



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO.856 OF 2023**

Dhundrya @ Dhansing Deda Bhilala [Pavara]

Age: 54 years, Occu : Nil,
R/o: Hindali, Tal. Sendhva,
Dist. Badwani [M.P.]
At present Convict No. C/11533
Central Prison Nashik,
Nashik Road, Nashik

.... Appellant

Versus

The State of Maharashtra
P. I. Bhadgaon Police Station,
Tq. Bhadgaon, Dist. Jalgaon,
[C.R. No. 129 of 2014]

.... Respondent

Appearance :-

Mr. Vivek M. Lomte, Advocate for the Appellant [Appointed through Legal Aid]

Ms. Dr. Kalpalata Patil Bharaswadkar, Addl. PP for Respondent - State

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

**Reserved On : 28/11/2024
Pronounced On : 06/12/2024**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. By the present Appeal filed under Section 374 [2] of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.PC'], the Appellant has challenged his conviction for the offence punishable under Section 302 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] and sentence of imprisonment for life and fine of Rs.3000/-, in default to pay the fine, to undergo simple imprisonment for three [3] months recorded by the learned Additional Sessions Judge, Jalgaon, vide Judgment and Order dated 14/12/2017, in Sessions Case No.1/2015.

2. The Prosecution's case, as revealed from the Police Report is as under :-

[I] The Appellant was residing with his family comprising his wife Kekadibai [hereinafter referred to as 'the Deceased'] and daughters in the agricultural field bearing Gat No.276 in village Girad in a tin shade. He was an agricultural labourer. He was addicted to liquor. In the evening of 04/10/2014 around 5.00 p.m., the Appellant demanded money to the Deceased for consuming liquor. The Deceased refused to part with money. On that count, the Appellant abused and beat her with fist blows and iron rod. In the assault, the Deceased got severely injured and there was profuse bleeding. The incident was witnessed by the Appellant's daughter and others. After the assault, the Appellant ran away. The Deceased was taken to the Hospital. The Doctor declared her brought dead. The incident was reported to the Police Station and Crime came to be registered with the Bhadgaon [Jalgaon] Police Station against the Appellant for the offence punishable under Sections 302, 323, 504 and 506 of IPC.

[II] The dead body was referred for Postmortem. The cause of death was revealed as *"due to Cardio-respiratory arrest due to head injury"*. The Investigating Officer conducted the Spot Panchnama and collected the relevant articles from the spot. The clothes of the Deceased were seized along with A.D. report. The Appellant came to be arrested on the next day i.e. 06/10/2014. The supplementary statement of the Informant and the statement of other witnesses came to be recorded. The statement of the Appellant's daughter was also recorded under Section 164 of Cr.PC. On 09/10/2014, the Appellant gave disclosure statement about the place where the weapon was

kept. The iron rod, which was concealed in the field, was discovered and seized at the instance of the Appellant. The clothes of the Appellant came to be seized. The seized articles were referred to the Chemical Analyzer. The opinion of the Medical Officer was sought as to whether the injury on the Deceased was possible by the iron rod seized at the instance of the Appellant and the Medical Officer gave his opinion. As sufficient evidence was available against the Appellant, he came to be Charge-sheeted.

[III] On committal, the learned Trial Court framed the Charge against the Appellant for the offence punishable under Section 302 of IPC vide Exhibit - 4, to which, the Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all twelve [12] witnesses and brought on record the relevant documents, such as the report / FIR, various panchnamas, communications relevant with the Crime, Postmortem Report and the report of Chemical Analyzer etc. After the Prosecution closed their evidence by filing pursis at Exhibit - 95, the statement of Appellant came to be recorded under Section 313[1][b] of Cr.PC. The Appellant denied the case and evidence of the Prosecution. After appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order.

3. It is submitted by the learned Advocate for the Appellant that, the material witnesses have not supported the case of Prosecution. The witnesses, who are examined as the eyewitnesses to the incident, were the interested witnesses and there is no corroboration to their testimony. The case of defence, as is clear from the cross-examination, was that the

Deceased fell into a well while she was drawing the water due to dizziness and suffered injuries by falling on the stone. The Appellant had no intention to kill his wife and therefore, the conviction for the offence of murder is unsustainable. The learned Trial Court failed to appreciate the evidence in its right perspective. Hence, the Appeal be allowed by setting aside the impugned Judgment and Order. In support of his contention, he relied on the Judgments, which would be considered at the later stage.

4. It is submitted by the learned APP that, the case is based on the testimony of eyewitnesses, and their testimony remained unshaken in the cross-examination. Merely because they are the relatives and known person of the Deceased, can be no reason to discard their evidence. The testimony of the eyewitnesses is corroborated by the medical evidence. The medical evidence, injuries and the cause of death are established. The learned Trial Court has rightly appreciated the evidence and passed the impugned Judgment and Order. Hence, the Appeal be dismissed.

5. The witnesses examined by the Prosecution before the learned Trial Court are as under :-

- [i] PW - 1 [Badshah Remlal Bhilala], who was the son-in-law of the Appellant and who set the criminal law in motion by lodging the Report ;
- [ii] PW - 2 [Sudhakar Shravan Chaudhari], the field owner, where the incident took place ;
- [iii] PW - 3 [Nimbibai Dhundrya Bhilala], the daughter of Appellant and eyewitness to the incident ;

- [iv] PW - 4 [Ranubai Dildar Bhilala], who was related to the Appellant and residing in the same field and also the eyewitness to the incident ;
- [v] PW - 5 [Dagadu Ramrao Gaikwad], who was cultivating the field and who acted as panch for the Inquest, Spot Panchnama and Panchnama of seizure of clothes of the Appellant ;
- [vi] PW - 6 [Kishor Bhaskar Patil], who acted as the panch for seizure of clothes of Deceased ;
- [vii] PW - 7 [Dharma Suka Javale], who was the panch for memorandum of disclosure statement by the Appellant and discovery pursuant to that ;
- [viii] PW - 8 [Amol Tulshiram Patil], who carried the muddemal to the Forensic Laboratory at Nashik ;
- [ix] PW - 9 [Sayyed Bashir Sayyed Musa], who was the Driver of the Police Jeep ;
- [x] PW - 10 [Hemchandra Bhoju More], the Policeman, who recorded the report given by PW - 1 [Badshah Remlal Bhilala] and registered the Crime ;
- [xi] PW - 11 [Dr. Mandar Mukund Karambelkar], the Medical Officer of the concerned Rural Hospital, through whom, Postmortem Report is brought on record ;
- [xii] PW - 12 [Narayan Dhanaji Borse], who conducted the investigation and filed the Charge-sheet ;

6. The evidence of PW - 1 [Badshah Remlal Bhilala] shows that, he was the son-in-law of the Appellant. The Appellant and his family came to reside in village Girad in the field and used to do the labour work. Except this, there is nothing in his evidence, which would further the case of Prosecution. As he did not support the case of Prosecution, he was subjected to cross-examination by the learned APP, however nothing fruitful came in his evidence in support of the Prosecution.

7. The evidence of PW - 2 [Sudhakar Shravan Chaudhari] shows that, he was the owner of agricultural field bearing Gat No.276 at village Girad, where the Appellant was residing with his family. He had given the said agricultural field for cultivation to PW - 5 [Dagadu Ramrao Gaikwad]. As he was informed by the Police that, one lady died, he went to the Bhadgaon Police Station. Except this, there is nothing in his evidence in support of the Charge. As he did not support the case of Prosecution, he was subjected to cross-examination by the learned APP, however nothing fruitful came in his evidence in support of the Prosecution.

8. PW - 3 [Nimbibai Dhundrya Bhilala] and PW - 4 [Ranubai Dildar Bhilala] are the star witnesses of the Prosecution being the eyewitness to the incident. The Prosecution's case largely depend on their testimony. Their evidence shows that, PW - 3 [Nimbibai Dhundrya Bhilala] was the daughter of the Appellant and Deceased and residing with them and PW - 4 [Ranubai Dildar Bhilala] was residing with her family in the same tin shade situated in the agricultural field, where the Accused and Deceased were residing. The Accused was her brother-in-law. Their evidence shows that, on the day of incident, they both along with husband of PW - 4 [Ranubai Dildar Bhilala] had gone to the weekly market at Pachora. They returned to the field around 5.00 p.m. They noticed that, the Appellant was beating the Deceased with iron rod. At that time, the Appellant was in drunken state / under the influence of liquor. As they tried to intervene, the Appellant ran towards them to assault, however they both saved themselves by hiding in the cotton field. The Appellant ran away. The evidence of PW - 4 [Ranubai Dildar Bhilala] shows that, when she inquired with the Deceased about

the assault, the Deceased told her that, she refused to give money to the Appellant for consuming liquor and therefore, the Appellant assaulted her. Both these witnesses identified the Article - D [Iron Rod], as the article used for assault.

9. Further evidence of the above referred two [2] eyewitnesses shows that, the Appellant's wife died. Though PW - 3 [Nimbibai Dhundrya Bhilala] was minor, around thirteen [13] years of age at the time of incident, her cross-examination shows that, she understood the sanctity / importance of oath. She denied the suggestion that, they all returned to the field at 7.00 p.m. Though, it has come in her cross-examination that, she did not understand Marathi language and her statement was not read-over to her, there is nothing in her evidence to show that, her testimony was inconsistent with her previous statement recorded under Sections 161 and 164 of Cr.PC. The note below her testimony, recorded by the learned Trial Judge shows that, she was examined in Hindi. Thus, the said admission that, she did not understand Marathi, will not render her testimony valueless.

10. The cross-examination of PW - 4 [Ranubai Dildar Bhilala] affirms that, she witnessed the incident. Not lodging the report on earlier occasion against the Appellant for beating the Deceased everyday under the influence of liquor, is not expected from such witness. She denied that, it was dark due to winter season. She being the women agricultural labourer, not informing the Police, when she had gone to Pachora, is not fatal for the Prosecution. Her cross-examination shows that, her statement was recorded eight [8] to [15] fifteen days after the date of incident. The said delay will not be fatal for the

Prosecution for the reason that, the unshattered testimony of PW - 3 [Nimbibai Dhundrya Bhilala] shows that, PW - 4 [Ranubai Dildar Bhilala] had accompanied her to the market.

11. The testimony of the above referred two [2] eyewitnesses remained unshaken during the cross-examination. PW - 3 [Nimbibai Dhundrya Bhilala], being the daughter of Deceased and Appellant and PW - 4 [Ranubai Dildar Bhilala], being residing with her family in the same field, their coming back to the field, where the incident took place, is natural. Their consistent testimony, finds corroboration from the evidence of PW - 5 [Dagadu Ramrao Gaikwad], who was cultivating the said agricultural field, where the incident had taken place, on the aspect of they going to the weekly Bazar and coming back to the agricultural field.

12. The evidence of PW - 5 [Dagadu Ramrao Gaikwad] shows that, the Appellant and Deceased were residing in the said agricultural field as they were employed by him. He had taken the said field from PW - 2 [Sudhakar Shravan Chaudhari] for cultivation. On the date of incident i.e. 04/10/2014, as it was weekly Bazar day, he went to the weekly Bazar at Pachora with PW - 3 [Nimbibai Dhundrya Bhilala], PW - 4 [Ranubai Dildar Bhilala] and her husband by named Dildar. From the market, PW - 3 [Nimbibai Dhundrya Bhilala], PW - 4 [Ranubai Dildar Bhilala] and Dildar returned to the field at 5.00 p.m. He received phone call from Dildar in between 5.30 and 6.00 p.m. that, the Appellant assaulted his wife under the influence of liquor and injured was lying in the shade. He along with PW - 1 [Badshah Remlal Bhilala] and wife of PW - 1 reached the agricultural field. He went near the injured and when inquired

with her, she told him that, the Appellant assaulted her with fist and kick blows and iron rod, as she refused to give money to the Appellant for consuming liquor. He took the Deceased in his Car along with PW - 1 [Badshah Remlal Bhilala] and his wife to the Rural Hospital, Pachora, where she was declared dead. He rightly responded to the query of defence that, after receiving the phone call about the assault on the Deceased, it was his duty first to go to the field and see what has happened. His coming to the field after getting knowledge of the incident, gets corroborate by the testimony of PW - 4 [Ranubai Dildar Bhilala], as her evidence shows that, her husband informed PW - 5 [Dagadu Ramrao Gaikwad] about the incident and PW - 5 [Dagadu Ramrao Gaikwad] came to the field and Deceased was taken to the Hospital at Pachora in his vehicle. The cross-examination could not affect his testimony in any manner.

13. Further evidence of PW - 5 [Dagadu Ramrao Gaikwad] shows that, he also acted as the panch for the Inquest at Exhibit - 34. He noticed that, the face of Deceased was swollen and smeared with blood with black-dark circles around the eyes. He acted as the panch for the Spot Panchnama at Exhibit - 35. This evidence shows that, the spot was agricultural field at Girad. His cross-examination shows that, no vax seal was affixed on the packets. The testimony of PW - 12 [Narayan Dhanaji Borse], who was the Investigating Officer shows that, spot panchnama was conducted in the agricultural field of PW - 2 [Sudhakar Shravan Chaudhari]. The spot of incident was shown by PW - 5 [Dagadu Ramrao Gaikwad].

14. The evidence of PW - 6 [Kishor Bhaskar Patil] shows that, the clothes of Deceased were seized in his presence on

05/10/2014 in the Bhadgaon Police Station under the panchnama at Exhibit - 38. His evidence shows that, he described the clothes and also identified the same in his testimony. His cross-examination shows that, he was an auto rickshaw driver. He denied the suggestion that, the panchnama was kept ready and he just put his signature in the Police Station. Merely because he was on visiting terms to the Police Station, being the auto rickshaw driver, cannot be the reason to discard his testimony.

15. By examining PW - 11 [Dr. Mandar Mukund Karambelkar], the Prosecution has brought in the evidence the Postmortem Report at Exhibit - 61. Though this witness had not performed the Postmortem on the Deceased, his evidence shows that, the Doctor i.e. Dr. Anant Patil, who performed the Postmortem, was his colleague and he could identify his signature and since the said Medical Officer was unable to attend the Court due to his medical treatment at Delhi, he was examined by the Prosecution. His evidence shows that, he could identify the handwriting and signature of the Medical Officer, who performed the Postmortem. This medical evidence shows the following external and internal injuries on the dead body when Postmortem was conducted :-

External Injuries :-

- [i] Multiple contusions over face over right and left side with moderate swelling with multiple abrasions.
- [ii] Maximum swelling over frontal bone of head with palpable fracture of frontal bone.
- [iii] Multiple abrasion present near right eye with bleeding with contusion and swelling.
- [iv] Palpable fracture over left maxillary bone (above upper lip).

15.1 All the above injuries were in anti-mortem in nature.

Internal Injuries :-

- [i] Contusion present over frontal bone.
- [ii] Palpate fracture of frontal bone was seen.
- [iii] Palpate fracture of left maxillary bone seen.
- [iv] He found presence of bleeding in frontal bone.

16. The medical evidence shows that, the cause of death was "*Cardio-respiratory arrest due to head injury*". The external injuries as discussed above were possible by Article - D-1 [Iron Rod]. The defence, as can be seen from the cross-examination of PW - 3 [Nimbibai Dhundrya Bhilala] and this Medical Officer is that the said injuries were caused by fall on hard surface from some height or in the well. The Medical Officer denied that, the said injuries were possible due to fall from some height on hard surface. From this medical evidence, the injuries on the Deceased and cause of death are established.

17. The other evidence brought on record by the Prosecution is regarding discovery and seizure of the iron rod at the instance of the Appellant. The evidence of PW - 12 [Narayan Dhanaji Borse] shows that, he arrested the Appellant on 06/10/2014 under the arrest memo at Exhibit - 87. The arrest of the Appellant is not in dispute. The evidence of PW - 7 [Dharma Suka Javale] shows that, on 09/10/2014, he was called in the Police Station as the panch. In his presence, the Appellant gave the statement to produce the iron rod, which was concealed by him and Memorandum at Exhibit - 43 was prepared. Thereafter, the Appellant led them to the field and produced one iron rod from the hut in the field, which came to be seized under the seizure panchnama at Exhibit - 44. He

identified the Article-D as the same iron rod, admeasuring approximately 3 ft. 3 inch and of 8 mm in diameter.

18. On the same line, PW - 12 [Narayan Dhanaji Borse], Investigating Officer, deposed of disclosure made by the Appellant to produce the iron rod and its seizure at the instance of the Appellant from the field under the seizure panchnama at Exhibit - 44. The evidence of these two [2] witnesses nowhere shows that, the Article - D-1 [Iron Rod] was stained with blood. The CA report at Exhibit - 90 is in respect of articles sent for the Chemical Analysis vide communication at Exhibit - 46. The CA report shows no blood stains on the said iron rod, which was labelled as Exhibit - D1 at Serial No.7. Therefore, the said discovery and seizure of the iron rod at the instance of the Appellant will not be relevant.

19. The evidence of PW - 5 [Dagadu Ramrao Gaikwad] shows that, on 10/10/2014, the blood stained clothes of the Appellant, which were, one ash colour pant and yellow colour shirt were seized under the Panchnama at Exhibit - 36. The CA report do not show any blood on the shirt, which was shown as Article - C-1 and shows the human blood on the full pant, which was shown as Article C-2. However, the blood group on the full pant is shown as inconclusive.

20. The evidence on record established that, the testimony of the eyewitnesses withstood the cross-examination. There is inter-say corroboration in the testimony of the eyewitnesses. There is consistent evidence of the eyewitnesses in respect of assault by the Appellant with the iron rod to the Deceased. We accept the evidence of the eyewitnesses. The medical evidence corroborate the testimony of the eyewitnesses. It is established

that, the Appellant's wife died due to injuries suffered due to assault by him. The reason for assault, as can be seen from the testimony of PW - 4 [Ranubai Dildar Bhilala] and PW - 5 [Dagadu Ramrao Gaikwad] was that, she refused to provide money to him for consuming liquor. That was the oral statement by the Deceased before her death to these two witnesses. As seen, the said assault resulted in her death. Therefore, that would be the oral dying declaration within the meaning of provisions of Section 32[1] of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act']. Though the discovery of the iron rod is held to be not relevant due to no blood stains of the Deceased on the same, that would not render the other evidence on record, particularly the evidence of the eyewitnesses and the medical evidence, inconsequential.

21. The learned Trial Court has recorded the conviction for the offence of Murder punishable under Section 302 of IPC. The alternate submission of the learned Advocate for the Appellant is that, the offence would not fall within the ambit of Murder. The Judgments relied upon by him are considered below :-

[a] **Kalu Ram Vs. State of Rajasthan; [2000] 10 SCC 324**, wherein, *the convict asked his wife to spare her ornaments, presumably for raising some more money for buying liquor. He was then also drunk. His wife refused to part with her ornaments and that infuriated the Appellant. He doused her with kerosene and wanted her to die and supplied a box of matchsticks to her. As she failed to ignite the matchstick, the Appellant therein collected the matchbox and lit one matchstick and set her ablaze. When the flames were up he*

brought water in a frantic effort to save her from death. She was later removed to the hospital. Her dying declaration was recorded. Later she succumbed to her burn injuries. It was held that, if the Appellant had ever intended her to die, he would not have alerted his senses to bring water in an effort to rescue her. It was held that, the Accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. The offence was brought down from first degree murder to culpable homicide not amounting to murder and the conviction was altered to Section 304 [Part-II] of IPC.

[b] Emperor Vs. Mehdi Ali, in Criminal Revision No.1107/1940, Indian Law Reports [1941] 608, wherein, *a young man was convicted for an offence under Section 304 of IPC for having killed his wife, whom he found in the act of adultery with another man, by beating her with a lathi on the head and body and inflicting as many as thirty-three injuries. The Trial Court found that, the Accused killed his wife under the influence of grave and sudden provocation and while wholly deprived by that provocation of the power of self-control and was sentenced to suffer rigorous imprisonment for ten years and fine. The Revisional Court held that, the sentence was too severe. It was held that, it was a contradiction in terms to hold that the Accused acted while he was wholly deprived of all power of self-control for a reason recognized by the law, namely grave and sudden provocation, and at the same time to say that he deserves the most severe punishment that his crime admits of; and it is a confusion of thought to permit in such circumstances the nature or number of the blows struck to count in assessing what punishment should be given, for ex*

hypothesi the man had no control of himself. The sentence was reduced by half without any fine.

[c] **Molu and Others Vs. State of Haryana ; AIR 1976 SC 2499**, wherein, *in the morning, the Deceased along with prosecution witnesses went out to ease themselves in the field which was away from their house. While they were in the process of easing themselves, all the five accused, variously armed with lathis, pharsis and gandasi, appeared on the scene and pounced upon the Deceased causing him several injuries. On alarm being raised, the relatives of Deceased and witnesses rushed to the scene of occurrence. They all were assaulted by the accused. One of the point for consideration before the Apex Court was, what was the nature of offence that accused committed. It was observed that, multiple injuries were received by the Deceased which were caused by blunt weapons like lathis and were of minor character. The injuries were not on any vital parts of the body and even those which were on the scalp portion appear to be very superficial. There was nothing to show that the accused intended to cause the deliberate murder of the deceased. It was held that, the offence would fall under Section 304 [Part-II] of IPC and not one under Section 302 of IPC.*

[d] **Manjeet Singh Vs. State of Himachal Pradesh ; [2014] 5 SCC 697**, wherein, *the accused and two others, while drinking liquor in a hotel, were inquired from their whereabouts by the hotel manager, upon which, the accused got agitated and abused the hotel manager and started beating him. The hotel manager ran outside, where he met deceased. The prosecution witnesses told them about the incident. The deceased then went*

and inquired from the appellant as to why he had beaten the hotel manager. It was then that the appellant's companions instigated the appellant to use his carbine, whereupon, appellant allegedly fired shots at deceased and his companions, which hit them. Deceased suffered two shots on his chest, leading to his death. It was held that, the evidence produced against the appellant did not show that the appellant had any motive to cause death of deceased or have intended to cause such bodily injuries which were sufficient in the ordinary course of nature to cause death of deceased. The evidence on record also did not establish that injuries caused on body of deceased must in all probability cause his death or likely to cause his death. On the spur of moment, during heat of exchange of words, appellant caused injuries to the deceased which caused his death. Therefore, ingredients for the offence of murder were held not established and he was found guilty of culpable homicide not amounting to murder under Section 304 of IPC and sentenced to suffer seven year rigorous imprisonment.

[e] **Sukh Lal and others Vs. The State; 1953 Criminal Law Journal 1815**, wherein, *the deceased who was a widow and in possession of her deceased husband's land fell out with the appellants who were collaterals of her deceased husband. The collaterals wanted to have say in the matter of leasing out the land to tenants and it appeared that deceased was not quite agreeable to their wishes. In the morning of the day of occurrence quarrel took place between deceased and the collaterals including the appellants therein. The deceased said that as the collaterals were getting quarrelsome she would go and seek the assistance of the police. She accordingly left her*

house for that purpose. She was followed by the four appellants of whom one was armed with a hatchet and the other with dangs. The deceased had hardly gone a few yards from her house, when the four appellants fell upon her and beat her with their respective weapons. The point for consideration was whether the appellant to be held guilty of murder. It was held that, none of the injuries according to the doctor was individually fatal. Indeed technically speaking all the injuries were simple in nature and death was due to shock and intracranial haemorrhage. It was held that, the case would fall more appropriately under the fourth alternative mentioned in Section 299 of IPC and they were convicted for the offence punishable under Section 304 [Part-II] of IPC.

[f] **Didar Singh Vs. State of Haryana ; 1992 AIR SCW 3178 SC**, wherein, *the case was based on the circumstantial evidence. It was held that, from the medical evidence, it was seen that, the accused therein had taken drinks along with the deceased and it appeared to be a case of fight during a drunken brawl. It was held that, in view of the matter, there appeared to be no intention to commit murder and their conviction was altered to be under Section 304 [Part-I] read with Section 34 of IPC.*

22. It would not be out of place to refer the Judgment of the Hon'ble Apex Court in **Anbazhagan Vs. The State represented by the Inspector of Police; AIR 2023 SC 3660**, wherein, the point for consideration was whether the conviction of the Appellant therein for the offence punishable under Section 304 Part-I of IPC should be further altered to Section 304 Part-II of IPC. The terms "Intent" and "Knowledge" are considered. The provisions of Sections 299 and 300 of IPC and the previous

Judgments, wherein, the aspect of culpable homicide and murder is dealt with. The important principles of law discernible from the discussion made in the said Judgment, are spelt out in Paragraph No.60 of the said Judgment.

23. Coming to the case on hand, the evidence of the eyewitnesses shows that, the Appellant was under the influence of liquor when he assaulted the Deceased. The weapon for assault used, as per the testimony of the eyewitnesses, was the iron rod. The evidence of PW - 4 [Ranubai Dildar Bhilala], the eyewitness, who was residing with her family in the same tin shade standing in the field, where the incident took place, shows that, for last one [1] month before the incident, the Appellant used to assault the Deceased everyday under the influence of liquor. This shows that, consuming liquor and assaulting the Deceased was not new and had become regular feature, though cannot be supported. The Accused and Deceased were the agricultural labourers. On the day of incident, he assaulted the Deceased with iron rod, since she refused to give money to him. Had really he intended to kill the Deceased, he would have used sharp weapon / article, easily available in the agricultural field, where he was working or would have dealt multiple blows on the Deceased to ensure her death. The medical evidence shows in all four [4] external injuries on the face and head. These aspects do not show that, the Appellant had intention to eliminate his wife. The internal examination shows fracture to the frontal bone and to left maxillary bone. This indicate that, the blow by the iron rod was by sufficient force. The force used in the assault by use of iron rod on the head, which is vital a part, the knowledge that, it will cause such bodily injury as was likely to cause

death, can safely be attributed to the Appellant. Therefore, the act of the Appellant would fall in third part of Section 299 of IPC punishable under Part-II of Section 304 of IPC, which read as under :-

“299. Culpable homicide. - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

“304. Punishment for culpable homicide not amounting to murder. - Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

24. The Appellant was arrested on 09/10/2014 and since then, he is behind the bars. He is sentenced to imprisonment for life with fine of Rs.3000/-, in default, to undergo simple imprisonment for three [3] months by the learned Trial Court. The sentence of imprisonment for seven [7] years with the fine and default sentence as awarded by the learned Trial Court, would be appropriate sentence. Thus, We alter the conviction and sentence as under :-

ORDER

- [i] Criminal Appeal is partly allowed.
- [ii] The conviction and substantive sentence awarded by the learned Trial Court, vide impugned Judgment and Order dated 14/12/2017 against the Appellant for the offence

punishable under Sections 302 of IPC, is quashed and set aside.

- [iii] The Appellant is convicted for the offence punishable under Section 304 [Part-II] of IPC and sentenced to suffer imprisonment for seven [7] years with fine and default sentence as awarded by learned Trial Court i.e. Rs.3000/- [Rupees Three Thousand], in default, to suffer simple imprisonment for three [3] months.
- [iv] The Paper-book shows that, the Appellant has paid the fine amount. He has served the said period of sentence. Therefore, he be released forthwith, if not required in any other offence.
- [v] Muddemal property be dealt with as directed by the learned Trial Court.
- [vi] The fees of learned Advocate Mr. V. M. Lomte appointed for the Appellant is quantified at Rs.10,000/- [Rupees Ten Thousand Only] to be paid by the High Court Legal Services Sub - Committee, Aurangabad.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer