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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.537 OF 2025**

Hemant Vasant Devrukhkar
Age: 39 years, Residing at R. No. 05,
Domnic Demelo Chawl, behind St. Xavier
Church, Kanjurmarg (East), Mumbai.
Presently in Nashik Jail ... Appellant
V/s.
State of Maharashtra ... Respondent

Mr. Nitesh S. Nevshe, appointed Advocate through Legal Aid a/w.
Ms. Shweta N. Nevshe, for the Appellant.
Mr. Ashish I. Satpute, APP for the Respondent – State.

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

**RESERVED ON : 13th FEBRUARY, 2026
PRONOUNCED ON : 10th MARCH, 2026.**

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

1) Present Appeal is directed against the Judgment and Order dated 19th October 2024, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Sessions Case No.619 of 2018, thereby the Appellant has been convicted under Section 302 of the Indian Penal Code ('I.P.C.') for committing murder of his brother Sainath and sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- in default, to suffer rigorous imprisonment for three months.

2) Heard Mr. Nevshe, learned counsel for the Appellant and Mr. Satpute, learned APP for the Respondent-State. Perused entire record.

3) The indictment against the Appellant was that, informant – Vanita Vasant Deorukhkar used to reside at Kanjur Marg (East), Mumbai along with her two sons, Appellant-Hemant and deceased-son-Sainath alias Sai. Appellant used to work in a *Bhajan* group and Sainath used to work in a dairy to earn livelihood. Sainath was addicted to tobacco and smoking and he used to spit inside their house day and night. He also used to consume *Ganja*. PW-1 and the Appellant could not tolerate the said addiction of Sainath. When PW-1 used to persuade Sainath, he used to respond in an arrogant manner and abuse her. On certain occasions, Sainath had assaulted her when she had shouted at him on account of his addiction. Despite repeated efforts by the Appellant to advise him, it did not improve Sainath's conduct. As a result, frequent quarrels used to occur between them. Owing to his vices, meager income, and unmarried status, Sainath had suffered depression between 2012 to 2018 and he was medically treated at Thane Mental Hospital. In the year 2013, when PW-1 had suggested him to give up the addictions, he manhandled her. Consequently, she had filed a complaint against him.

3.1) As the prosecution case goes further, on 12th April 2018, at about 9.00 p.m., PW-1, the Appellant and Sainath were at home. Appellant

was unwell due to jaundice and therefore, he had only consumed sugarcane juice. When Sainath was asked to eat, he arrogantly replied that he would eat later on and consume tobacco. Then Sainath was spitting inside the room making loud noise. Consequently, the Appellant got annoyed and he said to Sainath as, "You are creating a nuisance at the time of meals, we are fed up with your addictions. Despite advice, you are not improving, but, abuse and beat me and the mother. So, give up the tobacco right now". However, Sainath angrily replied that he would not, the Appellant could do whatever he wished. As a result, a quarrel ensued between them. During quarrel, Sainath slapped and gave fist blows to Appellant and threatened him to leave the house. However, PW-1 pacified Sainath and quarrel subsided. Sainath then had his dinner at 11.00 p.m. and the three slept.

3.2) On 13/04/2018, at about 7.00 a.m., when PW-1 and Sainath were asleep. She suddenly heard a sound of stone falling, followed by the cries of Sainath. Therefore, she woke up. The Appellant was standing in front of her. Sainath was hit by a cement block on the head and mouth. He was bleeding from mouth and was in pain. PW-1 asked the Appellant as to why he assaulted him on which the Appellant replied that he had put an end to the daily disputes and went away. Upon hearing shouts of PW-1, her brother-in-law Ganesh Deorukhkar and others came there and removed Sainath to Rajawadi hospital.

3.3) On information, PSI Raju Jire (PW-5) visited PW-1; recorded her complaint (Exh.30); registered it as C.R. No.62/2018 under Section 307 of the I.P.C.; recorded the Spot Panchnama (Exh.13) and arrested the Appellant. On the next day, Sainath succumbed to injuries. His body was subjected to post-mortem examination. During investigation, Police Inspector Shankar Bhore (PW-6) recorded the statements of witnesses and forwarded the seized articles alongwith samples of blood, viscera etc. to the FSL. Investigation transpired that, Appellant was fed up with the addictions and constant abuse by Sainath. He was also angry as Sainath used to beat him and PW-1 and on account of the quarrel that occurred last night. He, therefore, killed Sainath. Accordingly, charge-sheet came to be filed.

4) The trial Court framed the charge at Exh. No.6 under Sections 307 and 302 I.P.C. The Appellant pleaded not guilty and claimed to be tried. The defence of the Appellant was of total denial and false implication.

5) To prove the charge, the prosecution examined 6 witnesses including spot panch, neighbour, Medical Officer and Investigation Officer. The trial Court, on appreciation of the evidence before it and after hearing the parties, convicted and sentenced the Appellant as noted above.

6) Mr. Nevshe, the learned counsel appearing for the Appellant has made two fold submissions. Firstly, he submitted that, PW-1 has not supported the prosecution case. Whatsoever PW-1 has deposed, it was not

sufficient to prove that there was dispute between the Appellant and Sainath on the count of the latter used to consume tobacco, *gutkha* etc. and spit inside the house in an annoying manner and that for the same reason a quarrel had occurred between the Appellant and Sainath in the last night. PW-1 has not specifically deposed that the Appellant had struck Sainath on his head with the cement block. Her evidence regarding the Appellant's confession to her that he had assaulted Sainath, is contradictory and therefore not reliable. The evidence of PW-3 is hearsay. It is not supported by PW-1. In the alternative, Mr. Nevshe submitted that, in any case, the evidence clearly indicates that the homicidal death of Sainath was caused by the Appellant without any premeditation on account of a sudden fight in the heat of passion upon a sudden quarrel and without taking undue advantage or acting in a cruel or unusual manner. At the same time, Appellant was deprived of the power of self-control by grave and sudden provocation from Sainath. Therefore, the act of causing the homicidal death of Sainath cannot amount to murder but an offence of causing culpable homicide not amounting to murder punishable under Section 304 of I.P.C. To buttress his submissions, Mr. Nevshe has relied upon following decisions :-

(i). *Dauvaram Nirmalkar v. State Of Chhattisgarh reported in in (2023) 12 SCC 541*

(ii) Devendra Kumar & Ors. v. State Of Chhattisgarh reported in 2024 SCC OnLine SC 3182

(iii) Imranali Babuali Sayyed v. State Of Maharashtra reported in 2022 SCC OnLine Bom 2608

7) Mr. Satpute, the learned APP, on the other hand, submitted that it is trite that, even if a witness has turned hostile the material evidence in the testimony of such a witness, if found reliable cannot be ignored. Same is the case with PW-1. Because, in her cross-examination with the aid of Section 154 of the Evidence Act, she has conceded the prosecution case which she had narrated in her own complaint. Her testimony coupled with the testimonies of other witnesses and the post-mortem report establishes that frequent quarrels used to occur between the Appellant and Sainath on account of the latter's annoying conduct in the house. Such a quarrel had also occurred on the previous night when Sainath had assaulted the Appellant. As a result, Appellant intentionally killed Sainath by hitting him on the head with the heavy cement block, to put an end to the said disputes. The case does not fall in any of the exceptions appended to Section 300 of I.P.C. Therefore, the conviction and sentence handed over to the Appellant is proper. To strengthen his submissions, Mr. Satpute has relied upon the following decisions :-

(i). Mahesh Balmiki Alias Munna v. State of M.P reported in (2000) SCC 1 319

(ii) Arun Raj v. Union of India and others reported in (2010) SCC 6 457

8) We have carefully perused the evidence on record with the able assistance of both the counsel. The Appellant has not disputed the date, time and place of the incident nor the injuries sustained by Sainath.

9) Dr. Waghmare (PW-4) had conducted the autopsy on the body of Sainath on 14/04/2018. He has proved the post-mortem report (Exh.18). In his opinion, the external and internal injuries sustained by Sainath were sufficient in ordinary course of nature to cause death. The cause of his death was the head injury. Sainath had sustained following injuries :-

External Injuries :- (i) Contusion admeasuring 3 cm X 2 cm on right ear pinna, (ii) Contusion admeasuring 4 cm X 2 cm on right mastoid region, and (iii) Abrasion admeasuring 2 cm X 1 cm on right shoulder.

Internal Injuries :- There were corresponding internal injuries, viz. hematoma was present under the scalp; fracture of high parietal bone and fracture of base of skull; extra dural hematoma admeasuring 4 cm X 3 cm X 0.4 cm over high parietal region; diffuse sub dural hemorrhage over cerebrum and cerebellum and diffuse subarachnoid hemorrhage over cerebrum and cerebellum.

10) On the question of involvement of the Appellant as perpetrator,

PW-1 has deposed that she, Appellant and Sainath used to reside at Kanjur Marg. The Appellant was working in a *Bhajan* group whereas Sainath was not doing any work. Sainath was addicted to tobacco and *gutkha* and he used to spit inside the house by chewing tobacco. On that count, there used to be quarrels between Sainath and the Appellant. That, one day prior to the incident, at the night time, a dispute had occurred between Sainath and the Appellant. After the dispute was over, they all had slept. On the next day morning, she saw that Sainath was sleeping and the Appellant had gone to the police station. The police had visited her house and removed Sainath to Rajawadi hospital in an unconscious state. She had visited the police station. The police had enquired with her. She had disclosed to the police about the dispute that had occurred between Sainath and the Appellant one day prior to the incident. However, the police did not record her complaint as per her narration. Thus, PW-1 had resiled from her statement in the complaint and did not support the prosecution case on the crucial issue. This led to questioning her by the learned APP as provided in Section 154 of the Evidence Act, with prior approval of the trial Court.

10.1) In the cross-examination by the learned APP, PW-1 has admitted that she and the Appellant used to give an understanding to Sainath, not to chew tobacco and *gutkha* but Sainath was not listening them. She had stated to the police that in the year 2013, she had filed a

complaint against Sainath. On 12/04/2018, Sainath had come home at 9.00 p.m. At that time, the Appellant was not feeling well. However, Sainath was spitting by chewing tobacco and making noise. Therefore, the Appellant had asked Sainath to give up the habit of tobacco. On that count, a dispute had occurred between the Appellant and Sainath. During that dispute, Sainath had assaulted the Appellant. Therefore, she had pacified Sainath and the Appellant. Thereafter, the Appellant slept on a cot and Sainath slept on the floor.

10.2) In further cross-examination, PW-1 has deposed that, on 13/04/2018, she woke up in the morning by hearing sound of stone felling. At that time, she felt that someone's leg had touched her feet. She then saw that the Appellant was standing there and Sainath was crying. Sainath was bleeding from mouth and nostrils, not able to breath, gasping and unable to talk. The Appellant confessed to her that he had assaulted Sainath. The Appellant then went away. She has admitted that she had called her brother-in-law Ganesh Devrukhkar and son of her sister-in-law, Mahesh. The two removed Sainath to the hospital.

11) The aforesaid testimony of PW-1 is in line with her complaint (Exh.11) and thus has fully supported the prosecution case. PW-1 has admitted that she had signed the complaint. She has also identified her signature. PW-5 Raju Jire, PSI has deposed that, on 13/04/2018, he had

recorded complaint (Exh.11) of PW-1 as per her narration and accordingly, he had registered the crime under the printed FIR (Exh.30). It bears his signature and signature of PW-1. Its contents are correct and true. It is evident from the record that the complaint was filed after about 4 hours of the assault on Sainath. Said fact and conduct of PW-1 was relevant under Sections 6 and 8 of the Evidence Act. She has admitted that she had not complained to anybody that the police had recorded her false report. That apart, she had no reason to file a false complaint against her own son, the Appellant. It is trite that hostile witnesses' testimony need not be entirely dismissed. Even if a witness turns hostile, the prosecution can still use portions of its testimony that are supportive of the case. This ensures that relevant evidence is not disregarded simply due to a witness's change in stance. Therefore, the said testimony of PW-1 is safe to rely upon.

12) PW-3 Mandar Devdhar has testified that, he knew the Appellant and his family. There were disputes between the Appellant and Sainath. He had come to know that dispute had occurred between the Appellant and Sainath on 12/04/2018. That, on 13/04/2018, at about 7.30 a.m., he had seen that PW-1 was crying. At that time, PW-1 told him that the Appellant had assaulted Sainath with a paver block. This testimony of PW-3 hardly met with any challenge in his cross-examination for the Appellant. Said testimony appears completely natural. PW-3 has no enmity

with the Appellant. Thus, his testimony is dependable.

13) With the help of the testimonies of the spot panch Shekhar Gawai (PW-2) and PW-5 Raju Jire, PSI the prosecution has proved the Spot Panchnama. Further, it has proved that, from the spot, PW-5 had seized the blood stained mattress (Art.A), a cement paver block broken at one corner (Art.B), blood stained pillow (Art.C) and a Plastic String (Art.D) and the T-Shirt (Art.E). PW-2 and PW-5 have identified the said articles.

Investigation Officer Shankar Bhore (PW-6) has deposed that during the investigation he had recorded the supplementary statement of PW-1 and the statement of other witnesses including Ganesh Devrukhkar. He had obtained the statement of PW-1 recorded under Section 164 of Cr.P.C. He had forwarded the relevant blood and viscera samples to the FSL for the purpose of chemical analysis *vide* letters (Exh.34 Colly). Lastly, he had submitted the charge-sheet. The aforesaid circumstances were duly supported with the reports of the C.A. The C.A. report (Exh.26) clearly mentions that the human blood found on the subject cement block was of Group “B” and it tallied with the blood of Sainath found on the seized bed-sheet, pillow and the samples of the blood collected during the autopsy and from the spot. This evidence clearly indicates that Sainath was hit by the said cement block therefore it got stained with Sainath’s blood.

14) The aforesaid evidence of the witnesses is corroborated with

the extra-judicial confession made by the Appellant before PW-1 that he had assaulted Sainath. Since PW-1 had been mother of both brothers, it was natural that the Appellant would make that confession before her. Secondly, the confession was made soon after the assault on Sainath. Therefore, the extra-judicial confession cannot be overlooked.

15) In view of the above discussion we hold that the prosecution has established that Sainath was addicted to tobacco and *gutkha*; although he was given an understanding by PW-1 and the Appellant, he was not improving. On that count, there used to be quarrels between Sainath and the Appellant. In the previous night Sainath had consumed tobacco and he was spitting inside the room making an irritating noise. At that time, the Appellant was unwell and he had told Sainath to give up that addition. On that count a quarrel had occurred between the brothers and during that dispute, Sainath had assaulted the Appellant. Therefore, the Appellant had assaulted Sainath on the head by means of the paver block and caused him the fatal injuries leading to his death and immediately, he went away.

16) However, in our opinion, the act of causing the homicidal death of Sainath will fall under Exception 1 of Section 300 of I.P.C. which provides that, "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.” Considering this exception, in a recent decision in the case of *Dauvaram Nirmalkar v. State of Chhattisgarh* (*supra*), while interpreting the provisions of Exception 1 of Section 300 of the I.P.C., in paragraph 11 the Hon’ble Supreme Court has considered the following observations in case of *K.M. Nanavati v. State of Maharashtra*, reported in 1962 Supp (1) SCR 567:

“150. Is there any standard of a reasonable man for the application of the doctrine of “grave and sudden” provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision: it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

151. The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of “grave and sudden” provocation is whether a reasonable man, belonging to the same class of

society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.”

17) Further, in paragraphs 12 to 17 the Apex Court has observed that :

“12. K.M. Nanavati (supra), has held that the mental background created by the previous act(s) of the deceased may be taken into consideration in ascertaining whether the subsequent act caused sudden and grave provocation for committing the offence. There can be sustained and continuous provocations over a period of time, albeit in such cases Exception 1 to Section 300 of the IPC applies when preceding the offence, there was a last act, word or gesture in the series of incidents comprising of that conduct, amounting to sudden provocation sufficient for reactive loss of self-control.

13. K.M. Nanavati (*supra*) quotes the definition of 'provocation' given by Goddard, C.J.; in *R. v. Duffy*, [(1949) 1 All.E.R. 932)], as :

"...some act or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his own mind... [I]ndeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person had the time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation..."

14. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation (See the opinion expressed by Goddar, C.J. in *R v. Duffy* (*supra*)). The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-

control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances.

15. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

16. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be

confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the accused's reaction, should be identified to show that there was temporary loss of self control and the accused had acted without planning and premeditation. This has been aptly summarised by Ashworth [1975 Criminal LR 558-559, and George Mousourakis's elucidation in his paper 'Cumulative Provocation and Partial Defences in English Criminal Law'.] in the following words:

"[T]he significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased's final act and the accused's retaliation should continue to tell against him. The point is that the significance of the deceased's final act and its effect upon the accused – and indeed the relation of the retaliation to that act – can be neither understood nor evaluated without reference to previous dealings between the parties."

17. Exception 1 to Section 300 recognises that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self control, going astray and committing the offence. However, sustained provocation principle does not do away with the

requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation.

18) Now tuning to the case on hand. PW-1 has admitted that Sainath's behaviour was unbearable. She and the Appellant were fed up due to his vices. This was quite natural because Sainath used to beat them even though they used to persuade him to give up his addictions and improve. The Spot Panchnama clearly shows that the room where PW-1 and her two sons were residing, was small. Sainath further created hardship by spitting tobacco inside the room and keeping it unhygienic. The family had poor financial background. At the time of the last quarrel, Sainath had assaulted the Appellant, though he was unwell, had not eaten and not at fault. On the contrary, he wanted Sainath to give up his addictions and improve. In this background, we are of the view that the cumulative and continued abusive behaviour of Sainath towards the Appellant and their mother over a period of time coupled with the provocative assault to the Appellant by Sainath during their last quarrel resulted in continuing the stress by provocation, which ultimately led to the unfortunate homicidal death of Sainath. Therefore, the present case is covered with Exception 1 of Section 300 of I.P.C..

19) In view thereof, the appropriate conviction would be under Section 304 (Part I) of I.P.C. Consequently, the impugned conviction and sentence under Section 302 of I.P.C. is liable to be quashed and set-aside. Instead, the Appellant is liable to be convicted and sentenced under Section 304 (Part I) of I.P.C. Accordingly, the Appeal succeeds partly.

19.1) Hence, the following Order :-

(i) The impugned Judgment and Order of conviction and sentence dated 19th October, 2024 in Sessions Case No.619 of 2018, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, against the Appellant for the offence punishable under Section 302 of the I.P.C., is quashed and set-aside.

(ii) Instead the Appellant – Hemant Vasant Devrukhkar is convicted for the offence punishable under Section 304 (Part I) of I.P.C. and is sentenced to suffer rigorous imprisonment for a period of 10 years and to pay fine of Rs.5,000/- in default of payment of fine to undergo rigorous imprisonment for three months.

(iii) The Appellant shall be entitled for set-off under Section 428 of Cr.P.C.

(iv) The Appeal is partly allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)