections 302 and 506 of the IPC. Mr. Sudham Shinde, Investigation Officer (PW-6) recorded the inquest panchanama and referred the body for postmortem examination. The postmortem report confirmed the throttling. PW-6 then recorded the Spot Panchnama and statement of the witnesses. He arrested the Appellant. He forwarded the blood samples, viscera and *muddemal* to the FSL. On completion of investigation, he submitted the charge-sheet.

5) The trial Court framed charge. Appellant pleaded not guilty to the charge and claimed to be tried. The defence of the Appellant was of denial and false implication.

6) To bring home the charge/guilt of the Appellant, the prosecution examined 10 witnesses which includes the informant, panchas, autopsy surgeon, eyewitnesses, investigating officer etc. Various documents have been relied upon to support their testimonies. On closure of the prosecution evidence, the statement of the Appellant under Section 313 Cr.P.C. came to be recorded, wherein he has denied the incriminating circumstances.

7) On appreciation of the evidence, the learned Additional Sessions Judge at Palghar believed the testimonies of the witnesses and considering the nature of the injuries sustained by Shalu, convicted and sentenced the Appellant under Section 302 I.P.C. as noted above. Hence, the Appeal.

8) Smt. Ayubi, the learned appointed Advocate submitted that, the testimony of PW-3 shows that he did not witness the murder. There is no other eyewitness to the incident. The testimonies of the witnesses suffer from material omissions and contradictions and therefore no reliance can be placed on their testimonies. The evidence of the other witnesses is relating to the steps taken during the course of the investigation. Consequently, it is of no avail to the prosecution. Therefore, the offence under Section 302 was not proved. However, the learned trial Judge convicted the Appellant for the charge of murder. In the alternative, the learned counsel submitted that, the evidence clearly indicates that at the maximum the act of causing the homicidal death of Shalu falls under Section 304 part II of IPC. Nevertheless, the learned Judge did not view the case from that angle and therefore on both the counts, the impugned judgment is erroneous. She submitted that, the Appeal may be allowed.

9) Mr. Patil, the learned APP, on the other hand, supported the impugned judgment contending that it is based on appreciation of the prosecution evidence in accordance with law. Therefore, there is no merit in the Appeal.

10) We have considered these submissions and to evaluate the same, it is necessary to revisit the prosecution evidence. The evidence shows that Dr. Balaji Hengane (PW-4) had conducted the postmortem examination on the body of Shalu on 21st March 2017 and noted the

following external and internal injuries :-

(1) Contused abrasion on cricoid area of neck transversely of size $\frac{1}{2}$ x 6 cm (length) red colour. After dissection of neck area underlined structures:

- (a) Subcutaneous bleeding was present,
- (b) Muscles were contused, hemorrhage,
- (c) Edematous trachea and surrounding structures.

(2) Multiple crescentic (semi-circular), abrasions on both sides of neck present of average size $\frac{1}{4}$ x $\frac{1}{4}$ cm, red colour on Rt side of neck 06 nos and on the left side of neck 05 nos.

(3) Abrasion on left leg (calf area) 3X1 cm, 2X1 cm red colour.

(4) After dissection of neck area, hematoma present, subcutaneous bleeding, underlying muscles are contused. There is edema present at tracheal rings below cricoid area.

On internal examination after dissection of the external injury no.1, there was evidence of subcutaneous bleeding, muscles were contused with hemorrhage, trachea was edematous and surrounding structures had internal injuries. The external injuries were related to the internal injuries. The injuries were antemortem and sufficient in the ordinary course of nature to cause the death. In view thereof, PW-4 has opined that it was asphyxial death due to compression of neck structure with throttling. Accordingly, he had recorded and issued the postmortem report (Exh.17) which he has identified with his signature thereon and deposed that, its contents are true. The aforesaid evidence of PW-4 did not face any effective

challenge in the cross-examination. Thus, his evidence coupled with the postmortem report has established that Shalu had died a homicidal death.

11) Considering the charge, PW-3 Ramji Dhulsade was the most crucial witness. He has testified that the Appellant is his nephew (brother's son). At the time of the incident, he was present at home. A quarrel had occurred between the Appellant and his wife Shalu. They were assaulting each other. That, he had tried to persuade them not to quarrel. However, the Appellant pushed Shalu to the ground and killed her by throttling. He has specifically deposed that the Appellant had lifted a stone to hit him. Thereafter, the Appellant remained at the spot. That, he informed about the said incident to the Police Patil. The Police Patil visited the spot. Thereafter, PW-3 and the Police Patil went to the Police Station, where he filed a report (Exh.11). PW-3 identified the said report and deposed that its contents are correct and true.

12) Another important witness Ramu Hadal (PW-5) has testified that, on 20th March 2017, at about 02:00 p.m., the Appellant and Shalu were seated below a *Shevga* tree in front of the Appellant's house. The Appellant had held the neck of Shalu. He had told the Appellant to release her neck, but the Appellant replied to him not to interfere in the matter. Therefore, he and his neighbour took the Appellant away from Shalu, however by then Shalu had died. That, thereafter, PW-3 called the Police Patil and both of them went to the Police Station. PW-5 deposed that, the

police had recorded his statement. Additionally, his statement was recorded under Section 164 Cr.P.C. (Exh.28). In the cross-examination PW-5 has specifically denied that the Appellant had not held the neck of Shalu.

13) The aforesaid testimonies of PW-3 and PW-5 are consistent with the report (Exh.11). PW-3 had no reason to file the said report falsely narrating that, the Appellant had committed murder of Shalu. On the contrary, PW-3 and the Appellant have been closely related to each other. PW-5 is also relative of the Appellant. Further, no specific material has been brought out in the evidence much less, by the Appellant to prove that there was a reason for these witnesses, who happens to be his relative to falsely implicate him. Although, PW-5 has not directly deposed that, the Appellant had killed Shalu by throttling, he has specifically deposed that, immediately after release of her neck by Appellant, they had noticed that Shalu was dead. However, the Appellant has not explained as to why he had held the neck of Shalu. PW-4 clearly opined that Shalu had died due to asphyxia. Except for throttling, there was no other reason for the sudden asphyxial death of Shalu. Thus, the medical evidence corroborated the testimony of PW-3 and PW-5 that Shalu had died due to throttling.

14) It appears that, PW-10 Rupaji Kol was an eyewitness to the murder. In 2017, he was Deputy Sarpanch of village Agwan. But he did not support the prosecution case. He has deposed that he knew the Appellant and Shalu. On 20th March 2017, he was present at home. PW-5 had

informed him about the incident. He therefore went to the spot at 02:00 p.m. The Appellant was seated there with Shalu on his lap. Water was sprinkled on her face by the villagers, but she did not respond. However, in the cross-examination by the learned APP, PW-10 has admitted that, police had recorded his statement. He had informed about the incident to the Police Patil. He has admitted that PW-5 and PW-9 had informed the Police Patil that, the Appellant had committed the murder of Shalu by throttling her. He has admitted that quarrels used to take place between the Appellant and Shalu. The evidence indicates that Shalu was completely normal and she was doing labour work to earn her livelihood. Thus, to some extent PW-10 has supported the testimonies of PW-3 and PW-5.

15) Considering the evidence of PW-3 that the Appellant and Shalu were assaulting each other during the quarrel, it was probable that the Appellant would suffer some injuries. In this regard the testimonies of PW-6 and PW-4 have established that, PW-6 had issued the letter (Exh.38) and referred the Appellant for his medical examination. That letter was received by PW-4 on 22nd March 2017. Accordingly, Dr. Ankita Pandey had examined the Appellant and issued an injury report (Exh.39). It bears her signature. Additionally, PW-4 has referred the OPD papers (Exh.58). It bears the thumb impression of the Appellant. PW-4 has deposed that, as per the medical examination by Dr. Ankita Pandey and the injury report (Exh.39), there were following injuries on the person of the Appellant at the time of

his medical examination:

- (a) Scratch mark above lateral aspect of left eyebrow of size 1.5 x 0.1 cm, reddish brown in colour indicating 2-3 days old.
- (b) Scratch mark in front of left ear lobule of size 1 x 0.1 cm, reddish in colour on healing stage probably 2-3 days old.
- (c) Scratch mark behind left ear of size 0.2 x 0.1 cm brownish in colour, scabbing stage probably 2-3 days old.
- (d) Scratch mark on back, brownish black in colour of size 0.2 x 0.1 cm, scab present probably 2-3 days old.
- (e) Mildly swollen right thenar eminence.

15.1) The aforesaid injuries clearly indicate that the same were caused during the scuffle with Shalu. The Appellant did not explain as to how he had sustained the said injuries. Thus, the existence of the said injuries also corroborated the testimonies of PW-3 and PW-5.

16) PW-9 Ramji Dulsada has deposed that the Appellant was his cousin brother. Shalu was the wife of the Appellant and they used to reside together in the village. At the time of the incident, he was present at home. The Appellant and Shalu were fighting. The Appellant was throttling Shalu. They told the Appellant not to quarrel, but the Appellant did not listen to them. He has deposed that Shalu had died due to the throttling. They informed the Police Patil about the incident and thereafter all of them went to the police station and lodged the report.

16.1) In the cross-examination for the Appellant, PW-9 has admitted that the Appellant did not kill his wife in his presence. He has admitted that, it did not happen that in 2017 the Appellant had killed his wife. He

further admitted that, it did not happen that Police Patil and PW-10 had come to the spot at the time of the incident. Thus, the testimony of PW-9 indicates that, initially, he had supported the prosecution case, however, in the cross-examination he deposed very contrary to it. Therefore, the learned APP appearing in the case filed an Application (Exh.68) seeking permission to cross-examine PW-9, however subsequently the learned APP withdrew the said Application (*vide* remark Exh.86). Be that as it may, in the facts said testimony of PW-9 in the cross-examination would not be sufficient to nullify the strength and effect of the testimonies of PW-3 and PW-5 which have the backing of the expert medical evidence. Moreover, considering the relationship between PW-9 and the Appellant, it is safe to draw an adverse inference that, deliberately PW-9 has falsely deposed that it did not happen that in 2017 the Appellant had killed his wife.

17) Admittedly, at the time of the incident, the Appellant and Shalu were residing together. All of a sudden, Shalu had suffered the homicidal death while in his company. Therefore, the Appellant was required to explain Shalu's homicidal death, which he failed to do. This leads to an adverse inference against him.

18) The conspectus of the aforesaid discussion is that, it has been proved that on the relevant date, time and place, a quarrel had occurred between Shalu and the Appellant. Consequently, they had engaged in a scuffle; that during the said scuffle they assaulted each other, as a result of

which the Appellant had sustained the said injuries and lastly the Appellant caused the homicidal death of Shalu by throttling her.

19) Therefore, now, the question is, whether the act of causing the homicidal death by the Appellant amounted to murder or not. In this context we have noticed that, in the cross-examination, PW-3 has admitted that Shalu used to go out for labour work; that sometimes the Appellant used to get attacks of epilepsy; that the Appellant was not going for work and used to remain at home due to said ailment; that the Appellant has four children; and his elder daughter was suffering from mental disorder and had left the house due to that medical condition. In the cross-examination, PW-5 has admitted that, sometimes the Appellant used to become insane; that during that condition froth used to come out of his mouth; that he used to caught hold of a person near him and was not behaving like a normal person; that in that state the Appellant used to beat Shalu; that daughter of the Appellant was facing a mental health problem and used to go out of her house; that at the time of the incident, froth had come out from the mouth of the Appellant; that when the Appellant was on bail in this case, he had set his own house on fire. However, PW-5 deposed that he cannot tell whether, at the time of the incident, the Appellant was under an attack of insanity or not.

In the cross-examination, PW-9 has admitted that Shalu used to work and maintain the Appellant. When Appellant was getting attack of

epilepsy, he was unable to understand what he was doing. He has admitted that the elder daughter of the Appellant was also suffering from epilepsy and on one occasion of such epilepsy, she went missing. He has admitted that, when the Appellant was on bail, he has set the surrounding of his house on fire, owing to epilepsy.

20) The aforesaid evidence in the cross-examination of the witnesses show that the Appellant was suffering from the ailment of epilepsy. However, there was no evidence that immediately before or at the time of the incident the Appellant had suffered a violent attack of epilepsy. And consequently, he could not know that he was throttling his own wife to death. Therefore according to us, the case of the Appellant was not covered by general exception provided under Section 84 I.P.C. To decline that, the case was covered by this exception, the learned Judge of the trial Court has reasoned and held as under which, in our opinion, is correct.

In brief, the learned trial Judge has observed that PW-3 did not whisper that, at the time of incident the Appellant had suffered the attack of epilepsy. PW-5 has deposed that he does not know that the Appellant had suffered the attack of insanity at the time of incident. PW-5 has denied that when the Appellant had held Shalu in his arms, he had suffered the attack of insanity. No evidence has been brought on record to prove that, at the time of the crime, the cognitive faculty of the Appellant was so impaired that he was unable to know the nature of the act. The Appellant has not led

any medical evidence to substantiate his plea of insanity at relevant time. The prosecution has produced the OPD noting (Exh.58) through PW-4 which mentions that the Appellant was found physically and mentally fit for judicial proceeding. Considering the defence of insanity raised by the accused, directions were issued by the trial Court to Civil Hospital, Thane (Psychiatric) for complete check up of the Appellant *vide* Order dated 15/03/2023 passed below Exh.01. In furtherance of said directions, OPD case paper were forwarded to the Court by the Jail Authority below Application Exh.73. The noting in the said OPD case paper reflects the health history and medication narrated by the Appellant. But there was nothing to suggest that the accused had mental disorder.

21) However from the evidence on record it appears to us that, the Appellant has caused the homicidal death of Shalu without any premeditation in a sudden fight in a heat of passion upon a sudden quarrel and without taking undue advantage or acted in a cruel or unusual manner. There was no time gap between the dispute, the scuffle, the fight and the overt act on the part of the Appellant. No doubt, in the evidence of PW-10 it has come that, quarrels used to occur between them. However, this fact itself is not sufficient to infer that during said quarrels the Appellant used to treat Shalu inhumanly. Therefore according to us, the act of causing the death of Shalu cannot be equated to murder but its a culpable homicide not amounting to murder.

22) It is trite that, to bring a case within Exception 4 to Section 300 of I.P.C., all the ingredients mentioned in it must be found. It is to be noted that, the word 'fight' occurring in Exception 4 to Section 300 of I.P.C. is not defined in the I.P.C. It takes two to make a fight. To invoke Exception 4 to Section 300 of I.P.C., four requirements must be satisfied viz.:-

- (i) It was a sudden fight;
- (ii) There was no premeditation;
- (iii) The act was done in the heat of passion and
- (iv) The assailant had not taken undue advantage or acted in a cruel or unusual manner.

23) The cause of the quarrel is not relevant nor it is relevant as to who offered the provocation or started to assault first, but what is important is that the occurrence must have been sudden and not premeditated and the offender must have acted in a fit of anger and must not have taken any undue advantage or acted in a cruel or unusual manner. When during the course of a sudden quarrel, a person in the heat of moment, attacks the other person and causes injury, one of which proves to be fatal, the accused would be entitled to the benefit of this exception.

24) The Hon'ble Supreme Court in the case of *Sukhbir Singh Vs. State of Haryana*, reported in (2002) 3 SCC 327, while analyzing the provisions of Exception 4 of Section 300 of I.P.C. has held that, to avail the benefit of Exception 4, the defence is required to probabalise that the offence was committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and the offender had not taken any

undue advantage and the offender had not acted in a cruel or unusual manner. The exception is based upon the principle that in the absence of premeditation and on account of total deprivation of self-control but on account of heat of passion, the offence was committed which, normally a man of sober urges would not resort to. Sudden fight, though not defined under the Act, implies mutual provocation. It has been held by the Courts that a fight is not *per se* palliating circumstance and only unpremeditated fight is such. The time gap between quarrel and the fight is an important consideration to decide the applicability of the incident. If there intervenes a sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of this exception.

25) After applying the aforestated principles enunciated by the Hon'ble Supreme Court to the facts of the present case, we are of the considered view that, the act of the Appellant clearly fall within the purview of Exception 4 of Section 300 of the Indian Penal Code and therefore punishable under Section 304 (Part-II) I.P.C. However, the learned trial Court has failed to appreciate the evidence on record from that angle, as a result, he has held that the Appellant was guilty of the offence of murder punishable under Section 302 I.P.C. On account of this legal infirmity, we find it necessary to interfere with the impugned Judgment to bring down

the conviction and the sentence from Section 302 I.P.C. to Section 304 (Part-II) I.P.C. Thus, the Appeal partly succeeds.

25.1) Hence, the following Order :-

- (a) Criminal Appeal is partly allowed.
- (b) Appellant Chandu Jagan Dhulsada is acquitted under Section 302 of the Indian Penal Code and instead convicted under Section 304 (Part-II) of the Indian Penal Code.
- (c) Appellant is directed to undergo Rigorous Imprisonment for 10 years and to pay fine of Rs.5,000/-. In default of payment of fine, to further suffer simple Imprisonment for 3 months.
- (d) Appellant is entitled to set off under Section 428 Code of Criminal Procedure for the period already undergone in jail, till date.
- (e) The impugned Judgment dated 22nd July, 2024 is modified to the extent as noted hereinabove.

25.2) In view of disposal of the Appeal, Interim Application No.2346 of 2025 is also disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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