

IN THE HIGH COURT OF JUDICATURE AT PATNA

Sanjeev Kumar Yadav

vs.

The State of Bihar

Criminal Appeal (DB) No. 402 of 2014

15 September 2023

(Hon'ble Mr. Justice Ashutosh Kumar and

Hon'ble Mr. Justice Alok Kumar Pandey)

Issue for Consideration

Whether judgment of conviction and order of sentence passed by the learned Adhoc Additional Sessions Judge-I, Banka in Sessions Trial No. 1375 of 2010/Trial No. 103 of 2014, arising out of Bounsi P.S. Case No. 126 of 2010 is correct or not?

Headnotes

Indian Penal Code, 1860—Section 302—Murder—husband killed his second wife—appellant had given a helping hand to the deceased when she had lost her first husband and had nowhere to go—deceased married the appellant after death of her husband—from first marriage she was having a girl child—after marriage appellant was not permitted to stay along with the deceased in his own house, he went to Hyderabad along with the deceased and her daughter—after coming back from Hyderabad, when the deceased and the appellant both were trying to force their entry into the house of the appellant, appellant stabbed deceased in front of his own house.

Held: good relationship between appellant and deceased, there was nothing overtly wrong in their relationship—culpable homicide would not be murder is when the murder is committed without any premeditation, in a sudden fight, in the heat of passion, upon a sudden

quarrel and without the offender having taken any undue advantage or having acted in a cruel or unusual manner—no evidence of any sudden or grave provocation—no reason for sudden and grave provocation to the appellant for killing his own wife, who had been with him in all the thick and thin of his life—no reason to convert the offence from murder to one for manslaughter—appeal dismissed. (Paras 15, 33, 35, 48, 49, 50)

Case Law Cited

K.M. Nanavati vs. State of Maharashtra, AIR 1962 605—**Relied Upon.**

List of Acts

Indian Penal Code, 1860

List of Keywords

Murder; culpable homicide; sudden and grave provocation; adultery.

Case Arising From

From judgment dated 04.03.2014 passed by the learned Adhoc Additional Sessions Judge-I, Banka in Sessions Trial No. 1375 of 2010/Trial No. 103 of 2014, arising out of Bounsi P.S. Case No. 126 of 2010, and by order dated 11.03.2014.

Appearances for Parties

For the Appellant: Ms. Smriti Singh (Adv.), Amicus.

For the Respondents: Mr. Abhimanyu Sharma, APP.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.402 of 2014

Arising Out of PS. Case No.-126 Year-2010 Thana- BAUNSI District- Banka

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Sanjeev Kumar Yadav, S/o Bachandeo Yadav, Resident of Village-
Bagdumba, P.S.- Bounsi, District- Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Smriti Singh (Adv.), *Amicus*

For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 15-09-2023

None of the three Advocates on record
appeared for the appellant when the case was called out.

2. We, therefore, requested Ms. Smriti Singh,
the learned Advocate, to assist us on behalf of the
appellant. She agreed to the afore-noted request of the
Bench and has assisted us in disposing of this appeal.



3. The State is represented by Mr. Abhimanyu Sharma, the learned APP.

4. The appellant is the husband of the deceased, who stands convicted under Section 302 of the I.P.C *vide* judgment dated 04.03.2014 passed by the learned *Adhoc* Additional Sessions Judge-I, Banka in Sessions Trial No. 1375 of 2010/Trial No. 103 of 2014, arising out of Bounsi P.S. Case No. 126 of 2010, and by order dated 11.03.2014, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further simple imprisonment for two months.

5. The appellant is said to have slashed the neck of the deceased by means of a knife.

6. The informant of this case is the brother of the deceased, who has also been examined as P.W. 8 at the Trial. In his F.I.R, which was lodged on 23.07.2010 at the Referral Hospital, falling under the jurisdiction of Bounsi Police Station, he had narrated a long story of



the deceased having become widow at a young age when her first husband died of tuberculosis. However, from the wedlock, the deceased had given birth to a daughter, who at the time of the occurrence, was around seven years old. She too has been examined at the Trial as P.W. 5. Later, the deceased, much to the displeasure of her family members, married the appellant, who also had faced opposition against such marriage from his family. The appellant and the deceased carried on as husband and wife despite opposition from their respective families.

7. However, since the appellant was not permitted to stay along with the deceased in his own house, he went to Hyderabad along with the deceased and her daughter, where he started earning his livelihood as a casual labourer. On this occasion, the appellant had visited his home town along with the deceased and the daughter. The informant received the appellant and the deceased at the bus-depot and made them board an



auto-rikshaw for going to the home of the appellant.

The informant also accompanied them. At the house of the appellant, his family members including his first wife protested and almost made it difficult for the appellant and the deceased to enter the house. At that moment, the informant has alleged, the appellant took out a knife from his pocket and started hitting at the deceased indiscriminately. Seeing this, the family members of the appellant ran away. The informant carried his injured sister to the Referral Hospital, where she died.

8. On the basis of the afore-noted *fardebeyan* statement of P.W. 8, Bounsi P.S Case No. 126 of 2010, dated 23.07.2010, was registered for investigation for offences under Sections 302 and 109 of the I.P.C. against the appellant.

9. The police, after investigation, submitted charge-sheet under Sections 302 and 109 of the I.P.C and consequently the appellant was charged for the offences under both the sections.



10. At the trial, 15 witnesses were examined on behalf of the prosecution.

11. The Trial Court returned the verdict of guilty under Section 302 of the I.P.C., but acquitted the appellant of the charge under Section 109 of the I.P.C., holding that there was no abetment by him.

12. The prosecution has relied upon the deposition of Khenia Devi, the mother of the deceased (P.W. 3); Reeta Kumari, the daughter of the deceased (P.W. 5); Sheela Kumari, the sister of the deceased (P.W. 7); the informant (P.W. 8); and the evidence of the Doctor (P.W. 14); that the deceased died of knife injuries.

13. According to the First Information Report, only P.W. 8 had witnessed the occurrence. However, at the trial, the mother of the deceased (P.W. 3) has also claimed to have seen the occurrence. However, on going through the deposition of P.W. 3, it becomes very clear that she has repeated the accusation which was



initially hurled by the informant in his *fardebeyan* statement.

14. Reeta Kumari, the daughter of the deceased (P.W. 5), was present at the time of the occurrence. According to P.W. 8, both the deceased and P.W. 5 had accompanied the appellant to his village home. At the time when she had deposed before the Court, she was assessed to be only seven and half years of age, but capable of mental faculties enabling her to speak out about the occurrence. She has categorically stated that it was the appellant who stabbed the deceased, but has also stated that she had nothing to say against the appellant and that the appellant never misbehaved either with the deceased or with her at Hyderabad or at any other place.

15. From the deposition of the daughter of the deceased, who had witnessed good relationship between the appellant and the deceased, it appears that there was nothing overtly wrong in their relationship.



16. What was the flash-point for the appellant to have stabbed the deceased in front of his own house and that also when the deceased and the appellant both were trying to force their entry into the house of the appellant, remains unknown. Even the informant does not appear to have any clue about the reason for the appellant to have lost control of himself and having stabbed the deceased, which action was totally uncalled for.

17. P.W. 8 has, the learned *Amicus* has shown from the deposition, narrated a story which only reflects that the appellant had taken all odds to keep the deceased happy. Notwithstanding the fact that he was already married with two children, he had agreed to wed the deceased who had become a widow and was also having a child from the earlier wedlock. This could not only have been for satisfying his lust. That he fought with the family, left his first wife and children and took the deceased to Hyderabad are sufficient indications that



the appellant discharged his responsibilities as a husband. Had the appellant been intolerant on any score, the daughter of the deceased (P.W. 5) would surely have complained about it; if not earlier then definitely after her mother was killed. Her statement before the Trial Court that she was never ill-treated and that her mother was never troubled are surest indications of the fact that there was nothing wrong in the relationship of the appellant and the deceased.

18. Almost similar statement has been made by Khenia Devi, the mother (P.W. 3), about the circumstance under which the appellant wedded the deceased and the manner in which he killed her.

19. What must have gone wrong?

20. Did the appellant, in a flash of temper, consider the deceased to be the sole cause of trouble with his own family members?

21. The answer definitely is no as such opposition was faced by the appellant a number of times



during his visits to his home.

22. Did the appellant doubt the fidelity of the deceased?

23. There is nothing on record to indicate that also. Did the deceased argue with parents of the appellant when they were not letting her in? But the appellant himself was prevented from coming inside the house. If the deceased was making her forceful entry in the house, it was definitely at the behest of the appellant and not against his wishes.

24. We are, thus in a complete quandary as to what actually happened when the entire anger of the appellant was directed towards the deceased.

25. The appellant must not have entertained any idea of killing the deceased otherwise why bring her to his hometown. He had an opportunity to eliminate her if he ever wanted to do so, at Hyderabad, where he only resided with the deceased. Obviously, therefore, the emotions and anger took the better of the appellant.



26. The reason and cause is not reflected in the records of this case.

27. The evidence of P.W. 14, the Doctor, who conducted the *post-mortem* confirms that the deceased died of attack by a sharp and pointed weapon. Two incised wounds were found on the neck and one incised wound was found on the upper part of the forearm. The death was on account of hemorrhagic shock due to rupture of the big vessel of the neck.

28. There is nothing on record also to disbelieve the eye-witness account of P.W. 8, the brother, who had all along accompanied the appellant and the deceased and Reeta Kumari, the daughter of the deceased.

29. Thus, obviously the deceased had been attacked by the appellant. Had it not been so, P.W. 8 would not have hesitated even for a moment to raise the allegation against the family members of the appellant, who had made the life of his sister (deceased) difficult.



30. This, thus, leaves us with the question whether the appellant was actuated by any sudden and grave provocation to kill the deceased.

31. The answer is difficult to find out from the records of the case.

32. The first *exception* to Section 300 of the I.P.C., which provides as to when culpable homicide would not be murder, is that the offender, while deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. This *exception* is hemmed by other considerations as well. It would not be an *exception* if the provocation is sought as an excuse for killing or doing harm or the provocation is not grave and sudden enough to prevent the offence from amounting to murder and these aspects would fall in the domain of facts. Unless it is proved that the provocation was sudden and grave, any accused would not be entitled to



claim the privilege under such *exception*.

33. The other *exception* where culpable homicide would not be murder is when the murder is committed without any premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel and without the offender having taken any undue advantage or having acted in a cruel or unusual manner.

34. Both the conditions, referred to above, do not appear to be satisfied in the present case.

35. There is no evidence of any sudden or grave provocation. If at all, there was any provocation to the appellant to commit any act, it was against his own family members, who had not allowed him to enter his own house. The appellant, for sure, did not take any advantage of his position and there was definitely no premeditation also so far as the killing is concerned.

36. We have not been able to find out any flash-point suggesting any sudden fight, where under the heat of passion, upon a sudden quarrel, such an offence



was committed.

37. The word 'sudden' precedes both words, namely, the 'fight' and the 'quarrel'.

38. The deceased does not appear to have started any fight or quarrel; rather she was on the side of the appellant in helping him in entering his house. However, something irked the appellant at that point of time, which is not explicable. The act of the petitioner would not fall in any one of the *exceptions* which would make it culpable homicide not amounting to murder.

39. It is a trite law that the burden to claim the benefit under the *exception* is on the person who raises it.

40. Nothing has been brought on record on behalf of the defense to figure out the provocation, if at all there was any.

41. Was it adultery?

42. Even it were, would it constitute a sudden and grave provocation to justify the action of the



appellant?

43. The answer is obviously 'no'.

44. In ***K.M. Nanavati Vs. State of Maharashtra;*** ***AIR 1962 605***, the Supreme Court under a circumstance when the appellant doubted the fidelity of his wife, explained that the question which a Court is required to consider is whether a reasonable person placed in the same position as an accused, would react to such charge of adultery? The Supreme Court took into account the judgment of *Viscount Sankey* in ***Holmes Vs. Director of Public Prosecutions*** with respect to the question whether there is or is not provocation which would reduce the offence of murder to manslaughter and the definition of provocation by Goddard, the Chief Justice in Duffy's case.

45. The whole doctrine relating to provocation depends on the analysis whether it causes, or may cause a sudden and temporary loss of self-control, whereby there, is the malicious formation of an intention to kill or



to inflict grievous bodily harm.

46. According to Goddard, the C.J., "provocation is some act or series of acts done by the dead-man to the accused which would cause, in any reasonable person, an actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her, for the moment not master of his mind". Similarly, circumstances which induce a desire for revenge, or a sudden passion of anger, would not be enough as it would be inconsistent with "provocation". The conscious formulation of the desire for revenge means that the person has/had time to think, to reflect and that would only negative a sudden temporary loss of self-control, which is the essence of provocation.

47. Even if it were, for the adultery of the deceased, about which we are not certain, there is nothing on record to indicate that the issue had been festering in the mind of the appellant and suddenly when



he saw that his entry was being forbidden by his own people, he got provoked to eliminate the source for all the trouble, namely, his marriage with the deceased. Thus, the action of the appellant was at a time when he had lost his self-control, but the law does not take into account inexplicable and fragile conduct of a person without any reason.

48. We have not found any reason for sudden and grave provocation to the appellant for killing his own wife, who had been with him in all the thick and thin of his life.

49. Tested from all angles, we do not find any reason to convert the offence from murder to one for manslaughter, even when we have found that the appellant had given a helping hand to the deceased when she had lost her husband and had no where to go.

50. For the afore-noted reasons, we dismiss this appeal.

51. Before parting, we must indicate that Ms.



Smriti Singh, learned *Amicus* has rendered good assistance to the Court after getting ready in the matter in a short time.

52. We direct the Patna High Court Legal Services Authority to make payment of Rs. 2,500/- to Ms. Smriti Singh, learned *Amicus*, towards her professional fee.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Mayank/Praveen-II

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