

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No.702 of 2013

Naresh Madhu Pawar
R/at- Hut near the Brick-kiln of Rangnath
Mangrulkar at Niljepada
(Presently in Judicial Custody)
(At Kolhapur Central Prison) ... Appellant

V/s.

The State of Maharashtra
(at the instance of Manpada Police
Station, Dombivli) ... Respondent/
Orig. Complainant

Mr. Sushil Inamdar, appointed Advocate for the Appellant.
Mr. H.J. Dedhia, APP for the State.

**CORAM : PRASANNA B. VARALE
& SHRIKANT D. KULKARNI, JJ.**

27th June 2022

ORAL JUDGMENT (PER SHRIKANT D. KULKARNI, J)

Feeling aggrieved by the impugned judgment and order of conviction passed by the Additional Sessions Judge, Kalyan, Dist.

Thane in Sessions Case No.128/2011, the Appellant-Original Accused has preferred this Appeal by taking aid of Section 374(2) of the Code of Criminal Procedure.

2. The prosecution case in a narrow compass is as under:-

Ekabai (since deceased) happened to be mother of the Appellant-Accused. Both of them were working at the brick kiln at Village Niljepada. The said brick kiln was owned by one Devanand Mangrulkar and Rangnath Mangrulkar, residents of Niljepada. Ekabai (since deceased) and her son Appellant were residing in one hut erected at brick kiln. On 19th March 2011, there was Holi festival and most of the workers had gone to their respective home town, however, the appellant and his mother were at their hutment. It was about 7.00 p.m. on 19th March 2011, the Appellant picked a quarrel with his mother Ekabai on account of preparing the same vegetable brinjal in the evening. The Appellant asked his mother as to why she prepared the same vegetable brinjal with potatoes and potatoes not cooked properly. Why fish was not prepared in the evening. The Appellant was annoyed since same vegetable was repeated in the evening by his mother. After getting annoyed, the Appellant started assaulting his mother by means of iron rod. Nivrutti Mangrulkar (PW-1) rushed to the spot and intervened in the quarrel. He noticed that Ekabai was not responding

and lying on the ground. He informed to his father about the incident. His father came to the spot and found that mother of the Appellant is no more. Nivrutti Mangrulkar (PW-1) lodged FIR about incident with Manpada Police Station and on that basis C.R. No.85/2011 came to be registered under Section 302 of Indian Penal Code (IPC) against the Appellant-Accused.

3. The investigation was entrusted to Police Inspector Pandre. The weapon used in the commission of offence came to be seized under Panchnama. The clothes of the deceased also came to be seized. The inquest panchnama was prepared. The dead body was sent to hospital for postmortem examination and report. The investigation officer found sufficient evidence against the Appellant-Accused during course of investigation. The chargesheet came to be filed against the Appellant-Accused in the Court of JMFC at Kalyan for the offence punishable under Sections 302 of IPC.

4. The learned JMFC committed the case to the Court of Sessions at Kalyan for trial according to law.

5. The charge against the Accused-Appellant came to be framed vide Exhibit 4 for the offence punishable under Section 302 of IPC. The accused denied the charge of murder of his mother and claimed for trial according to law. The trial was commenced before the learned

Additional Sessions Judge, Kalyan. The prosecution machinery has examined in all seven witnesses including two eye witnesses and Investigation Officer and closed its evidence. The statement of Accused under Section 313 of Cr.P.C. came to be recorded. The defence of the Accused-Appellant is of plain denial. According to him, he has been falsely implicated in this case, however, he did not chose to examine any defence witness.

6. The learned Additional Sessions Judge, Kalyan after appreciating the evidence on record and considering the arguments advanced on behalf of both the sides was pleased to hold the Appellant-Accused guilty under Section 302 of IPC and sentenced him to undergo imprisonment for life and pay fine of Rs.1000/- and in default rigorous imprisonment for a period of two months for the offence punishable under Section 302 of the IPC.

7. In the above background, the Appellant-Accused questions the legality of the judgment and order of conviction rendered by the Additional Sessions Judge, Kalyan under Section 302 of IPC.

8. Heard Mr. Sushil Inamdar, learned Counsel appointed through the High Court Legal Services Committee, Bombay and Mr.H.J.Dedhia, learned APP for the State-Respondents.

9. Mr. Sushil Inamdar, learned Counsel for the Appellant-Accused took us through the evidence of two eye witnesses who are PW No.1 Nivrutti Mangrulkar vide Exhibit 12 and PW No.7 Jagannath Dattu Shirsat vide Exhibit 28. Mr. Sushil Inamdar has been fair enough to admit that mother of the Appellant met with homicidal death. He has also not disputed the cause of death and the postmortem report. He pointed out relevant part of the evidence of above referred two eye witnesses and argued that the Appellant-Accused got annoyed since his mother prepared the same vegetable brinjal and potatoes in the evening which was not even properly cooked. He was expecting fish dish in the evening. He was annoyed and in a heat of passion he picked up one iron rod and gave 2-3 blows on the back of his mother resulting her instant death. Mr. Inamdar pointed out that Appellant-Accused No.1 had no intention to kill his mother. He never thought of such unfortunate death of his mother at his hands. Whatever blows given by Appellant-Accused, by iron rod, were not on the vital parts of the body, however, mother of the Appellant succumbed to injuries instantly. He submitted that it is not a case of murder as defined under Section 300. He submitted that motive is important. Secondly, the Appellant-Accused had no knowledge that 2-3 blows of iron rod may cause death of his mother instantly. Mr. Inamdar, therefore, vehemently submitted that learned Additional Sessions Judge has committed an error while convicting the Appellant-Accused under Section 302 of

IPC. According to Mr. Inamdar, the learned Counsel for the Appellant, instant case falls under Section 304(II) of IPC in view of the peculiar facts of the case. He, therefore, urged to quash and set aside the conviction awarded by the Additional Sessions Judge to the Appellant-Accused under Section 302 of IPC and prayed to modify the same under Section 304(II) of IPC.

10. *Per contra*, Mr. Dedhia, the learned APP appearing for the State, also took us through the testimony of two eye witnesses referred above. He vehemently submitted that the Appellant-Accused had used iron bar while assaulting to his mother knowing fully well that if such a weapon is used, it may cause death. He submitted that the said weapon 'rod' has been recovered from the spot. There is no reason to disbelieve the testimony of PW No.1 Nivrtutti and PW No.7 Jagannath who have witnessed the incident. Both of them were natural eye witnesses to the incident. It is a case of murder. The Appellant-Accused has committed murder of his mother. The learned Additional Sessions Judge has rightly convicted the Appellant under Section 302 of IPC. He, therefore, urged to confirm the order of conviction.

11. We have considered the submissions of Mr. Sushil Inamdar, the learned Counsel for the Appellant-Accused and the learned APP for the State-Respondent. We have also gone through the original record and proceedings with the able assistance of learned APP and learned

Counsel (appointed) for the Appellant-Accused.

12. Learned Counsel for the Appellant has not disputed that Ekabai (since deceased), who was mother of the Accused met with homicidal death. He is not even disputing the medical evidence as well as cause of death of Ekabai.

13. The point revolves around whether it is a case of murder or it is a case of homicidal death not amounting to murder and falls under Exception contemplated under Section 300 of IPC and thereby attracting Section 304(II) of IPC.

14. *Mens Rea* is very important in a criminal trial. It is to be seen from the evidence available on record whether the Appellant-Accused had intention to kill his mother. The circumstances, manner of assault, nature and number of injuries, all have to be considered cumulatively to decipher intention or knowledge as the case may be. It would depend upon the weapon used, the size of it, in some cases the force with which the blow was given, part of the body on which it was given, and several such relevant factors play role. For bringing in operation Exception 4 of Section 300 of Indian Penal Code, 1860 it has to be established that the act was committed without premeditation in a sudden fight, in a heat of passion, upon sudden quarrel and without the offender having taken undue advantage and not having acted in a cruel

and unusual manner.

15. Having regard to the provisions of Section 304, Part I & II, let us examine the evidence of above referred two eye witnesses which throws light on the entire episode of incident which had occurred on the unfortunate evening of 19th March 2011. On going through the evidence of PW No.1 Nivrutti and PW No.7 Jagannath, both eye witnesses, it is evident that Appellant-Accused on the day of incident got annoyed since his mother Ekabai has prepared the same vegetable of brinjal and potatoes and that too not cooked properly. He got annoyed and in a heat of passion picked up quarrel with his mother Ekabai. He picked up iron bar/rod and started assaulting to his mother Ekabai on her back. It is further evident that after 2-3 blows by iron rod/bar, Ekabai fallen down. In the meanwhile, PW No.1 and PW No.7 rushed there. PW No.1 Nivrutti snatched away iron bar from the hands of Appellant-Accused. PW No.1 Nivrutti noticed that Ekabai is not responding. He called his father and uncle on a phone. Accordingly, both of them rushed to the spot. They noticed that Ekabai was no more. It was instant death of Ekabai due to blows given by the Appellant-Accused by means of iron rod.

16. It is material to note that firstly there was quarrel between Ekabai (since deceased) and her son Appellant-Accused on account of preparing same vegetable in the evening. The Appellant got annoyed

because of repetition of same vegetable in the evening and after picking up quarrel with his mother, in the heat of anger, he picked up iron bar and started assaulting on the back of his mother resulting her instant death. There was no premeditation in making such attack. He was not armed with any weapon. He seems to have picked up iron rod which was lying there at brick kiln. He never thought of such unfortunate death of his mother at his hands because of 2-3 blows of iron rod. It indicates that Appellant-Accused had no intention to kill his mother. If he had really intention to kill his mother, he would have given blows on the vital parts of the body of his mother like head. It indicates that it was not his intention to kill his mother. Out of anger he seems to have given 2-3 blows on the back of his mother resulting her instant death. If these peculiar facts and circumstances, brought on record through the evidence of two eye witnesses referred above, are taken into consideration, we find merit in the submissions of learned Counsel for the Appellant-Accused that it is not a case of murder.

Exception 4 to Section 300 reads as under:

“ Exception 4 to Section 300 Indian Penal Code provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel

or unusual manner.

Explanation to Exception 4 to the section further provides that it is immaterial in such cases which party offers provocation or commits the first assault.

A perusal of the provision would reveal that four conditions must be satisfied to bring the matter within Exception 4:

- (i) it was a sudden fight
- (ii) there was no premeditation
- (iii) the act was done in the heat of passion; and that
- (iv) the assailant had not taken any undue advantage or acted in a cruel manner.”

17. On going through the evidence on record coupled with the medical evidence, we are not in agreement with the finding recorded by the Additional Sessions Judge thereby convicting the Appellant-Accused for the offence of murder under Section 302 of IPC. On going through the impugned judgment, it is noticed by us that the learned Additional Sessions Judge has not considered the above crucial aspects while making scrutiny of the evidence. The learned Additional Sessions Judge has not considered the provisions of Section 304 of IPC while assessing the evidence whether it is a case of murder or whether Section 304 Part I or II of IPC attracts. Resultantly, the learned

Additional Sessions Judge went on passing conviction against the Appellant-Accused under Section 302 of IPC and sentenced him to suffer imprisonment for life. It is necessary to upset that finding in view of the above peculiar circumstances noticed by us by referring evidence of two important eye witnesses. The case on hand clearly falls under the Exception No.4 of Section 300 of IPC and thereby attract penal Section 304 Part II of IPC.

18. To support our view, we would like to place reliance in the case of *Rambir v/s. State (NCT of Delhi)*¹ wherein the Hon'ble Supreme Court has held that unless it is barbaric, torturous and brutal act of cruelty, benefit of Exception 4 to Section 300 of IPC cannot be denied. The case in hand is squarely covered by the above referred citation in case of Rambir (supra). As such conviction recorded against the Appellant-Accused under Section 302 of IPC needs to be quashed and set aside. Resultantly, the conviction of Appellant-Accused under Section 302 of IPC certainly needs to be modified to one under Section 304(II) of IPC. As per record the Appellant-Accused is behind the bars since more than 9 years. Having regard to the provisions of Section 304 (II) of IPC and punishment provided therein and in view of the facts of the case in hand, it would meet the ends of justice if Appellant-Accused is awarded the conviction which he has undergone till this date.

1 (2019) 6 Supreme Court Cases 122

19. Needless to say that Appeal needs to be partly allowed as under.

(i) The Appeal is partly allowed.

(ii) The conviction recorded against the Appellant-Accused under Section 302 of IPC by the Additional Sessions Judge, Kalyan, District Thane, in Sessions Case No.128/2011 is hereby set aside and the conviction of the Appellant-Accused is altered under Section 304(II) of IPC for the period which the Appellant-Accused has undergone the sentence in the prison.

(iii) The Registry to take necessary follow up in view of alteration of sentence as indicated above.

(iv) R & P be sent back to the Sessions Court, Kalyan, District Thane, as per procedure.

(v) The Criminal Appeal is accordingly disposed of.

(SHRIKANT D. KULKARNI, J) (PRASANNA B. VARALE, J)