

Sunny @ Santosh Dharmu Bhosale

v.

The State of Maharashtra

(Criminal Appeal No. 4664 of 2024)

20 November 2024

[B.R. Gavai* and K.V. Viswanathan, JJ.]

Issue for Consideration

Whether it was the appellant-accused who assaulted the victim-deceased due to which the death of the deceased has occurred; whether the conviction of the appellant under Section 302 IPC, deserves to be altered to one under Part I of Section 304 IPC.

Headnotes[†]

Penal Code, 1860 – s.302 and s.304 Part-I – Prosecution case that PW-6 and her husband-victim went to the house of PW-5 – Appellant-accused came in front of the house of PW-5 and started abusing PW-5 and his wife on account of a loan they had taken – Victim intervened – Appellant abused victim as well – Appellant left – Victim went behind the appellant – Sound of quarrel was heard – After rushing to the spot, appellant was seen assaulting victim with a bamboo stick – Injured victim was taken hospital, where he was declared dead – Trial Court convicted appellant u/s. 302 IPC – Appeal preferred by the appellant was dismissed by the High Court:

Held: Taking into consideration the evidence of PW-5 and PW-6, there is no error in the finding of the trial court and the High Court that it is the present appellant who assaulted the victim-deceased due to which the death of the deceased has occurred – From the testimony of PW-6 itself, it will be clear that after a scuffle took place at the house of PW-5, the accused appellant went from there and the deceased followed him – Thereafter, as to how the assault took place is not clear either from the evidence of PW-5 or from the evidence of PW-6 – It is however clear that after the accused appellant left the place, the deceased followed him – After that, as to what had happened between the deceased and the appellant is not clear from the evidence of the eyewitnesses – From the evidence

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of PW-6 itself, it is clear that the deceased had nothing to do with the incident – It was just that deceased had intervened when appellant was abusing PW-5 and his wife – Irked by the intervention of the deceased, the appellant started abusing the deceased and thereafter went away – It is thus clear that no motive has come on record as to why the appellant wanted to commit the murder of the deceased – The evidence of the eyewitnesses also does not show that the appellant had come with any weapon – On the contrary, the medical evidence would show that the injuries caused are with the bamboo stick, which is commonly available in a village – The possibility of the deceased following the appellant and an altercation taking place between them and in a sudden fight in the heat of passion the appellant assaulting the deceased cannot be ruled out – The nature of the injuries sustained by the deceased would also not show that the appellant had taken any undue advantage or acted in a cruel or unusual manner – In that view of the matter, the appellant is entitled to benefit of doubt – The conviction of the appellant u/s.302 IPC, therefore, deserves to be altered to one under Part I of s.304 IPC. [Paras 12, 15, 16, 17, 18, 19]

List of Acts

Penal Code, 1860

List of Keywords

Section 304 Part-I of Penal Code, 1860; Section 302 of Penal Code, 1860; Sudden fight; Heat of passion; Benefit of doubt.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4664 of 2024

From the Judgment and Order dated 05.08.2020 of the High Court of Judicature at Bombay in CRLA No. 927 of 2015

Appearances for Parties

D.N. Goburdhun, Sr. Adv., Mrs. Anjani Aiyagari, Rohan Kochar, Jayanta Kumar Biswas, K. Sriram, Advs. for the Appellant.

Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Advs. for the Respondent.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****B.R. Gavai, J.**

1. Leave granted.
2. The present appeal arises out of the final judgment and order dated 5th August, 2020, passed by a Division Bench of the High Court of Judicature at Bombay (hereinafter, “High Court”), in Criminal Appeal No. 927 of 2015, whereby the High Court has negated the challenge to the judgment and order dated 7th July, 2015, passed by the Court of Additional Sessions Judge – 3, at Satara (hereinafter, “trial court”), in Sessions Case No. 121 of 2014, thereby upholding the conviction for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter, “IPC”) and the imposition of sentence to suffer imprisonment for life along with fine of Rs. 500/- on the appellant.
3. By way of the present appeal, the appellant has called into question the *dismissal* of his Criminal Appeal by the High Court.
4. The facts, *in brief*, giving rise to the present appeal are as given below.
 - 4.1 The prosecution story is that on 21st March 2014, Sunita Bhosale (PW-6) and her husband Gopal Bhosale went to the house of Rajendra Bhosale (PW-5). At that moment, Rajendra Bhosale had gone to answer nature’s call. Sunita Bhosale (PW-6) and her husband were having a conversation with Chayya – wife of Rajendra Bhosale (PW-5). At about 10:30 PM, Sunny @ Santosh (appellant) came in front of the house of Rajendra Bhosale (PW-5) and started abusing Chayya and Rajendra Bhosale (PW-5) on account of a loan they had taken. When Chayya tried to pacify the appellant, he attempted to assault her. Seeing this, Gopal Bhosale intervened and requested the appellant not to use abusive language and that his grievance could be resolved the next day. The appellant went some distance away from the house of Rajendra Bhosale (PW-5) but then suddenly started abusing Gopal Bhosale in filthy language and called him out of the house in a threatening tone. Gopal Bhosale went out of the house and followed the appellant towards the Northern side of tar road leading towards Khadkoba Temple in the village. It

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is then that the appellant beat and assaulted Gopal Bhosale particularly on his face and head by means of a bamboo stick causing bleeding injuries. Mangesh Bhosale (PW-3) and Aniket Bhosale (not examined), upon hearing the sound of quarrel so also Rajendra Bhosale (PW-5) who was informed by Sunita Bhosale (PW-6) and his wife Chayya, rushed towards the spot and saw the appellant assaulting Gopal Bhosale by means of a bamboo stick and the injured lying on the ground. Seeing the three of them, the appellant ran away from there. Other people including Sharad Bhosale (PW-4) gathered at the spot. The injured Gopal Bhosale was taken to the Rural Hospital, Khandala, where the doctor declared him brought dead.

- 4.2 Sharad Bhosale (PW-4) lodged the First Information Report being FIR No. 54 of 2014 at Police Station Khandala, District Satara, on the intervening night of 21st March 2014 and 22nd March 2014 at around 1:35 AM. The FIR was registered for offences punishable under Sections 302 and 504 of IPC.
- 4.3 Investigating Officer Ashok Shelke (PW-10) conducted the investigation. After preparing the inquest panchnama, the dead body was sent for postmortem. The appellant was arrested. The blood-stained clothes of the appellant were seized by preparing a panchnama. While in police custody, the disclosure statement of the appellant was recorded and at his instance muddemal i.e., bamboo stick was seized under panchnama. The Investigating Officer also recorded the statement of witnesses. He sent blood-stained clothes, bamboo stick, etc., for chemical analysis.
- 4.4 The Investigating Officer, upon completion of the investigation, filed a chargesheet forwarding the appellant to face the trial. The case was committed to the Sessions Court as the offence punishable under Section 302 of the IPC is exclusively triable by the Sessions Court.
- 4.5 The trial court, upon hearing, framed charge against the appellant. The appellant pleaded not guilty and claimed to be tried.
- 4.6 In order to bring home the guilt of the appellant, the prosecution examined ten witnesses. Besides the oral evidence, prosecution has also placed reliance on a number of documents. The incriminating circumstances in evidence were put to the appellant. The appellant denied the circumstances. He led no defence evidence. The defence was of total denial.

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- 4.7 The Sessions Court, upon trial, convicted the appellant for the offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life.
- 4.8 Aggrieved thereby, the appellant preferred an appeal before the High Court. Vide impugned final judgment and order, the High Court dismissed the appeal filed by the appellant. Aggrieved still, the appellant has filed the present appeal.
5. We have heard Shri D.N. Goburdhun, learned Senior Counsel appearing for the appellant and Shri Siddharth Dharmadhikari, learned Counsel appearing for the respondent-State.
6. Shri D.N. Goburdhun, learned Senior Counsel, submits that the trial court as well as the High Court has grossly erred in convicting the appellant. It is submitted that the testimonies of the witnesses i.e. Mangesh Bhosale (PW-3), Rajendra Bhosale (PW-5) and Sunita Bhosale (PW-6) would show that there are material contradictions and inconsistencies in their depositions. It is further submitted that there are various contradictions in the FIR on one hand and the testimonies of the alleged eyewitnesses. He, therefore, submits that the judgment and order of conviction is not at all sustainable in law.
7. Shri Goburdhun in the alternative submits that the evidence of the prosecution witnesses itself would show that the incident was an outcome of a sudden and grave provocation in a quarrel that took place between the deceased and the appellant. It is, therefore, submitted that, in any event, the conviction under Section 302 IPC would not be sustainable and will have to be altered to a lesser offence.
8. Shri Siddharth Dharmadhikari, learned Standing Counsel for the State of Maharashtra, on the contrary, submits that insofar as the material aspect is concerned, the testimonies of all the three eyewitnesses are consistent. He submits that apart from the testimonies of the eyewitnesses, the circumstantial evidence also points towards the guilt of the appellant. He, therefore, submits that no interference would be warranted with the concurrent judgments and orders passed by the trial court and the High Court.
9. Rajendra Bhosale (PW-5), states in his deposition that, on the date of the incident the deceased and his wife Sunita Bhosale (PW-6) had come to his residence. He had gone to answer the call of the nature. When he returned, Sunita Bhosale (PW-6) and his wife were standing

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at the door. They informed that the appellant had come and was abusing the deceased and that the deceased had gone after him. He then, went after them. When he went towards Khadkoba temple, he noticed that the deceased was lying on road near the house situated behind metal-sheet mansion and the appellant was assaulting him by means of bamboo stick. He states that Mangesh Bhosale (PW-3) and one Aniket Bhosale also came there. Seeing them, the appellant fled away. The deceased had become unconscious. The deceased was taken to the Government hospital where he was declared dead.

10. The evidence of Rajendra Bhosale (PW-5) is sought to be corroborated by Mangesh Bhosale (PW-3). He stated that hearing the quarrelling noise on the rear side of his house he came out of the house and thereafter saw the appellant assaulting the deceased. However, the presence of this witness is itself doubtful, inasmuch as, Rajendra Bhosale (PW-5) in his cross-examination admits that the house of Mangesh Bhosale (PW-3) is at a distance of 2000-2500 feet from the place of incident.
11. The prosecution case is, however, also supported by Sunita Bhosale (PW-6), the wife of the deceased.
12. Taking into consideration the evidence of Rajendra Bhosale (PW-5) and Sunita Bhosale (PW-6), we do not find any error in the finding of the trial court and the High Court that it is the present appellant who assaulted the deceased due to which the death of the deceased has occurred.
13. The next question that arises for consideration is as to whether the conviction under Section 302 IPC would be sustainable or whether the appellant deserves to be convicted for a lesser offence.
14. In this respect, it will be relevant to refer to the testimony of Sunita Bhosale (PW-6), the wife of the deceased. She in her evidence states that, she and her husband deceased Gopal had gone to the house of Rajendra Bhosale (PW-5). When they went to the house of Rajendra Bhosale (PW-5), he had gone to answer nature's call. She further states that the accused appellant came there and started abusing Chayya and Rajendra Bhosale (PW-5). Thereafter, her husband tried to persuade the accused appellant telling him why he was abusing them, and they would see about his grievance in the morning. She states that thereafter the accused appellant started abusing her husband deceased Gopal due to his intervention. The

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accused appellant went from there and the deceased also went behind him. She further stated that she and Chayya, the wife of Rajendra Bhosale (PW-5) stood outside the house. At that time, Rajendra Bhosale (PW-5) also arrived. She states that, when Rajendra Bhosale (PW-5) returned, she and Chayya told Rajendra Bhosale (PW-5) about the incident stating that deceased Gopal had gone behind the accused appellant. She states that, thereafter Rajendra Bhosale (PW-5) went towards Khadkoba temple. He was followed by Mangesh Bhosale (PW-3) and one Aniket Bhosale.

15. From the testimony of Sunita Bhosale (PW-6) itself, it will be clear that after a scuffle took place at the house of Rajendra Bhosale (PW-5), the accused appellant went from there and the deceased followed him. Thereafter, as to how the assault took place is not clear either from the evidence of Rajendra Bhosale (PW-5) or from the evidence of Sunita Bhosale (PW-6). It is however clear that after the accused appellant left the place, the deceased followed him. After that, as to what had happened between the deceased and the appellant is not clear from the evidence of the eyewitnesses.
16. From the evidence of Sunita Bhosale (PW-6) itself, it is clear that the deceased had nothing to do with the incident. The appellant had come to the house of Rajendra Bhosale (PW-5) where she and her husband had gone. Rajendra Bhosale (PW-5) had gone to answer nature's call and three of them i.e. the deceased, Sunita Bhosale (PW-6) and Chayya, the wife of Rajendra Bhosale (PW-5), were present there. The appellant started abusing Rajendra Bhosale (PW-5) and his wife Chayya. The deceased intervened and asked the appellant as to why he was abusing Rajendra Bhosale (PW-5). Irrked by the intervention of the deceased, the appellant started abusing the deceased and thereafter went away. It is thus clear that no motive has come on record as to why the appellant wanted to commit the murder of the deceased.
17. The evidence of the eyewitnesses also does not show that the appellant had come with any weapon. On the contrary, the medical evidence would show that the injuries caused are with the bamboo stick, which is commonly available in a village. The possibility of the deceased following the appellant and an altercation taking place between them and in a sudden fight in the heat of passion the appellant assaulting the deceased cannot be ruled out.

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18. As already discussed hereinabove, the prosecution has utterly failed to prove any case of premeditation. On the contrary, the case as put forth by the prosecution is about the appellant coming to the house of Rajendra Bhosale (PW-5), abusing him and his wife Chayya, and the weapon used is a bamboo stick which is commonly available anywhere in the village. The nature of the injuries sustained by the deceased would also not show that the appellant had taken any undue advantage or acted in a cruel or unusual manner.
19. In that view of the matter, we find that the appellant is entitled to benefit of doubt. The conviction of the appellant under Section 302 IPC, therefore, deserves to be altered to one under Part I of Section 304 IPC.
20. We are, therefore, inclined to partly allow the present appeal.
21. In the result, we pass the following order:
 - (i) The appeal is partly allowed.
 - (ii) The conviction of the appellant under Section 302 IPC is altered to the one under Part I of Section 304 IPC.
 - (iii) The appellant has already undergone actual imprisonment for a period of more than 9 years and with remission he has undergone the sentence of more than 12 years prior to his release on bail by the order of this Court dated 4th October 2024. We, therefore, find that the said sentence would subserve the ends of justice. Therefore, the appellant is sentenced to the period already undergone.
 - (iv) The bail bonds, if any, shall stand discharged.

Result of the case: Appeal Partly allowed.