

A MANGESH
v.
STATE OF MAHARASHTRA
(Criminal Appeal No. 14 of 2011)
B JANUARY 05, 2011
[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Penal code, 1860: s.302 – Murder – Accused's sister had love affair with the victim-deceased which was not liked by the accused – On the fateful day at odd hours, when accused saw the deceased with his sister, he assaulted him with a knife – Deceased died after three days – Concurrent findings of courts below that accused stabbed the deceased with a knife which resulted in his death – Conviction u/s.302 and award of life sentence – On appeal, held: It was a clear cut case of loss of self control that the accused caused injuries to deceased – Blow was not with full force as was apparent from the medical evidence – Stabbing was twice on thigh and only once in chest which indicated that there was no intention to cause death – The act was not pre-meditated – The accused had not taken any undue advantage or acted in cruel or in unusual manner – In the facts and circumstances of the case, conviction of the accused altered from s.302 to s.304 Part-I IPC and in order to meet the ends of the justice, ten years rigorous imprisonment awarded to him.

The prosecution case was that PW-6, the sister of the appellants had a love affair with the victim (deceased) which continued for 2-3 years. The appellants did not like their relationship and had altercations with the deceased several times. On the fateful night, the appellants saw the deceased and his sister together at 9.15 p.m. He assaulted the deceased with a knife thrice and ran away from the spot. PW-6 called the police jeep which took the

deceased to the hospital. On the way, the deceased made a statement of sub-inspector (PW-7) which was treated as an FIR under Section 307 IPC. The deceased died later and the FIR was converted to one under Section 302 IPC. The deceased made two dying declarations, one to PW-7 and another to the magistrate to the effect that the appellant had caused knife injuries to him. The trial court convicted the appellant under Section 302 IPC. The High Court affirmed the same. The instant appeal was filed challenging the order of the High Court on the ground that the act of the appellant was not pre-meditated and it happened because of sudden provocation.

Disposing of the appeal, the Court

HELD: 1. It was not the case in any of the dying declarations that the appellant had pre-meditated or pre-planned his actions or was having any information prior to the incident that the deceased would be found with his sister at the place of occurrence. Their meeting might have been taken by the appellant as temerity. Therefore, it was a clear cut case of loss of self control and in the heat of passion, the appellant caused injuries to deceased. It was evident from the medical report that the appellant had not given the knife blow with full force, otherwise, the depth of the injury no.1 would have been more than just "cavity deep". Undoubtedly, injury No.1 had been caused on the vital part of the body of the deceased but when a person loses his sense he may act violently and that by itself may not be a ground to be considered against him while determining the nature of the offence. Each case is to be considered on its own facts. In such a case, the entire attending circumstances must be taken into consideration in order to find out the nature of the actual offence committed. The fact that the appellant stabbed the deceased twice in the thigh and only once in the chest was indicative of a lack of

A intention to cause death. Had the appellant intended to kill the deceased, it is unlikely that he would flee from the scene without having inflicted more injuries on the deceased. On examining the weapon, the doctor, PW.1 opined that injury Nos. 1, 2 and 3 could be caused by
 B handle of the knife. Death of deceased was not instantaneous rather he died on third day of the incident. The appellant had not taken any undue advantage or acted in cruel or in unusual manner. Thus, the facts and
 C circumstances of the case require alteration of conviction of the appellant from Section 302 IPC to Section 304 Part-I IPC and ends of the justice would be met by awarding ten years rigorous imprisonment to the appellant. [Paras 12, 15, 16, 17] [79-B-C; 80-D-H; 81-A-B]

D *Pulicherla Nagaraju alias Nagaraja Reddy v. State of A.P.* AIR 2006 SC 3010 – distinguished.

Kailash v. State of M.P. (2006 (11) SCC 420; *Karuppusamy & Anr. v. State of Tamil Nadu* (2006) 11 SCC 459 – relied on.

E *Sridhar Bhuyan v. State of Orissa* AIR 2004 SC 4100; *Gali Venkataiah v. State of Andhra Pradesh* AIR 2008 SC 462 – referred to.

Case Law Reference:

F	AIR 2006 SC 3010	distinguished	Para 13
	AIR 2004 SC 4100	referred to	Para 14
	AIR 2008 SC 462	referred to	Para 14
G	(2006 (11) SCC 420	relied on	Para 16
	(2006) 11 SCC 459	relied on	Para 16

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
 No. 14 of 2011.

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From the Judgment & Order dated 25.8.2009 of the High Court of Bombay at Nagpur Bench, Nagpur in Criminal Appeal No. 242 of 2004.

Gaurav Agarwal for the Appellant.

Shabkar Chillarge, Sanjay V. Kharde and Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 25.8.2009 passed in Criminal Appeal No.242/04 by the High Court of Judicature at Bombay, Nagpur Bench, affirming the judgment and order dated 16.3.2004 passed by 2nd Additional Sessions Judge, Nagpur, in Sessions Trial No.366/03 convicting the appellant under Section 302 of Indian Penal Code, 1860 (hereinafter called IPC) and awarding the sentence of life imprisonment and, in addition thereto a fine of Rs.1000/- had also been imposed and in default of payment to undergo further rigorous imprisonment for the period of one year.

3. Facts and circumstances giving rise to this appeal are that the appellant's sister Sandhya had a love affair with Prashant (deceased) which continued for 2-3 years. The appellant was fully aware of the said affair and expressed his displeasure, having had altercations with Prashant (deceased) several times. On 30.4.2003, the appellant saw Prashant (deceased) and his sister Sandhya chatting with each other at about 9.15 p.m. at a short distance from his house. He assaulted Prashant (deceased) with the knife thrice and ran away from the spot.

4. The appellant's sister Sandhya (PW.6) called the police jeep passing through the road. The police shifted Prashant,

A injured, to hospital and while going to the hospital Prashant made a statement to PSI Bhaurao Meshram (PW.7) which was treated to be an FIR under Section 307 IPC. As subsequently, Prashant died, the FIR was converted to one under Section 302 IPC. Prashant made two dying declarations (Exh. 20 and 26),
B one to PSI Bhaurao Meshram (PW.7) on 30.4.2003 and another to Mr. Prakash, Special Judicial Magistrate (PW.3) on 1.5.2003 to the effect that the appellant had caused knife injuries to him.

C 5. After conclusion of the investigation, charge sheet was filed against the appellant under Section 302 IPC. In support of the case, the prosecution examined several witnesses, however, the eye-witnesses including Sandhya (PW.6) did not support the case of the prosecution and they were declared hostile. The trial Court after considering the evidence on record
D and the arguments made by learned counsel for prosecution as well as the defence, convicted the appellant under Section 302 IPC vide judgment and order dated 16.3.2004 awarding the life imprisonment and a fine of Rs.1000/- and in default of payment to undergo further rigorous imprisonment for the period of one year.

E 6. Being aggrieved, the appellant preferred Criminal Appeal No.242/04 which has been dismissed vide impugned judgment and order dated 25.8.2009. Hence, this appeal.

F 7. Shri Gaurav Agrawal, learned counsel appearing for the appellant has made large number of submissions regarding the veracity of the evidence on record; pointed out contradictions in two dying declarations; prosecution case was not supported by any of the eye-witnesses including Sandhya (PW.6) who had called the police jeep which had taken Prashant (deceased)
G to the hospital; and the panchnama witnesses of the recovery of knife also did not support the case of the prosecution. However, realising the fact that there have been concurrent findings of fact by the two courts below, wherein after considering the contentions of the defence in detail the courts
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have recorded the finding that there was no material contradiction in both the dying declarations and the conviction could be based solely on the said dying declarations, he restricted his case only to the nature of offence. It has been submitted by Mr. Agrawal that as the act of the appellant had not been pre-meditated and it all happened because of sudden provocation, conviction could be only under Section 304, Part I IPC and not under Section 302 IPC.

8. Mr. Shabkar Chillarge, learned counsel appearing for the State has submitted that considering the gravity of injuries, no interference is required with the impugned judgment by this Court. The appellant has rightly been convicted under Section 302 IPC. The appeal lacks merit and is liable to be dismissed.

9. We have considered the rival submissions made by learned counsel for the parties and perused the record.

10. The admitted facts, in the case, have been that the love affair of Sandhya, sister of the appellant, continued with Prashant (deceased) for 2-3 years. The appellant did not like the relationship and had altercations with Prashant (deceased) several times. On seeing both of them together at an odd hour i.e. 9.15 P.M. on 30th April, 2003, he suddenly assaulted Prashant with knife and caused stab injuries. Later on, Prashant (deceased) succumbed to the said injuries and died on 2nd May, 2003. The following injuries were found on his body as per the postmortem report:

- (i) Stitched wound over left side of chest 9th intercostal space in posterior auxiliary line of size 1 cm x 0.5 cm angles and margins clear cut cavity deep.
- (ii) Continued abrasion left shoulder, anterior aspect 3 cm x 0.5 cm, reddish.
- (iii) Grazed abrasion over left arm, anterior aspect 4 cm x 3 cm, reddish brown.

- A (iv) Contused abrasion over dorsum of left hand, 3 cm x 2 cm, reddish brown.
- (v) Stab wound in the mid of right thigh medial aspect 1.5 cm x 0.5 cm x muscle deep, angles and margins clean.
- B (vi) Stab wound over right thigh, lateral aspect in its middle 4.5 cm x 1.5 cm, muscle deep, angles and margins clear cut.

C Doctor Amit Kumar (PW.1) found the following internal injuries :

- (i) Internal injuries to thorax cut injury to the parietal pleura corresponding to the injury no. 1.
- D (ii) Internal injury to diaphragm cut injury through and through corresponding to injury no. 1.
- (iii) Peritoneum cut injury to peritoneum corresponding to injury no. 1.
- E (iv) Cut injury to left gastric artery, cut injury to outer layer of stomach cut injury to peritoneum corresponding to injury no. 1.

F Cause of death was opined to be hemorrhagic shock due to stab injury.

In the opinion of the doctor, injury no.1 was of grave nature and proved to be fatal. Injury nos.2, 3, and 4 were simple injuries. Injury nos. 5 and 6 did not cause any internal damage.

G 11. In both dying declarations made by Prashant (deceased), the contradiction had been regarding place of injuries and nothing else which has been held by both the courts below to be immaterial. What is material in both the dying declarations that on seeing Prashant, deceased and Sandhya

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together, appellant got annoyed and immediately took out the knife which he had with him and gave three blows on the body of deceased.

12. It is evident from the medical report that the appellant has not given the knife blow with full force. Otherwise, the depth of the injury No.1 would have been more than just "cavity deep". The fact that the appellant stabbed the deceased twice in the thigh and only once in the chest is indicative of a lack of intention to cause death. Had the appellant intended to kill the deceased, it is unlikely that he would flee from the scene without having inflicted more injuries on the deceased.

13. The judgment cited by the learned counsel for the State, *Pulicherla Nagaraju alias Nagaraja Reddy v. State of A.P.*, AIR 2006 SC 3010, is quite distinguishable from the present case as in that case the knife blow that caused death was given with full force and the single injury was found to be 12 c.m. deep. Even in that case the law has been laid down as under:

"The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a

A single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention”.

B 14. This Court has re-iterated the same view in *Sridhar Bhuyan v. State of Orissa*, AIR 2004 SC 4100; and *Gali Venkataiah v. State of Andhra Pradesh*, AIR 2008 SC 462.

C 15. It is not the case even in any of the dying declarations that the appellant had premeditated or preplanned his actions or was having any information prior to the incident that the deceased would be found with his sister Sandhya at the place of occurrence. Their meeting might have been taken by the appellant as temerity. Therefore, it is a clear cut case of loss of self control and in the heat of passion, the appellant caused injuries to Prashant (deceased). By no means, can it be held to be a case of premeditation. The appellant did not cause all the injuries on the vital part of the body. Nor the appellant caused the fatal injury No.1 with full force, otherwise the said injury could have been very deep. On examining the weapon, Dr. Amit Kumar (PW.1) opined that injury Nos. 1, 2 and 3 could be caused by handle of the knife. Death of Parshant (deceased) was not instantaneous rather he died on third day of the incident. The appellant has not taken any undue advantage or acted in cruel or in unusual manner.

F 16. Undoubtedly, injury No.1 had been caused on the vital part of the body of the deceased but it must also be borne in mind that when a person loses his sense he may act violently and that by itself may not be a ground to be considered against him while determining the nature of the offence. Each case is to be considered on its own facts, however, taking a holistic view of the matter. In such a case, the entire attending circumstances must be taken into consideration in order to find out the nature of the actual offence committed. (See: *Kailash*

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v. *State of M.P.*, (2006 (11) SCC 420; and *Karuppusamy & Anr. v. State of Tamil Nadu*, (2006) 11 SCC 459.) A

17. Thus, the facts and circumstances of the case require alteration of conviction of the appellant from Section 302 IPC to Section 304 Part-I IPC and ends of the justice would be met by awarding ten years rigorous imprisonment to the appellant. Ordered accordingly. The appeal is disposed of. B

D.G.

Appeal disposed of.