

A BALU S/O ONKAR PUND & OTHERS

v.

THE STATE OF MAHARASHTRA
(Criminal Appeal No. 175 of 2015)

B FEBRUARY 2, 2015

[DIPAK MISRA AND ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860: s.302 r/w s.149; 304 Part-I – Allegation that accused persons committed murder of PW-3's wife – Prosecution case was that PW-3 had purchased land for cattle shed from A-1 – Later their relations became bitter and A-1 started pressurizing PW-3 to vacate the land – On fateful day, accused armed with weapons barged in the cattle shed and started removing the iron sheets fixed on roof – Scuffle took place between PW-3 and accused persons – A-1 set fire on the cattle shed – Wife of PW-3 present in cattle shed caught fire – When PW-3 tried to save his wife, A-2 inflicted axe blow on him – PW-3's wife succumbed to burn injuries – Conviction u/s. 302 by courts below – Held: It was a fight on a spur of moment between the two male groups on the issue of taking possession of cattle shed with no intention to kill any one – Had the appellants not ablaze the cattle shed, the incident of death of PW-3's wife would not have occurred – In the absence of any overt act attributed to any of the appellants towards the deceased for inflicting any injury to her, the appellants could not have been convicted for an offence of murder so as to attract the rigour of s.302 – Instead they are liable to conviction u/s.304 Part I.

G Partly allowing the appeal, the Court

HELD: This is a case where the appellants should have been convicted for the offence punishable under Section 304 Part-I instead of Section 302 IPC. It is for the reason that firstly, neither there was any motive and nor

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any intention on the part of any of the appellants to eliminate the wife of PW-3. Secondly, there was no enmity of any kind with deceased in person with any of the appellants. Thirdly, the appellants had gone there to take possession of the cattle shed and not with an intention to kill any member of the family of PW-3. Fourthly, if at all, if there was some kind of animosity or jealousy then it was towards A-1 whose panel had won the election. The deceased had nothing to do with election because she never contested the election. Fifthly, despite the appellants armed with weapons, none of them inflicted any injury or gave blow to the deceased but single blow was inflicted only on PW-3, who fortunately survived. Sixthly, the deceased died due to sustaining of burn injuries, which she suffered because the appellants ablazed the cattle shed by pouring kerosene on it. [Paras 18, 19 and 20] [979-G-H; 980-A-C, F]

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Virsa Singh v. State of Punjab 1958 SCR 1495;
Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC 444: 2006 (4) Suppl. SCR 633 -
relied on.

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Case Law Reference:

1958 SCR 1495 Relied on Para 15

2006 (4) Suppl. SCR 633 Relied on Para 17

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 175 of 2015.

From the Judgment and Order dated 03.02.2014 of the
High Court of Judicature at Bombay, Bench at Aurangabad in
Criminal Appeal No. 225 of 2011

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Criminal Appeal Nos. 166-167 and 164-165 of 2015.

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A Gopal Jain, Sudhansu S. Choudhari, Anish R. Shah, Shivaji M. Jadhav for the Appellants.

Sushil Karanjkar, Aniruddha P. Mayee for the Respondent.

The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J. 1. These appeals are filed by the accused persons against the judgment and order dated 03.02.2014 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal Nos. 215 and 225 of 2011 which arise out of judgment/order dated

C 11.04.2011 passed by the Sessions Judge, Parbhani in Sessions Trial No.80 of 2008.

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2. Accused Nos. 5, 8, 9 & 10 have filed appeal @ SLP(Crl.) No. 8715 of 2014 whereas appeals @ SLP(Crl.) Nos.10109-10110/2014 are filed by accused Nos.1 and 4 and appeals @ SLP(Crl.) Nos. 9524-9525/2014 are filed by accused Nos. 2, 3 and 6.

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3. By impugned judgment, the High Court confirmed the conviction and sentences awarded to the appellants by the learned trial Judge. Suffice it to state here that the appellants, apart from other offences were convicted under Section 302 read with Section 149 of the IPC and sentenced to suffer life imprisonment and to pay fine of Rs.10,000/- each, in default of payment of fine, to undergo further six months rigorous imprisonment. The sentences imposed in respect of other offences are of below 7 years and all the sentences have been directed to run concurrently.

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4. The question, regard being had to the submissions advanced by the learned counsel for the appellants, is whether the learned trial Judge as well as the High Court was justified in convicting the appellants under Section 302 read with Section 149 IPC considering the genesis of occurrence and the facts in entirety or they should have been convicted under Section 304 Part-I, IPC.

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5. In order to appreciate the issue involved in these appeals, it is necessary to state the relevant facts in brief.

6. Apparao Rajaram Pund (A-1) and Madhavrao Rangnathrao Range (PW- 3), both resident of village Itlapur in District Parbhani, were good friends. Both were agriculturists. Savitribai-the deceased was the wife of Madhavrao Range. Around 25-30 years back, Madhavarao had purchased two kathas of land from Apparao for his cattle shed in the same village and he was also placed in its possession. However, no sale deed was executed between them yet Madhavrao continued to remain in possession of cattle shed all through.

7. In course of time, both entered in politics and formed their respective panels to contest the elections for the post of Sarpanch of the village. In the election, panel led by Madhavrao Range won whereas panel led by Apparao Pund lost. Due to this event, the relations between them were not as cordial as they used to be in the past. Thereafter Apparao started pressurizing Madhavrao Range to vacate the land and hand over the possession of cattle shed else he was threatened to face the dire consequences.

8. On 15.01.2008, the appellants around 7.30 to 8.00 A.M. armed with weapons barged in the cattle shed and started removing the iron sheets fixed on the roof. Madhavrao requested the appellants not to remove the sheets. Since the appellants did not listen to Madhavrao and continued in their operation in removing the sheets; Madhavrao resisted and made attempt to stop them. At that time, Savitribai and Madhavrao's son - Udhav (PW -5), who were also present on the spot, intervened and resisted the appellants from removing the sheets. This led to scuffle between Apparao (A-1), Sachin- (A-4), Achyut (A-3) and Madhavrao (PW-3). Accused Nos. 1, 3 and 4 beat Madhavrao with fist blows and leg kicks and threw him out of cattle shed. Apparao(A-1), who was having bottle containing kerosene, poured the entire kerosene on cattle shed and Sachin (A-4) set the cattle shed on fire.

- A Savitribai, who was resisting the appellants, caught in contact of fire and received severe burn injuries. On noticing this, Madhavrao tried to enter in cattle shed to save his wife-Savitribai. Gopal (A-2) then inflicted an axe blow on Madhavrao's head due to which he sustained bleeding injury.
- B When Madhavrao cried for help, Navnath and other persons reached there and tried to extinguish the fire. Thereafter they wrapped Savitribai in a piece of cloth and took her to the civil hospital around 10 A.M.

C 9. In the meantime, Mohammad Bashir Sheikh Umar (PW-2)- Inspector on duty to the Nanal Peth Police Station, got an information that a lady with burn injuries was admitted to the Hospital. Therefore, he rushed to the hospital to record her statement. After getting certification from the doctors that Savitribai was in a fit condition to give her statement, PW-2

D recorded her statement (Ex-45). In the meantime, Kishore Achyut Deshmukh (PW-1), In-charge Tahsildar of the area also reached to the hospital and recorded the statement of Savitribai (Ex-P-42).

E 10. Annasahab Gholap - Assistant Police Inspector (PW-16) then registered the crime being Crime No. 6 of 2008 and started investigation. On the same day, five accused were arrested, panchnama (Ex-P-58) was prepared and several articles were recovered from the spot. On 16.01.2008 at 6.15

F a.m., Savitribai succumbed to her injuries while in the Hospital. This led to arrest of some other accused persons and also led to registration of case of offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") along with other offences punishable under Sections 147, 148, 323, 324, 436, 440, 448, 506 all read with Section 149 IPC

G against the appellants and other accused persons. The case was then committed to Sessions for trial. The accused abjured their guilt and claimed trial. The prosecution examined 16 witnesses. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure,

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11. The Sessions judge convicted the appellants-accused and imposed punishment to each appellant as specified above. Challenging the said order, the appellants filed appeals in the High Court against their conviction. The High Court, by impugned judgment, dismissed their appeals and confirmed the conviction and sentence awarded by the trial Court to each of the appellants. Against the said order, the appellants have preferred these appeals by way of special leave before this Court.

12. While assailing the legality and correctness of the impugned order, Mr. Sudhanshu S. Choudhari, learned Counsel for the appellants has argued only one point. According to him, taking the prosecution case on its face value, it was not a case of murder of Savitribai so as to enable the Courts to convict the appellants under Section 302 IPC but it was a case falling under Section 304 Part-I IPC. Learned counsel pointed out that there was neither any intention on the part of any of the appellants to commit the murder of Savitribai nor the appellants had visited the spot with any such intention. Learned Counsel further pointed out that the only intention of the appellants was to take possession of the cattle shed and it was in process of taking forcible possession, the sudden fight ensued between the two groups as also cattle shed caught fire causing burn injuries to Savitribai, which unfortunately resulted in her death. It was also pointed out that if the appellants had come to the spot with an intention to eliminate Savitribai, they or any member of their group would have in the first instance targeted Savitribai, who was present on the spot with her husband (PW-3) and inflicted injury. It was not done. According to learned Counsel, her death was as a result of burn injuries because she was inside the shed, which caught fire. Therefore, learned Counsel urged that this Court should alter the sentence to that of the one punishable under Section 304 Part-I IPC instead of under Section 302 IPC because it was not a case of murder but it was a case of culpable homicide not amounting to murder.

A 13. Per contra, learned Counsel for the respondent supported the impugned order and urged that two courts have rightly held the appellants guilty for committing murder of Savitribai and hence the appeals merit dismissal calling no interference.

B 14. Having heard the learned Counsel for the parties and on perusal of the record of the case, we find force in the submission of the learned Counsel for the appellants.

C 15. Before we examine the factual matrix of the case in hand, it is apposite to take note of the law laid down by this Court on the question as to when culpable homicide is a murder under Section 300 "thirdly" and what are the elements which the prosecution should establish. This Court in *Virsa Singh v. State of Punjab*, 1958 SCR 1495, examined this issue in detail.

D 16. The learned Judge Vivian Bose in his distinctive style of writing and speaking for the Court succinctly stated as under:

E "13. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and

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understand.

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14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly";

15. First, it must establish, quite objectively, that a bodily injury is present;

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16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

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18. Once these three elements are proved to be present, the enquiry proceeds further and,

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19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

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20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and

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A the only question is whether, as a matter of purely
 objective inference, the injury is sufficient in the
 ordinary course of nature to cause death. No one has
 a licence to run around inflicting injuries that are
 sufficient to cause death in the ordinary course of
 B nature and claim that they are not guilty of murder. If
 they inflict injuries of that kind, they must face the
 consequences; and they can only escape if it can be
 shown, or reasonably deduced, that the injury was
 accidental or otherwise unintentional.”

C 17. Relying on the aforesaid principle of law, recently this
 Court in *Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of*
Andhra Pradesh (2006)11 SCC 444, again examined the
 issue as to what relevant factors should be kept in consideration
 while deciding the question as to whether case in hand falls
 D under Section 302 or 304 Part-I or Part-II. Justice Raveendran
 speaking for the Court held in para 29 as under:

“29. Therefore, the court should proceed to decide
 the pivotal question of intention, with care and
 caution, as that will decide whether the case falls
 E under Section 302 or 304 Part I or 304 Part II. Many
 petty or insignificant matters — plucking of a fruit,
 straying of cattle, quarrel of children, utterance of a
 rude word or even an objectionable glance, may lead
 to altercations and group clashes culminating in
 F deaths. Usual motives like revenge, greed, jealousy
 or suspicion may be totally absent in such cases.
 There may be no intention. There may be no
 premeditation. In fact, there may not even be
 criminality. At the other end of the spectrum, there
 G may be cases of murder where the accused attempts
 to avoid the penalty for murder by attempting to put
 forth a case that there was no intention to cause
 death. It is for the courts to ensure that the cases of
 murder punishable under Section 302, are not
 H converted into offences punishable under Section

304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. 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 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. Be that as it may."

18. Applying the aforesaid principle of law to the facts of the case in hand and keeping the same in consideration when we examine the evidence of the prosecution, we find that this is a case where the appellants should have been convicted for the offence punishable under Section 304 Part-I instead of Section 302 IPC.

19. It is for the reason that firstly, neither there was any motive and nor any intention on the part of any of the appellants to eliminate Savitribai. Secondly, there was no enmity of any

A kind with Savitribai in person with any of the appellants. Thirdly, the appellants had gone there to take possession of the cattle shed and not with an intention to kill any member of the family of Madhavrao Renge. Fourthly, if at all, if there was some kind of animosity or jealousy then it was towards A-1 whose panel had won the election. Savitribai had nothing to do with election because she never contested the election. Fifthly, despite the appellants armed with weapons, none of them inflicted any injury or gave blow to Savitribai but single blow was inflicted only on Madhavrao, who fortunately survived. Sixthly, Savitribai died due to sustaining of burn injuries, which she suffered because the appellants ablazed the cattle shed by pouring kerosene on it. In other words, if the appellants had not ablazed the cattle shed then the incident of death of Savitribai would not have occurred. Eighthly, it was a fight on a spur of moment between the two male groups on the issue of taking possession of cattle shed with no intention to kill any one and lastly, in the absence of any overt act attributed to any of the appellants towards Savitribai for inflicting any injury to her, the appellants could not have been convicted for an offence of committing murder of Savitribai so as to attract the rigour of Section 302 IPC and instead they should have been convicted for an offence of culpable homicide not amounting to murder under Section 304 Part I IPC.

20. In the light of foregoing discussion, we allow the appeals in part. The appellants are accordingly convicted for an offence punishable under Section 304 Part-I IPC instead of Section 302 IPC and each of the appellants is hereby awarded 7 years RI.

21. So far as the conviction and sentence awarded by the courts below under various other sections, as specified above, are concerned, they are upheld calling no interference. All the sentences shall run concurrently.

Devika Gujral

Appeal Partly allowed.

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