SUDHAKAR

*v.*

STATE OF MAHARASHTRA

(Criminal Appeal No. 1603 of 2012)

OCTOBER 05, 2012

**[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]**

*Penal Code, 1860 – s. 304 (Part I) – Prosecution of accused u/s. 302 – For killing his own son – Mother of deceased and one neighbour witnesses to the incident – Seizure of weapon of offence, blood-stained clothes of accused and bloodstained bed sheets – Report of the Chemical Analyst disclosing that blood on the clothes of accused matched with blood group of deceased – Mother in her cross-examination stating that the deceased was under the influence of liquor and in such condition he used to create ruckus in the house – Trial court convicting the accused u/s. 302 – High Court confirming the conviction – On appeal, held: Offence against the accused is conclusively proved – There is nothing to suggest that there was premeditation in the mind of the accused to cause death – Behavior of the deceased under influence of liquor created heat of passion in the accused – Therefore conviction altered to one u/s. 304 (Part I) – Sentence of Life Imprisonment altered to period already undergone i.e. 8 years.*

**The appellant-accused was prosecuted for killing his own son by stabbing him. Prosecution case was that PW1 (mother of deceased and wife of accused) lodged a complaint about the incident. The police seized the clothes of the accused, the knife, blood-stained bed sheets in presence of the panch witnesses. PW. 1 in her statement before court stated that the deceased was**

A under influence of liquor and in such condition, he used to throw house-hold articles and create a ruckus in the house. PW-2 was another witness stated that he had seen the accused in front of his house who told him that he killed his son. Trial court convicted the accused u/s. 302
B IPC and sentenced him to life imprisonment and fine of Rs. 500/- with default clause. High Court confirmed the conviction. Hence the present appeal.

Partly allowing the appeal, the Court

C HELD: 1. It came out in evidence that at the time of occurrence, there were only three persons, namely, the appellant, P.W.1 and the deceased. Though there is variation in the version of P.W.1, as between the complaint and her evidence before the court, going by the
D evidence available on record, the conclusion of the trial court that the appellant was responsible for the death of the deceased is unassailable. Apart from the exclusive presence of the appellant with a weapon in his hand as deposed by P.W.2, the other two persons were the
E deceased and P.W.1. The said conclusion of the trial court as well as that of the High Court cannot be doubted. Further the report of the chemical analysis also disclosed that the blood stained clothes of the appellant matched with the blood group of the deceased, which were found
F on the clothes of the deceased himself. Therefore, there was conclusive proof to hold that it was the appellant who was responsible for the single stab injury inflicted upon the deceased with the aid of the knife seized under Exhibit-47. [Para 8] [1174-F-H; 1175-A-C]

G 2. There was nothing to suggest that there was any premeditation in the mind of the appellant to cause the death of the deceased. Taking into account the statement of P.W.1 that the deceased was under the influence of liquor and that whenever he was under the influence of

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**liquor he used to throw the household articles and create a ruckus in the house was a factor which created a heat of passion in the appellant who as a father was not in a position to tolerate the behaviour of his son whose misbehaviour under the influence of liquor was the torment. Therefore, unmindful of the consequences, though not in a cruel manner, the appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, the offence alleged and as found proved against the appellant can be brought under the First Part of Section 304 IPC. Accordingly, the conviction is altered as falling under Section 304 (Part I) IPC in place of Section 302 IPC. [Para 9] [1175-E-H; 1176-A]**

**3. Taking note of the sentence already undergone (8 years), it is held that the sentence already undergone would be sufficient punishment apart from the fine imposed with the default sentence as per the judgment of the trial court and as affirmed by the High Court. [Para 9] [1176-B-C]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1603 of 2012.

From the Judgment & Order dated 01.12.2011 of the High Court of Judicature of Bombay Bench at Nagpur in Criminal Appeal No. 84 of 2006.

K. Rajeev for the Appellant.

Asha G Nair for the Respondent.

The Judgment of the Court was delivered by

**FAKKIR MOHAMED IBRAHIM KALIFULLA, J.** 1. Leave granted and the scope of consideration in this appeal is limited to the nature of offence and the sentence to be imposed.

A 2. This appeal is directed against the judgment of the High Court of Judicature at Bombay, Nagpur Bench dated 01.12.2011 passed in Criminal Appeal No.84 of 2006. By the judgment impugned in this appeal, the conviction of the appellant for an offence under Section 302 of IPC with a B sentence of life imprisonment apart from fine of Rs.500/- in default of which to undergo rigorous imprisonment for three months by the learned Sessions Judge, Amravati in Sessions Trial No.195/2004 dated 22.09.2005 came to be confirmed.

3. The brief facts which are required to be stated are that C on 10.07.2004 P.W.1-Tulsabai preferred a complaint under Exhibit-38 with P.W.3-PSI Madhav Dhande attached to Police Station Frezarpura, Amravati which came to be registered as Crime No.138/2004. The printed First Information Report is Exhibit-39. According to the complainant, on 09.07.2004 D between 9.30 p.m. to 10.00 p.m. while her husband, the appellant herein, was sleeping on a wooden cot which was in the front court-yard of the house, her son Balya-the deceased, came from outside and asked the appellant as to whether he had taken his dinner to which the appellant replied in the E negative. Thereafter, the deceased asked P.W.1 to serve food for him which she did inside the house. Balya went inside the house for washing his hands. The deceased stated to have asked his father, appellant herein, to sleep inside the house and, thereafter, the appellant went inside which was being F watched by P.W.1 who was standing near the door of the house. It is sated that at that point of time she saw the appellant inflicting a stab injury on the deceased on which the deceased raised shouts about the inflicting of the injury by his father and so saying he also fell down. The appellant stated to have come G out of the house by shouting to the effect that he had stabbed the deceased and on hearing shouts the appellant's brother one Sunil Chandrabhan Bansod arrived at the spot and arranged for an auto rickshaw to take the deceased to Irwin Hospital, Amravati. It is stated that on being admitted in the hospital, it H was declared that the deceased succumbed to the injuries.

4. After investigation, P.W.3 stated to have arrested the appellant at 1.50 a.m and drew the scene of occurrence in the presence of Panchas under Exhibit-45, seized the clothes of the appellant under seizure memo Exhibit-46, seized the knife under seizure memo Exhibit-47 and also seized two blood stained bed-sheets, simple and blood stained soil from the spot in the presence of Panch witnesses under seizure memo Exhibit-48 which were sent for chemical analyzer report. The report of the chemical analyzer was marked as Exhibits-30, 35 and 36. Exhibit 35 disclosed that the knife was stained with human blood while the clothes of the appellant were stained with blood group 'A' which was the blood group of Balya, the deceased. Exhibit-36 disclosed that the blood group of the appellant as 'B' group. On framing of the charges for the offence under Section 302 of IPC, the trial was held against the appellant in which four witnesses were examined on the side of the prosecution. In the 313 questioning the appellant totally denied the offence alleged against him.

5. P.W.1, the wife of the appellant, is also the mother of the deceased. As per her version before the Court on the date of the incident she was present along with her husband, when the deceased in the first instance asked the appellant whether he had his dinner and thereafter P.W.1 served dinner to the deceased inside the house. The appellant, who was sitting on the cot outside the house, stated to have went inside the house while P.W.1 was standing at the entrance of the house. Then P.W.1 stated to have heard the cries of the deceased to the effect that he was dying and when she asked him, he replied that he was stabbed by the appellant and that she cried for help to which the neighbours gathered who took the deceased in an auto rickshaw to the hospital and that thereafter she lodged the report Exhibit-38. In the cross-examination P.W.1 came out with the information that the deceased was under the influence of liquor and that whenever he was under the influence of liquor he used to throw the household articles and also beat himself.

A 6. According to P.W.2, a neighbour of the house, on hearing the cries of a lady i.e. P.W.1 he rushed towards her house where he saw the appellant standing outside his house and that the door was closed. According to him, when he asked the appellant as to what happened, the appellant, who was B holding a knife in his hand, informed P.W.2 that he gave one blow to his son which made him sleep for ever. P.W.2 also stated that P.W.1 Tulsabai opened the door which was latched from inside and she ran outside the house. P.W.2 was declared hostile. He admitted that the appellant was holding a knife in C his hand and was standing outside the house.

7. P.W.4, the postmortem doctor, who issued Exhibit 51-postmortem report deposed that the deceased sustained one stab injury of 1½ inch in length and 2 inches in depth which was perforated up to intestine. According to P.W.4 on internal D examination he found that the abdominal wall was ruptured due to stab on right lateral part of abdominal wall and that peritoneal cavity was full of blood, the liver was also found ruptured below the stab injury. As per the opinion of P.W.4, the probable cause of death was the injury to the vital organ like E liver which caused internal haemorrhage and shock. To the suggestion put to P.W.4 that the injury mentioned in postmortem report could have been caused by the knife of 19 cm. in length and 4 cm. in width, the same was denied by him.

F 8. Whatever be the subsequent versions made by P.Ws 1 and 2 before the Court, it came out in evidence that at the time of occurrence there were only three persons, namely, the appellant, P.W.1 and the deceased. The admission of P.W.1 that the deceased had drinking habit and that whenever he was under the influence of liquor he used to create a ruckus in the G house was a factor which had to be necessarily borne in mind while considering the offence alleged and proved against the appellant. Though there is variation in the version of P.W.1, as between the complaint and her evidence before the Court, going by the evidence available on record, the conclusion of H

the Trial Court that the appellant was responsible for the death of the deceased is unassailable. Apart from the exclusive presence of the appellant with a weapon in his hand as deposed by P.W.2, the other two persons were the deceased and P.W.1. The said conclusion of the Trial Court as well as that of the High Court cannot be doubted. Further the report of the chemical analysis Exhibits 35 and 36 also disclosed that the blood stained clothes of the appellant matched with the blood group of the deceased which were found on the clothes of the deceased himself. Therefore, there was conclusive proof to hold that it was appellant who was responsible for the single stab injury inflicted upon the deceased with the aid of the knife seized under Exhibit-47. Having reached the above conclusion, the only other question raised was as to whether there is any mitigating circumstance in order to hold that the offence would fall under any of the Exceptions to Section 300 of IPC to state that it was a case of culpable homicide not amounting to murder.

9. Going by the narration of the facts disclosed, there was nothing to suggest that there was any premeditation in the mind of the appellant to cause the death of the deceased. Taking into account the statement of P.W.1 that the deceased was under the influence of liquor and that whenever he was under the influence of liquor he used to throw the household articles and create a ruckus in the house was a factor which created a heat of passion in the appellant who as a father was not in a position to tolerate the behaviour of his son whose misbehaviour under the influence of liquor was the torment. Therefore, unmindful of the consequences, though not in a cruel manner the appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by learned counsel for the appellant, we are convinced that the offence alleged and as found proved against the appellant can be brought under the First Part of Section 304 of IPC. Accordingly, while affirming the conviction of the appellant, we

A are only altering the same as falling under Section 304 Part I of IPC in place of Section 302 of IPC. As far as the sentence imposed on the appellant in as much as we reached at the conclusion that the conviction should fall under Section 304 Part I of IPC, taking note of the sentence already undergone, we find
B from the Imprisonment Certificate that the appellant is in jail from 12.07.2004 and he is 60 year old, P.W.1, who is the wife of the appellant, is left all alone and the appellant having suffered imprisonment for more than eight years, we hold that the sentence already undergone would be sufficient punishment
C apart from the fine imposed with the default sentence as per the judgment of the Trial Court and as affirmed by the High Court. The appeal stands partly allowed with the above modifications of the charge and the sentence imposed on the appellant.

D 10. In the light of the modification of the sentence, the appellant shall be set at liberty forthwith, if not required in any other case.

K.K.T. Appeal partly allowed.