

Sudam Prabhakar Achat

v.

The State of Maharashtra

(Criminal Appeal No. 641 of 2024)

21 March 2025

[B.R. Gavai* and Augustine George Masih, JJ.]

Issue for Consideration

Issue arose as to whether the conviction u/s.302 IPC could be converted into s.304 Part I or Part II IPC.

Headnotes[†]

Penal Code, 1860 – ss.304 Part I, 300 exception IV, 302 – Culpable homicide not amounting to murder – Alteration of conviction to a lesser offence – Testimony of related witnesses – Reliability – Quarrel on account of previous enmity between the accused persons and the deceased who were brothers – Upon confrontation, the co-accused and his son-appellant became aggressive, and the co-accused armed with axe and the appellant armed with stick assaulted the deceased and his son-complainant, resulting in injuries to them – Deceased succumbed to his injuries the same night and the complainant succumbed to his injuries, a month later – Order of conviction and sentence of the accused u/ss.302/34 and 324/34 by the courts below – Correctness:

Held: No reason to interfere with the finding that the death of the deceased was homicidal, and it was the appellant along with the co-accused who caused injuries to the deceased resulting in his death – All the witnesses are related to the deceased – Merely because the witnesses are relatives of the deceased and as such are interested witnesses, that alone cannot be a ground to discard their testimony – Testimony of such witnesses to be scrutinized with greater caution and circumspection – Possibility of a quarrel taking place on account of previous enmity between the accused persons and the deceased; and in a sudden fight in the heat of the moment, the appellant along with the co-accused assaulting the deceased cannot be ruled out – Weapons used are stick and

* Author

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the blunt side of the axe, easily available in any agricultural field – Thus, cannot be said that there was any premeditation – Appellant is alleged to have used the stick whereas the co-accused is said to have used the blunt side of the axe – If their intention was to kill the deceased, no reason as to why the co-accused would not have used the sharp side of the axe – Nature of injury and the evidence of the prosecution witnesses would also not show that the appellant had taken undue advantage or acted in a cruel manner – Thus, the case would not fall under the ambit of s.302 and the appellant is entitled to benefit of exception IV of s.300 – Conviction u/s.302 converted to Part I of s.304 – Appellant having already undergone the sentence of 6 years 10 months, sentenced to the period already undergone. [Paras 7-15]

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Testimony of witnesses; Previous enmity; Post-Mortem Report; Evidence of the Medical Officer; Homicidal; Related witnesses; Interested witnesses; Testimony; Premeditation; Blunt side of the axe; Undue advantage or acted in a cruel manner; Benefit of exception IV of s.300 IPC; Conviction u/s.302 converted to Part I of s.304 IPC.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 641 of 2024

From the Judgment and Order dated 10.08.2021 of the High Court of Judicature at Bombay in CRLA No. 88 of 2013

Appearances for Parties

Advs. for the Appellant:

Ms. Deeplaxmi Subhash Matwankar, Dr. Ravindra Chingale, Ms. Manreet Kaur.

Advs. for the Respondent:

Ms. Rukhmini Bobde, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Ms. Soumya Priyadarshinee, Amlaan Kumar, Jatin Dhamija, Naveen Kumar Bhardwaj.

Sudam Prabhakar Achat v. The State of Maharashtra**Judgment / Order of the Supreme Court****Judgment****B.R. Gavai, J.**

1. The present appeal challenges the final judgment and order dated 10th August 2021, passed by the Division Bench of the High Court of Judicature at Bombay in Criminal Appeal No. 88 of 2013, whereby the High Court *dismissed* the appeal filed by the Appellant (Accused No.2) thereby affirming the judgment and order dated 5th December 2012 rendered by the Additional Sessions Judge-I, Malegaon, District Nashik (hereinafter referred to as “the trial court”) in Sessions Case No.76 of 2009 thereby convicting the appellant under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and sentencing him to undergo rigorous imprisonment for life along with fine of Rs.1,000/-, in default whereof rigorous imprisonment for two months. The appellant was also convicted under Section 324 read with Section 34 of the IPC and sentenced to undergo rigorous imprisonment for two years along with fine of Rs.500/-, in default whereof rigorous imprisonment for one month.
2. Shorn of details, the facts leading to the present appeal are as under:
 - 2.1 The case of the prosecution is that Bapu Motiram Achat (complainant), Motiram Deoram Achat (deceased), Sudam Prabhakar Achat (appellant herein) and Prabhat Deoram Achat (co-accused) are all residents of Sitane, Taluka Malegaon, District Nashik. The deceased and the co-accused were brothers. Their agricultural fields were situated adjacent to each other with a common boundary and a common well. Further, the complainant is the son of the deceased and the appellant is the son of the co-accused.
 - 2.2 On 15th July 2009, when the complainant had gone to his field, the appellant hurled abuses at the complainant with respect to the use of common boundary (*Bundh*) to operate the electric pump on the well. The complainant returned home and narrated the incident to his parents. Thereafter, the complainant and his parents went to the field at 12:00 Noon and asked the appellant an explanation as to why he was obstructing the complainant.

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Upon such confrontation, the appellant and the co-accused became aggressive. The co-accused armed with an axe and the appellant armed with a stick assaulted the deceased and the complainant.

- 2.3 The complainant and the deceased both sustained injuries. The people working in the nearby field namely, Chhagan Krishna Achat (PW-1), Krishna Deoram Achat and mother of the complainant i.e. Sojabai (PW-7), separated and took the complainant and the deceased to the Government Hospital, Malegaon. The report of the complainant was recorded at 4:15 PM and Crime Case No.171 of 2009 was registered under Sections 323, 326, 504 and 506 read with Section 34 of the IPC. The deceased was thereafter shifted to Government Hospital, Dhule. However, he succumbed to injuries on the same night and Section 302 of the IPC was added.
- 2.4 The Investigating Officer, Mahindra Ahire (for short, "IO") prepared a spot panchnama (Exhibit 26). The appellant was arrested on the next day i.e., 16th July 2009. Further, inquest panchnama (Exhibit 20) was drawn, clothes of the deceased were seized under panchnama (Exhibit 21), post-mortem was carried out and the report (Exhibit 15) was prepared. The co-accused in police custody, gave a memorandum statement (Exhibit 11) which resulted in the recovery of the axe and stick (Exhibit 12). At the request of the IO, evidence of eye-witnesses were recorded under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter, referred to as "CrPC") by the Judicial Magistrate.
- 2.5 After completion of the investigation, chargesheet was filed by the IO in the Court of Judicial Magistrate, FC, Malegaon and was registered as R.C.C. No.578 of 2009. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court. The trial court framed charges against the appellant and co-accused. The charges were read over and explained to both of them to which they pleaded not guilty and claimed to be tried. Their defence was that of total denial and false implication in the present crime and that the deceased slipped while he was in the field because of the tin-sheet of the tin-shed and sustained injuries.

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- 2.6 To bring home the guilt of the accused persons, the prosecution examined eight witnesses and exhibited nine documents. The accused persons did not examine any of the prosecution witnesses or any witness in support of their defence.
- 2.7 At the end of trial, the trial court convicted the appellant and the co-accused as aforesaid.
- 2.8 Being aggrieved thereby, the appellant and the co-accused preferred a criminal appeal before the High Court challenging the judgment and order of conviction and sentence awarded by the trial court. The High Court vide the impugned final judgment and order dismissed the appeal.
- 2.9 Being aggrieved thereby, a special leave petition was filed, in which notice was issued limited to the question as to whether the conviction under Section 302 of the IPC could be converted into Section 304 Part I or Part II of the IPC. Subsequently, by an order dated 2nd February 2024, leave was granted.
3. We have heard Ms. Deeplaxmi Subhash Matwankar, learned counsel appearing on behalf of the appellant and Ms. Rukmini Bobde, learned counsel appearing on behalf of the Respondent-State.
4. Ms. Matwankar, learned counsel appearing on behalf of the appellant submits that the prosecution relies only on the eye witnesses who are the relatives of the deceased. It is submitted that the relatives of the deceased being interested witnesses, the conviction only on the basis of their testimony would not be sustainable in law. She therefore submitted that the conviction is not sustainable and the appeal deserves to be allowed.
5. Ms. Matwankar, in the alternative, submits that, from the evidence on record, it is clear that the offence would not come under the ambit of Section 302 of IPC and at the most, it would come under Part I or II of Section 304 of IPC.
6. *Per contra*, Ms. Bobde, learned counsel appearing on behalf of the State submits that both the courts below concurrently, on the basis of the perusal of the evidence, found the accused guilty of the offence charged with. She submits that, in view of the concurrent findings of fact, no interference is warranted in the present appeal.
7. From the perusal of the Post-Mortem Report (Exhibit-15) and the evidence of the Medical Officer (PW-4), we do not find any reason to

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interfere with the finding that the death of the deceased is homicidal. We also do not find any reason to interfere with the finding of the trial court that it is the appellant along with the co-accused who have caused injuries to the deceased resulting in his death.

8. Having come to the conclusion that the appellant and the co-accused are liable for the death of the deceased, we will have to now examine whether the prosecution has proved its case that the offence committed by the appellant would come under the ambit of Section 302 IPC or it can be altered into a lesser offence.
9. No doubt that all the witnesses are related to the deceased. As a matter of fact, the deceased and the complainant on the one hand and the accused persons on the other hand are also closely related to each other inasmuch they are first cousins. It is however a settled position of law that merely because the witnesses are relatives of the deceased and as such are interested witnesses, that alone cannot be a ground to discard their testimony. The only requirement is that the testimony of such witnesses has to be scrutinized with greater caution and circumspection.
10. A perusal of the evidence of Chhagan Krishna Achat (PW-1) who is the nephew of the deceased would reveal that the fields of the accused persons and the deceased are adjoining each other. His testimony would further reveal that when he returned to the field on the date of the incident, he saw that there was a quarrel going on between the accused persons and the deceased. His testimony would further reveal that the co-accused Prabhakar was assaulting the deceased with the blunt side of the axe and the appellant was armed with a stick and he assaulted the deceased with the said stick. It is to be noted that Motiram died when he was taken to the Government Hospital, Dhule. The other injured person Bapu Motiram succumbed to injury about a month after the date of incident.
11. A perusal of evidence of PW-1 would reveal that the deceased was standing on the bundh which was only 15-20 feet on the northern side of the house of the co-accused. To the same effect is the evidence of the other eye witnesses.
12. From the evidence of the prosecution witnesses itself, it is clear that the place of incident is near the house of accused persons. The possibility of a quarrel taking place on account of previous enmity

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between the accused persons and the deceased; and in a sudden fight in the heat of the moment, the appellant along with the co-accused assaulting the deceased cannot be ruled out. It can further be seen that the weapons used are a stick and the blunt side of the axe. These tools are easily available in any agricultural field. It therefore cannot be said that there was any premeditation.

13. It is further to be noted that the appellant is alleged to have used the stick whereas the co-accused is said to have used the blunt side of the axe. If their intention was to kill the deceased, there was no reason as to why the co-accused would not have used the sharp side of the axe. The nature of injury and the evidence of the prosecution witnesses would also not show that the appellant had taken undue advantage or acted in a cruel manner.
14. In that view of the matter, we find that the present case would not fall under the ambit of Section 302 of IPC and the appellant would be entitled to benefit of Exception IV of Section 300 of IPC. It is further to be noted that the appellant has already undergone the sentence of 6 years 10 months.
15. We are therefore inclined to partly allow the appeal. In the result, we pass the following order:
 - (i) The appeal is partly allowed;
 - (ii) The conviction under Section 302 IPC is converted to Part I of Section 304 IPC;
 - (iii) The appellant is sentenced to the period already undergone; and
 - (iv) The appellant is directed to be released forthwith if not required in any other case.

Result of the case: Appeal partly allowed.